IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
Cutera, Inc., *et al.*[1]	Case No. 25-90088 (ARP)
Debtors.	(Joint Administration Requested)

DECLARATION OF TAYLOR HARRIS,
CHIEF EXECUTIVE OFFICER OF THE DEBTORS, IN SUPPORT
OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

I, Taylor Harris, hereby declare under penalty of perjury to the best of my knowledge, information, and belief:

1. I am the chief executive officer (the "Chief Executive Officer") of Cutera, Inc. ("Cutera"), a corporation organized under the laws of Delaware (together with Crystal Sub, LLC, the "Debtors" and collectively with all non-debtor affiliates, the "Company"). Prior to becoming Cutera's Chief Executive Officer in August of 2023, I advised Cutera in my capacity as a member of Cutera's board of directors (the "Board of Directors") starting in June of 2023. In addition to my employment with Cutera, I have served as the chief financial officer for a company in the biotech sector, and as the senior vice president and chief financial officer of a company in the aesthetics industry. My career also includes over a decade at a prominent bank where I worked in

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Cutera, Inc. (2262) and Crystal Sub, LLC (6339). The Debtors' service address is 3240 Bayshore Boulevard, Brisbane, CA 94005.

various capacities, including as a vice president in the healthcare investment banking department. I earned my B.A. from the University of North Carolina at Chapel Hill as a Morehead-Cain Scholar.

2. On March 5, 2025 (the "Petition Date"), the Debtors filed voluntary petitions (the "Petitions") in the United States Bankruptcy Court for the Southern District of Texas (this "Court") for relief under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"). To facilitate the Debtors' transition into chapter 11, the Debtors have requested certain "first day" relief in various applications and motions filed with the Court (collectively, the "First Day Motions"). The First Day Motions, as applicable, seek relief intended to avoid immediate and irreparable harm to the Debtors' estates and to preserve their value, by, among other things, obtaining debtor-in-possession financing, and paying certain tax, prepetition, and administrative obligations to facilitate the Debtors' restructuring efforts. The First Day Motions also seek certain procedural relief that will facilitate the Debtors' orderly transition into chapter 11.

3. As a result of my service with the Company, review of relevant documents, and discussions with other members of the Company's management team and professional advisors, I am familiar with the Company, and in particular the Debtors' day-to-day operations, business affairs, and books and records. I am authorized to submit this declaration (the "Declaration") in support of the Petitions and the First Day Motions to assist the Court and other parties in interest in understanding the Debtors' corporate history, business operations, prepetition corporate and capital structure, and the circumstances leading to the commencement of these chapter 11 cases.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with other members of the Company's management teams and other advisors, my review of relevant documents and information concerning the Company's operations, financial affairs, and restructuring initiatives, or my opinions based upon my

experience and knowledge. The statements in this Declaration are accurate and correct to the best of my knowledge, information, and belief. If called upon as a witness, I could and would testify competently to the facts set forth in this Declaration on that basis.

PRELIMINARY STATEMENT[2]

5. Founded in 1998 and headquartered in Brisbane, California, Cutera is a leading global provider of aesthetic and dermatology solutions for medical practitioners. The Company develops, manufactures, and markets products that enable safe and effective treatments for acne, skin resurfacing, hair removal, tattoo removal, body contouring and other aesthetic and dermatologic conditions. The Company currently markets the following key platforms: *AviClear*, *enlighten*, *excel V/V+*, *excel HR*, *truSculpt*, *truFlex*, *Secret*, and *xeo*. In addition, the Company provides device support and service, as well as consumables (products which require replacement) used in connection with its product platforms. Offering direct sales and service to 11 countries outside the United States and distributing products to over 30 additional countries around the world, the Company is committed to designing accessible products that cater to a broad demographic for a variety of patient needs. In 2023, approximately fifty percent of the Company's total revenue was from customers outside of North America. As of the Petition Date, the Company employs approximately 350 people worldwide.

6. Despite these accomplishments, in recent years the Company has experienced a series of challenges. These challenges include product launch and other operational difficulties, leadership turnover, loss of a key skincare distribution partnership, increased market competition, and macroeconomic pressures which affect customers' willingness and ability to invest in equipment. These challenges were compounded by Cutera's substantial debt service (annual

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them in this Declaration.

payments of approximately $12 million), as well as the prospective maturity of its 2026 Senior Notes (approximately $69 million in March 2026). In response, the Company implemented various initiatives to improve operational performance, reduce costs, streamline operations and increase revenue. Some of these initiatives include strategic reductions in force, termination of a costly manufacturing relationship, intense focus on customer service and product reliability, improved inventory and receivables management, salesforce restructuring and a revised business model for *AviClear*.

7. Starting in the middle of 2024, Cutera began engaging with certain members of an ad hoc committee of Senior Noteholders (the "Ad Hoc Committee of Consenting Senior Noteholders") to address solutions for Cutera's over-levered balance sheet and upcoming maturities. Together, Cutera and the Ad Hoc Committee of Consenting Senior Noteholders explored and negotiated various strategic alternatives to address the near-term maturity of the 2026 Senior Notes and liquidity needs of the business, as well as the longer-term sustainability of the Company's capital structure. These negotiations resulted in the execution of a restructuring support agreement (the "Restructuring Support Agreement"), which provides the main framework for the prepackaged plan of reorganization (as may be amended, modified or supplemented, the "Plan") and is the basis on which the acceptances of the Senior Noteholders are being solicited—with such solicitation process commencing prior to the filing of these chapter 11 cases.

8. Thus, the Debtors filed these chapter 11 cases to implement the terms of the prepackaged Plan and the go-forward business strategy on which the Plan is based. In that regard, these chapter 11 cases will comprehensively restructure the Debtors' prepetition capital structure, preserve the going-concern value of the Debtors' businesses, maximize creditor recoveries (including by reinstating general unsecured claims in full and assuming all executory contracts and

unexpired leases), and protect the jobs of the Company's employees. The Plan's consummation and the significant deleveraging of nearly $400 million (over 90% of the prepetition funded indebtedness) will enable the post-emergence Company to allocate capital to essential research and development. These investments aim to drive profitability and maintain competitiveness in the highly regulated and competitive aesthetic medical device sector.

9. To familiarize the Court with the Company, their business, the circumstances leading to the filing of these chapter 11 cases and the relief the Debtors are seeking in those certain motions and applications filed contemporaneously herewith, this Declaration is organized in four parts:

- ***Part I*** describes the Company's corporate history and business operations;
- ***Part II*** describes the Company's prepetition capital structure;
- ***Part III*** describes the circumstances leading to the filing of these chapter 11 cases; and
- ***Part IV*** discusses the First Day Motions.

I. Corporate History and Business Operations

10. Since its founding in 1998, Cutera has grown into a leading provider of aesthetic and dermatology solutions for medical practitioners worldwide. The Company conducts manufacturing, research and development, sales, marketing and administrative activities at its corporate headquarters in Brisbane, California. The Company markets, sells and services its products through direct sales and service employees in North America (including Canada), Australia, New Zealand, Austria, France, Belgium, Germany, Japan, Hong Kong, Switzerland, the United Kingdom and Ireland. Sales and service outside of these direct markets are made through a worldwide distributor network in over 30 countries.

11. The Company's revenue has declined from $212.4 million for the twelve months ended December 31, 2023, to $138.5 million for the twelve months ended December 31, 2024. The Company is focused on a range of initiatives to enhance productivity, reduce costs, and promote its portfolio of aesthetic devices.

A. The Debtors' Workforce and Headquarters

12. As of the Petition Date, the Debtors' domestic labor force consists of approximately 251 total employees.[3] Of the Debtors' employees, approximately 186 are salaried employees, 65 are paid hourly, and none of the Debtors' employees is represented by a labor union. Employees are the backbone of the Company, supporting all key functions including manufacturing, research and development, service and sales. The Company's future plans rely on this workforce to drive momentum and growth.

B. Product Portfolio

13. The Company's product portfolio targets four dermatology and aesthetic treatment categories: (1) Skin Resurfacing and Revitalization; (2) Acne Treatment; (3) Body Sculpting and Muscle Stimulation; and (4) Other Aesthetic Conditions (collectively, the "Product Areas").[4] The Product Areas are described in more detail below:

1. **Skin Resurfacing and Revitalization**: The Company makes a broad range of products designed to improve the texture and appearance of skin (collectively, the "Cutera Skin Suite"). Key product lines within the Cutera Skin Suite include:

    (1) *Excel V/V+* for the treatment of vascular and benign pigmented lesions;

[3] In addition to the Debtors' employees, approximately 105 individuals are employed by foreign non-debtor subsidiaries.

[4] In 2024, the Company's aggregate net revenues, including all Product Areas, totaled approximately $138.5 million.

(2) *Xeo* and *Xeo+*, which include both laser and intense pulsed light technology, for multiple applications including skin revitalization;

(3) *Enlighten*, the company's picosecond laser platform for the treatment of benign pigmented lesions and scars; and

(4) The *Secret* platform, including *RF*, *PRO*, and *DUO,* which incorporate radiofrequency microneedling and laser technology for skin resurfacing and rejuvenation treatments.

2. **Acne Treatment**: *AviClear* was the first FDA-cleared energy-based device for treating mild to severe inflammatory acne vulgaris. *AviClear* uses a 1726nm laser to suppress sebaceous glands which produce sebum; one of the primary root causes of acne. The *AviClear* technology utilizes the principle of selective photothermolysis, incorporating a powerful laser, a wavelength that is selective for sebum and the *AviCool* contact cooling technology for enhanced comfort during the procedure.

3. **Body Sculpting and Muscle Stimulation**: *truFlex* and *truSculpt* are innovative body treatment devices designed for muscle toning and body sculpting. *truFlex* delivers muscle stimulation for firming and toning, whereas *truSculpt* uses RF technology for fat reduction and body contouring. Both systems include consumable parts that need periodic replacement, generating ongoing revenue.

4. **Other Aesthetic Conditions**: The Company's device portfolio also offers treatments for other aesthetic conditions, including tattoo removal and hair removal.

C. Customers

14. The Company primarily sells its products to physicians, including dermatologists and other medical aesthetic practitioners, through both direct sales and a network of distributors. These customers purchase systems, consumables, and extended service contracts. Systems consist of a primary console and various hand pieces, which can be upgraded over time. Consumables, which are essential for the ongoing use of the systems, provide a steady stream of recurring revenue. Additionally, the Company offers extended service contracts that provide post-warranty services, helping customers support and maintain their systems.

15. The Company also provides training and marketing support to customers, enhancing their ability to effectively use and promote their products. By offering comprehensive support services which meet the diverse clinical needs of its customers, the Company strengthens its relationships and drives repeat business, contributing to its overall growth and stability.

II. DEBTORS' PREPETITION CORPORATE AND CAPITAL STRUCTURE

16. A chart summarizing the Debtors' corporate structure is attached hereto as **Exhibit A**. As of the Petition Date, the Debtors' capital structure includes approximately $429.13 million[5], net of unamortized debt issuance costs, of total principal unsecured debt obligations, including: (i) 2.25% convertible senior notes due 2026 in the amount of approximately $69.13 million outstanding, (ii) 2.25% convertible senior notes due 2028 in the amount of approximately $240 million outstanding and (iii) 4.00% convertible senior notes due 2029 in the amount of approximately $120 million outstanding (collectively, the "Senior Notes"). Each series of the Senior Notes is a general senior unsecured obligation that ranks senior to any of the Company's indebtedness that is explicitly subordinated to such series of the Senior Notes. Each series of the Senior Notes has equal rank in right of payment with all existing and future unsecured indebtedness (including each other series of Senior Notes). The Debtors have no funded secured debt. As of March 3, 2025, Cutera has 20,185,926 shares of common stock issued and outstanding.

[5] The total principal debt obligations set forth in this sentence reflect the funded debt instruments and do not reflect general unsecured claims, including approximately $550,000 on account of a PPP Loan (as defined herein).

17. The following tables summarize the Debtors' prepetition capital structure (as of the Petition Date).

Capital Structure as of the Petition Date	
Instrument	Principal Outstanding (mm)
2026 Senior Notes	$69.13
2028 Senior Notes	$240
2029 Senior Notes	$120
Total Debt[6]	**$429.13**
Common Stock	$6.5[7]
Total Capitalization	$435.63

A. 2026 Senior Notes

18. On March 9, 2021, Cutera entered into that certain Indenture (the "2026 Senior Notes Indenture") with U.S. Bank Trust Company, National Association as trustee (the "2026 Senior Notes Indenture Trustee"), pursuant to which Cutera issued unsecured convertible senior notes in an original principal amount of $138.3 million (all such notes issued pursuant to the 2026 Senior Notes Indenture, the "2026 Senior Notes") in a private placement offering. On February 24, 2025, Crystal Sub, LLC was added as an obligor under the 2026 Senior Notes via a supplemental indenture.

19. The 2026 Senior Notes have a maturity date of March 15, 2026, and bear interest at a fixed rate of 2.25% per year payable semiannually in arrears on March 15 and September 15 of each year. The 2026 Senior Notes are convertible at the noteholders' discretion. Upon conversion, Cutera may elect whether the 2026 Senior Notes are exchanged for cash, shares of

[6] "Total Debt" reflects the funded debt instruments and does not reflect general unsecured claims – including approximately $550,000 on account of a PPP Loan (as defined herein).

[7] The Common Stock market capitalization is as of March 3, 2025.

common stock or a combination thereof. As of the Petition Date, approximately $69.1 million of principal remains outstanding under the 2026 Senior Notes Indenture.

B. 2028 Senior Notes

20. On May 27, 2022, Cutera entered into that certain Indenture (the "2028 Senior Notes Indenture") with U.S. Bank Trust Company, National Association as trustee (the "2028 Senior Notes Indenture Trustee"), pursuant to which Cutera issued unsecured convertible senior notes in an original principal amount of $240 million (all such notes issued pursuant to the 2028 Senior Notes Indenture, the "2028 Senior Notes"). On February 24, 2025, Crystal Sub, LLC was added as an obligor under the 2028 Senior Notes via a supplemental indenture. A total of $230 million in aggregate principal amount of 2028 Senior Notes was issued in a private placement offering. Concurrently with this private placement offering, Cutera entered into a purchase agreement with Voce Capital Management LLC ("Voce"), an entity affiliated with J. Daniel Plants, Cutera's former Executive Chairperson. Under such purchase agreement, Cutera issued to Voce $10 million aggregate principal amount of 2028 Senior Notes on identical terms and conditions.

21. The 2028 Senior Notes have a maturity date of June 1, 2028, and bear interest at a fixed rate of 2.25% per year payable semiannually in arrears on June 1 and December 1 of each year. The 2028 Senior Notes are convertible at the noteholders' discretion. Upon conversion, Cutera may elect whether the 2028 Senior Notes are exchanged for cash, shares of common stock or a combination thereof. As of the Petition Date, approximately $240 million of principal remains outstanding under the 2028 Senior Notes Indenture.

C. 2029 Senior Notes

22. Cutera entered into that certain Indenture, dated as of December 12, 2022 (the "2029 Senior Notes Indenture") with U.S. Bank Trust Company, National Association, as trustee

(the "2029 Senior Notes Indenture Trustee"), pursuant to which Cutera issued unsecured convertible senior notes in an original principal amount of $120 million (all such notes issued pursuant to the 2029 Senior Notes Indenture, the "2029 Senior Notes" and the holders of the 2029 Senior Notes together with holders of the 2026 Senior Notes, the 2028 Senior Notes, the "Senior Noteholders") in a private placement offering. On February 24, 2025, Crystal Sub, LLC was added as an obligor under the 2029 Senior Notes via a supplemental indenture.

23. The 2029 Senior Notes have a maturity date of June 1, 2029, and bear interest at a fixed rate of 4.00% per year payable semiannually in arrears on June 1 and December 1 of each year. The 2029 Senior Notes are convertible at the noteholders' discretion. Upon conversion, Cutera may elect whether the 2029 Senior Notes are exchanged for cash, shares of common stock or a combination thereof. As of the Petition Date, approximately $120 million of principal remains outstanding under the 2029 Senior Notes Indenture.

E. General Unsecured Claims

24. In the ordinary course of business, the Debtors incur obligations to vendors, suppliers, and trade counterparties, including, but not limited to, employees, critical vendors and customers. As of the Petition Date, the Debtors estimate they have approximately $6.7 million in accounts payable outstanding before application of any setoffs, credits, or deductions which may be available to the Debtors, including claims that may be entitled to priority (e.g., under section 503(b)(9)) of the Bankruptcy Code. The Debtors also have approximately $550,000 of unsecured debt outstanding in connection with a "Paycheck Protection Program" loan (the "PPP Loan") made pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act. While the Debtors had previously been advised that the full balance was forgiven, the U.S. Small Business Administration ("SBA") in its review of prior loans revised its position and noted that approximately $550,000 remained outstanding and due. The Debtors have sought clarification of

this position, including with respect to further instruction on payment timing and terms, but have not received updates since December 2023.

F. Existing Equity

25. Cutera's common stock is publicly traded on the NASDAQ Stock Market under the trading symbol "CUTR". As of March 3, 2025, Cutera has 20,185,926 shares of common stock issued and outstanding. As of March 3, 2025, the trading price of the common stock at market close was $0.32 with a 52-week high of $3.00 and a 52-week low of $0.28. The issued and outstanding common stock is held by approximately six holders of record as of March 3, 2025. Cutera believes the actual number of stockholders is greater than the number of record holders, and includes beneficial owners whose shares are held in "street" name by brokerage firms and other nominees. The number of holders of record also does not include holders whose shares may be held in trust by other entities.

III. EVENTS LEADING TO THESE CHAPTER 11 CASES

26. The Debtors' restructuring arises from a number of factors, including product launch and other operational difficulties, leadership turnover, loss of a key skincare distribution partnership, increased market competition and macroeconomic pressures affecting customers' willingness and ability to invest in capital equipment. The negative impact from these factors on the Debtors was further exacerbated by an unsustainable capital structure. To preserve and maximize value, the Debtors have already begun implementing certain internal business plan initiatives to strengthen operations and performance. Due to the Debtors' burdensome capital structure and declining revenues however, the Debtors have been unable to successfully execute

all phases of their business plan. Delayed execution of this business plan has limited the Debtors ability to navigate industry challenges and has negatively impacted revenues.

A. Product Launch and Other Operational Difficulties, Leadership Turnover, Loss of a Key Skincare Distribution Partnership, Increased Market Competition and Macroeconomic Pressures

1. Product Launch and Other Operational Difficulties

27. While *AviClear* is a marquee product offering for the Company, its initial North American launch in 2022 under prior management was unsuccessful, primarily due to an ineffective go-to-market strategy. The Company initially placed *AviClear* devices under a rental model in over 1,300 customer locations during 2022 and 2023. This volume level required a significant increase in production capacity, which the Company addressed by utilizing a third-party contract manufacturer for both *AviClear* and another flagship product, *excel V+*. This outsourcing relationship proved to be problematic for multiple reasons, including the higher cost of outsourcing compared to the Company's internal manufacturing costs. The Company committed to purchase 1,500 machines annually from the outsourced manufacturing partner, an unsustainable level not matched by underlying demand. Exacerbating this issue, unsuccessful execution of the rental model (described below) failed to produce high system utilization. Over half of installed systems were located at medical spas which typically do not treat acne, the FDA cleared use of *AviClear*. Sales representatives and field service teams were not adequately equipped to provide the necessary responses and service to the customer base using *AviClear* systems, largely due to an increased volume of requests and limited parts availability. The Company's back-office employees and customer service departments became overwhelmed by issues resulting from this strategy, contributing to systems being underutilized by practitioners.

28. The initial roll-out offered *AviClear* systems under a rental model, where the upfront cost of obtaining an *AviClear* system was minimal. Subsequent revenue was obtained

from treating patients, and was split roughly evenly between the operating practice and the Company. Due to the placement of systems at practices with limited acne patient flows, this rental model greatly impaired cash flow. Given the critical importance of *AviClear* to the Company's product portfolio and business growth strategy, this flawed launch significantly impacted revenue and profitability. After I assumed the role of Chief Executive Officer of Cutera in August 2023, the Company halted new placements of *AviClear* under the rental model and the Company decided to forgo renewing the outsourced manufacturing agreement. The Company settled its purchase obligations and expenses with the manufacturing partner for a payment of $19.5 million.

29. The *AviClear* launch strategy compounded other operational challenges that the Company was experiencing, including field service delays, product reliability issues, supply chain management and inventory control. When I started as Chief Executive Officer, the Company had over 500 backlogged field service cases in North America which needed to be resolved, part shortages in certain critical areas and excess inventory purchases in other areas. Moreover, at the end of the first quarter after I joined (the third calendar quarter of 2023), we identified inadequate control over movements of inventory. Over the past 18 months, we have worked hard and made progress in many of these areas of operational challenge.

2. Leadership Turnover

30. Cutera experienced significant changes in its executive leadership and Board of Directors during 2023. In May 2023, the current interim chief financial officer was appointed, in July 2023 a new slate of directors was elected by Cutera's stockholders and in August 2023, I was announced as the president and Chief Executive Officer.

31. While the Company expects these leadership changes will be beneficial in the long-term, changes to strategic or operating goals can create short-term uncertainty. The beginning of leadership transition periods are often difficult until new executives gain detailed knowledge of

business operations. Management turnover inherently causes some degree of loss to institutional knowledge, which can negatively affect strategy and the ability to execute efficiently. Since experiencing this turnover, the Company has integrated new executives and board members effectively. The Company expects these changes to increasingly help manage the business to improve its financial condition and profitability.

3. Loss of Skincare Distribution Agreement

32. The Company has historically relied on the Japanese market for approximately 25% of its global sales, primarily through the distribution of skincare products manufactured by ZO Skin Health, Inc. ("ZO"). In 2023 and 2022, revenue from these skincare products was $34 million and $42.5 million, respectively, representing 16% and 17% of the Company's consolidated revenue. The Company's distribution agreement with ZO was set to expire in 2024. In 2023, ZO informed the Company that it did not intend to renew the agreement, electing instead to establish a direct commercial presence itself in Japan. On February 28, 2024, all agreements between Cutera, Cutera KK (Cutera's Japanese subsidiary), and ZO were terminated, ending the Company's distribution of ZO's products in Japan.

33. The termination of the ZO distribution agreement significantly reduced the Company's revenue and profitability in Japan, and the Company's ability to maintain and grow its business was impacted. While the Company has entered into a new skincare distribution partnership in Japan, it is generating significantly less revenue compared to the ZO distribution agreement which the Company had invested in and grown over an almost 10-year period.

4. Market Competition and Macroeconomic Pressures

34. The aesthetics market is highly competitive and characterized by rapid innovation. The Company faces competition from competitors offering alternative solutions, competitors with greater resources and competitors with broader product offerings. Increased industry

consolidation, coupled with the international expansion of aesthetic companies in lower-cost markets, has intensified competition. This has led to downward pressure on product prices and reduced profit margins across the industry. Starting in 2023, the Company began to experience reduced demand due to the broader macroeconomic environment. The impact of higher interest rates and the reduced availability of capital impaired the ability of its customers to finance the purchase of equipment. At the same time the market for body contouring machines, such as *TruSculpt* and *TruFlex*, declined substantially due to the introduction of new pharmaceutical treatments for obesity.

5. Capital Structure Overhang

35. These operational challenges have, in turn, created additional challenges with respect to the Debtors' funded debt load. As noted above, the Debtors' debt balance totals approximately $429.1 million. In 2025, debt service payments would otherwise total approximately $12 million if the capital structure remains unchanged. The substantial size of these debt service payments and its maturity profile put significant pressure on the business.

B. Prepetition Operational Initiatives

36. In response to its operational challenges, the Company has implemented various strategic actions and operational initiatives.

1. Cost Restructuring

37. During the fourth quarter of 2023, the Company initiated an internal global restructuring program across all of its functions and geographies. The goals of the program were to align and structure the business to better serve customers, improve communication and coordination across the Company and gain operational efficiencies in support of long-term financial health. The changes made in this internal restructuring were carefully planned to ensure that customers would not experience disruptions in the service they receive. This program

concluded in the second quarter of 2024 and resulted in personnel-related expense savings of approximately $20 million on an annualized basis. In addition, during the second half of 2024 the Company identified an additional $10 million cost reduction opportunity, which the Company expects to be fully realized in 2025. In total, the Company has reduced its total headcount from approximately 525 employees in the middle of 2023 to approximately 350 currently[8]. The Company is also undertaking cost reduction initiatives that include: (i) implementing a return merchandise authorization handpiece return policy for warranty customers to substantially increase the return rate of goods for warranty repair; (ii) implementing a refurbishment program for high-dollar field service components instead of scrapping; (iii) implementing production lines and work cells for high volume handpiece repair to improve cycle times and reduce labor costs; (iv) renegotiating shipping rates domestically and internationally, and (v) consolidation of inventory into three new centralized warehouses.

2. Revamped Sales Model

38. The Company also revamped its North American launch strategy for its *AviClear* platform, leveraging best practices from a successful international launch which boosted receptivity and utilization. This strategy entails four key changes: (i) a focus on providing systems to aesthetic dermatologists; (ii) shifting to a capital sales model; (iii) re-training and restructuring the sales force; and (iv) implementing a comprehensive service offering.

39. The Company identified priority targets in the United States, by focusing on dermatology practices experienced in aesthetics that likely utilize other devices or lasers. This shifts the primary focus away from the previously targeted medical spa ecosystem, though the Company still views any practice which has a natural flow of acne patients as a good candidate for

[8] Headcount figures represent full-time employees of the Company, excluding contractors.

AviClear. To incentivize the adoption of *AviClear*, the Company revised its business model to sell the system to providers upfront with a reduced per-treatment cost (in contrast to the prior, ineffective rental model), thereby aligning economic interests to promote usage. The Company also aimed to improve the effectiveness and productivity of its salesforce through additional sales training and restructuring of its sales organization. The new salesforce is better aligned with the practice development team that is responsible for assisting customers in growing their business. The Company also expanded the *AviClear* platform to offer improved customer support through training via "Cutera Academy," timely equipment servicing, and cooperative marketing.

C. Strategic Review and Lender Engagement

1. Engagement of Restructuring Advisors

40. In the middle of 2024, Cutera began engaging with its key stakeholders, including certain members of Ad Hoc Committee of Consenting Senior Noteholders, to explore options to address the upcoming maturity of the 2026 Senior Notes and more broadly, to right-size the Company's balance sheet. Cutera and such members of the Ad Hoc Committee of Consenting Senior Noteholders, together with their advisors, explored a variety of alternatives including, among other things, the possibility of an out-of-court public exchange.

41. To help lead these efforts, Cutera engaged Ropes & Gray LLP as restructuring counsel, Houlihan Lokey Capital, Inc. ("Houlihan"), as investment banker, and, later, FTI Consulting, Inc., as financial advisor. Houlihan explored various alternatives, including an attempted a third-party capital raise. Houlihan contacted 50 potential lenders and entered into confidentiality agreements with 18 to provide copies of a confidential investment memorandum. Houlihan held multiple calls to discuss possible funding arrangements, but ultimately no potential lenders elected to proceed.

42. Beginning in the fall of 2024, the Cutera and its advisors explored and negotiated a potential strategic transaction. Over several months, the transaction evolved into the transaction contemplated here today, to be implemented via chapter 11.

43. In connection with the restructuring efforts described above, the Ad Hoc Committee of Consenting Senior Noteholders engaged Paul, Weiss, Rifkind, Wharton & Garrison LLP as legal counsel and Centerview Partners LLC as financial advisor and investment banker.

2. Appointment of Additional Independent Director

44. In February 2025, contemporaneously with a director's resignation from the Board of Directors, Paul Wierbicki was appointed as an independent director. In this capacity, Mr. Wierbicki was delegated the investigative authority with respect to affiliate transactions and potential claims and causes of action against directors and officers.

3. Strategic Engagement

45. On March 4, 2025, after months of good faith, arm's-length negotiations, the Debtors reached consensus and executed the Restructuring Support Agreement with holders of approximately 74% of the Senior Notes (the "Consenting Senior Noteholders"). The signing of the Restructuring Support Agreement was undertaken only after careful consideration by the Board of Directors, in consultation with the management team and their experienced financial and legal advisors.

46. The Restructuring Support Agreement provides for a much-needed deleveraging: equitizing all of the prepetition Senior Notes and infusing new-money capital to the post-emergence company. More specifically, the Restructuring Support Agreement contemplates, among other things:[9] (i) a DIP Facility that provides for a $25 million new-money, super-priority

[9] Capitalized terms not defined in this section shall have the meanings ascribed to them in the Restructuring Support Agreement.

secured term loan debtor in possession financing facility, (ii) an Exit Facility consisting of (a) conversion term loans issued under the Exit Facility in an aggregate outstanding principal amount equal to the principal amount the term loans outstanding under the DIP Facility Documents on the Effective Date plus (b) a $10 million new money term loan with delayed draw capacity available upon emergence from these chapter 11 cases, each as provided by the Consenting Senior Noteholders; (iii) a $30 million Equity Rights Offering, backstopped by the Consenting Senior Noteholders; (iv) the Common Equity Convenience Buyout, backstopped by the Consenting Senior Noteholders in an amount up to approximately $7 million, and (v) most critically, support by the Consenting Senior Noteholders who represent a substantial majority of the Company's prepetition capital structure and hold approximately 74% of the Claims in the sole Voting Class, all subject to a robust fiduciary out provision.

47. The Restructuring Support Agreement provides the Debtors with a viable path forward and a framework to exit chapter 11 successfully and efficiently; the restructuring made possible by the Restructuring Support Agreement presents the most cost-effective path through settlement and compromise rather than litigation. Therefore, the Debtors believe execution of the Restructuring Support Agreement is an exercise of their reasonable business judgment.

IV. FIRST DAY MOTIONS AND RELATED RELIEF REQUESTED

48. In connection with the filing of these chapter 11 petitions, the Debtors filed the below-listed First Day Motions requesting relief that the Debtors believe is necessary to enable them to administer their estates with minimal disruption and loss of value during these chapter 11 cases. The facts set forth in each of the First Day Motions are incorporated herein in their entirety.

(i) Administrative Motions:

(1) Joint Administration Motion. *Debtors' Emergency Motion for Entry of an Order (I) Directing Joint Administration of the Chapter 11 Cases and (II) Granting Related Relief*;

(2) Claims Agent Application. *Emergency Ex Parte Application for Entry of an Order Authorizing the Employment and Retention of Kurtzman Carson Consultants, LLC DBA Verita Global as Claims, Noticing, and Solicitation Agent*;

(3) Creditor Matrix Motion. *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to File a Consolidated (A) Creditor Matrix and (B) Top 30 Creditors List, (II) Waiving the Requirement to File a List of Equity Security Holders; (III) Authorizing Redaction of Certain Personally Identifiable Information; and (IV) Granting Related Relief*; and

(ii) Financing Motions:

(4) DIP Motion. *Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Senior Secured Superpriority Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief;* and

(5) DIP Sealing Motion. *Motion of Debtors for Entry of an Order Authorizing the Debtors to File Certain Documents Under Seal*.

(iii) Operational Motions:

(6) Cash Management Motion. *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue Certain Intercompany Transactions and (II) Granting Related Relief*;

(7) Insurance Motion. *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to (A) Maintain and Extend Existing Insurance Policies and Pay All Insurance Obligations Arising Thereunder, and (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (II) Granting Related Relief*;

(8) Taxes Motion. *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Fees and (II) Granting Related Relief*;

(9) Utilities Motion. *Debtors' Emergency Motion for Entry of an Order (I)(A) Approving Debtors' Proposed Form of Adequate Assurance of Payment for Future Utility Services, (B) Approving Debtors' Proposed Procedures for Resolving Adequate Assurance Requests,*

and (C) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, and (II) Granting Related Relief;

(10) Wages Motion. *Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations, and (II) Granting Related Relief*;

(11) All Trade Motion. *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Payment of Certain Prepetition Claims of Trade Creditors, (II) Confirming Administrative Expense Priority Status of Debtors' Undisputed Obligations for Postpetition Delivery of Goods and Services, (III) Authorizing Payment of Customer Program Obligations, (IV) Authorizing Financial Institutions to Honor and Process Related Checks and Fund Transfers, and (V) Granting Related Relief.*

(iv) Other Relief

(12) NOL Motion. *Debtors' Emergency Motion for Entry of an Order (I) Approving Notification and Hearing Procedures for Certain Transfers of Common Stock and (II) Granting Related Relief.*

49. The First Day Motions request authority to, among other things, honor workforce-related compensation and benefits obligations, pay claims of certain taxing authorities and critical vendors, and continue the Debtors' cash management system and other operations in the ordinary course of business to ensure minimal disruption of the Debtors' business operations during these chapter 11 cases. For the avoidance of doubt, the Debtors request authority, but not direction, to pay amounts or satisfy obligations with respect to the relief requested in the First Day Motions.

50. The Debtors have tailored their request for immediate relief to those circumstances when the failure to receive such relief would cause immediate and irreparable harm to the Debtors and their estates. I believe an orderly transition into chapter 11 is critical to the viability of the Debtors' operations and that any delay in granting the relief described below could hinder the

Debtors' operations and cause irreparable harm. Other requests for relief will be deferred for consideration at a later hearing.

51. I have reviewed each of the First Day Motions and am familiar with the content and substance contained therein. The facts set forth in each First Day Motion are true and correct to the best of my knowledge and belief with appropriate reliance on other corporate officers and advisors and I can attest to such facts. I believe the relief requested in each of the First Day Motions listed above (a) is necessary to allow the Debtors to operate with minimal disruption and productivity losses during these chapter 11 cases, (b) is critical to ensure the maximization of value of the Debtors' estates, (c) is essential to achieving a successful reorganization, and (d) serves the best interests of the Debtors' stakeholders.

CONCLUSION

52. The Debtors' ultimate goal in these chapter 11 cases is to achieve an orderly, efficient, consensual, and successful reorganization and value maximizing result for the Debtors' stakeholders. To minimize any loss of value, the Debtors' immediate objective is to maintain a business-as-usual atmosphere during the course of these chapter 11 cases, with as little interruption or disruption to the Debtors' operations as possible. I believe that if the Court grants the relief requested by the First Day Motions, the prospect for achieving these objectives will be substantially enhanced.

[*Remainder of Page Intentionally Left Blank*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: March 5, 2025

/s/ *Taylor Harris*
Taylor Harris
Chief Executive Officer
Cutera, Inc.

EXHIBIT A

Organizational Structure Chart

Cutera Corporate Structure Chart

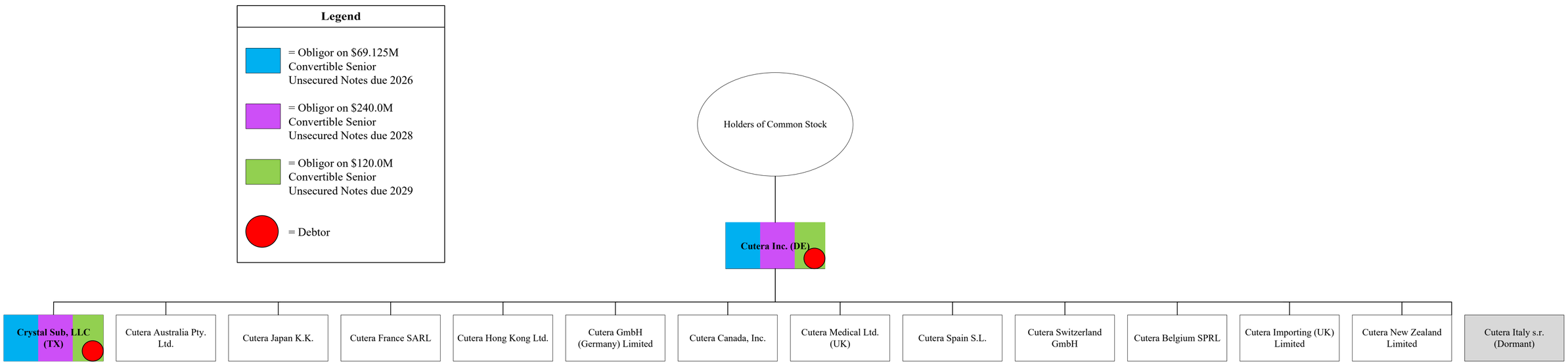

EXHIBIT B

Restructuring Support Agreement

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 13.02, this "**Agreement**") is made and entered into as of March 4, 2025 (the "**Execution Date**"), by and among the following parties (each of the following described in sub-clauses ((i)) through (iv) of this preamble, collectively, the "**Parties**"):

(i) Cutera, Inc., a Delaware corporation, and Crystal Sub, LLC, a Texas limited liability company (each, a "**Company Party**" and together, the "**Company Parties**"), that have executed and delivered a counterpart signature page to this Agreement to the Ad Hoc Committee of Consenting Senior Noteholders;

(ii) the undersigned beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2026 Senior Notes (as defined below) that have executed and delivered counterpart signature pages to this Agreement to counsel to the Company Parties (in each case solely in their capacity as such, the "**Consenting 2026 Senior Noteholders**");

(iii) the undersigned beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2028 Senior Notes (as defined below) that have executed and delivered counterpart signature pages to this Agreement to counsel to the Company Parties (in each case solely in their capacity as such, the "**Consenting 2028 Senior Noteholders**"); and

(iv) the undersigned beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2029 Senior Notes (as defined below) that have executed and delivered counterpart signature pages to this Agreement to counsel to the Company Parties (in each case solely in their capacity as such, the "**Consenting 2029 Senior Noteholders**").

RECITALS

WHEREAS, the Company Parties and the Consenting Senior Noteholders have in good faith and at arms' length negotiated or been apprised of certain restructuring and recapitalization transactions with respect to the Company Parties' capital structure on the terms set forth in this Agreement and as specified in the chapter 11 plan of reorganization attached as **Exhibit A** hereto (the "**Plan**" and, such transactions as described in this Agreement, the "**Restructuring Transactions**"), the Equity Rights Offering Backstop Commitment Agreement attached hereto as

Exhibit B, the Interim DIP Order (as defined below) attached hereto as **Exhibit C**, the New Corporate Governance Term Sheet (as defined below) attached hereto as **Exhibit D**, and the Exit Facility Term Sheet (as defined below), attached hereto as **Exhibit E**;

WHEREAS, the Company Parties intend to implement the Restructuring Transactions, including through the commencement by each Company Party of a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (each case commenced, the "**Chapter 11 Case**" and, collectively, the "**Chapter 11 Cases**");

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Plan; and

NOW, THEREFORE, in consideration of the covenants, representations, warranties, and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Definitions and Interpretation***.

1.01. Definitions.[1] The following terms shall have the following definitions:

"**2026 Senior Notes**" means those certain unsecured convertible senior notes issued pursuant to the 2026 Senior Notes Indenture.

"**2026 Senior Notes Indenture**" means that certain *First Supplemental Indenture*, dated as of February 24, 2025, to that certain *Indenture*, dated as of March 9, 2021, between Cutera, Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank National Association as trustee for 2.25% Senior Notes due 2026.

"**2028 Senior Notes**" means those certain unsecured convertible senior notes issued pursuant to the 2028 Senior Notes Indenture.

"**2028 Senior Notes Indenture**" means that certain *First Supplemental Indenture*, dated as of February 24, 2025, to that certain *Indenture*, dated as of May 27, 2022, between Cutera, Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank Trust Company, National Association as trustee for 2.25% Senior Notes due 2028.

"**2029 Senior Notes**" means those certain unsecured convertible senior notes issued pursuant to the 2029 Senior Notes Indenture.

"**2029 Senior Notes Indenture**" means that certain *First Supplemental Indenture*, dated as of February 24, 2025, to that certain *Indenture*, dated as of December 12, 2022, between Cutera,

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan.

Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank Trust Company, National Association as trustee for 4.00% Senior Notes due 2029.

"**Ad Hoc Committee of Consenting Senior Noteholders**" means the group of Consenting Senior Noteholders represented by the Ad Hoc Committee of Consenting Senior Noteholders Advisors.

"**Ad Hoc Committee of Consenting Senior Noteholders Advisors**" means, collectively, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel; (ii) Porter Hedges LLP as co-counsel; and (iii) Centerview, as financial advisor and investment banker.

"**Affiliate**" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such entity was a debtor in a case under the Bankruptcy Code.

"**Agreement**" has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 13.02 (including the Plan, Equity Rights Offering Backstop Commitment Agreement, New Corporate Governance Term Sheet, Exit Facility Term Sheet, the DIP Credit Agreement, and the Interim DIP Order).

"**Agreement Effective Date**" means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

"**Agreement Effective Period**" means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

"**Alternative Restructuring Proposal**" means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, tender offer, recapitalization, chapter 11 plan, share exchange, business combination, or similar transaction involving the Company Parties or the debt, equity, or other interests in the Company Parties that is an alternative to one or more of the Restructuring Transactions.

"**Announcement**" has the meaning set forth in Section 6.01 of this Agreement.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"**Bankruptcy Court**" means the United States Bankruptcy Court in which the Chapter 11 Cases are commenced or another United States Bankruptcy Court with jurisdiction over the Chapter 11 Cases.

"**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"**Causes of Action**" means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

"**Centerview**" means Centerview Partners LLC, as investment banker to the Ad Hoc Committee of Consenting Senior Noteholders.

"**Chapter 11 Case**" has the meaning set forth in the recitals to this Agreement.

"**Claim**" has the meaning ascribed to it in section 101(5) of the Bankruptcy Code.

"**Common Equity Convenience Buyout**" means the option of Holders of Allowed Senior Notes Claims who are not Consenting Senior Noteholders to elect to receive the Senior Notes Claim Cash Option in lieu of receiving Reorganized Common Equity on account of such Senior Notes Claims, pursuant to which certain of the Consenting Senior Noteholders shall purchase Reorganized Common Equity on the terms set forth in Section 4.14 of the Plan and the Common Equity Convenience Buyout Documents.

"**Common Equity Convenience Buyout Documents**" means the definitive documents and agreements required to effectuate the Common Equity Convenience Buyout, including the Common Equity Convenience Buyout Procedures and the Equity Rights Offering Backstop Commitment Agreement, to be reasonably agreed among the Debtors and the Required Consenting Senior Noteholders.

"**Common Equity Convenience Buyout Procedures**" means those certain procedures with respect to the Common Equity Convenience Buyout, as approved by the Bankruptcy Court, which shall be in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Company Parties.

"**Company Claims/Interests**" means any Claim against, or Equity Interest in, the Company Parties, including a Senior Notes Claim.

"**Confidentiality Agreement**" means an executed confidentiality agreement, including with respect to the issuance of a "cleansing letter" or other public disclosure of material non-public information agreement, in connection with any proposed Restructuring Transactions.

"**Confirmation Order**" means the confirmation order with respect to the Plan.

"**Consenting 2026 Senior Noteholders**" has the meaning set forth in the preamble of this Agreement.

"**Consenting 2028 Senior Noteholders**" has the meaning set forth in the preamble of this Agreement.

"**Consenting 2029 Senior Noteholders**" has the meaning set forth in the preamble of this Agreement.

"**Consenting Exit Facility Lenders**" means the Consenting Senior Noteholders, in their capacities as DIP Lenders that hold Exit Facility New Money Commitments.

"**Consenting Senior Noteholders**" means, collectively, the Consenting 2026 Senior Noteholders, the Consenting 2028 Senior Noteholders, and the Consenting 2029 Senior Noteholders, including (i) (A) in their capacity as providers of DIP Commitments and (B) following the funding of such DIP Commitments, as DIP Lenders, and (ii) in their capacity as providers of Exit Facility New Money Commitments.

"**Debtor**" means any Company Party that commences a Chapter 11 Case.

"**Definitive Documents**" means the documents listed in Section 3.01.

"**DIP Agent**" means Wilmington Savings Fund Society, FSB, as administrative and collateral agent for the DIP Lenders under the DIP Facility Documents, or any successor agents thereunder.

"**DIP Claim**" means any Claim on account of the DIP Facility.

"**DIP Commitments**" means the commitments of the Consenting Senior Noteholders to fund the DIP Facility on the terms and conditions set forth in the DIP Credit Agreement, as set forth on Schedule 2.1(T-1) and Schedule 2.1(T-2) of the DIP Credit Agreement.

"**DIP Credit Agreement**" means that certain Superpriority Senior Secured Debtor-in-Possession Credit Agreement, substantially in the form attached to the Interim DIP Order as Annex I, evidencing the DIP Facility by and among Cutera, Inc., as borrower, Crystal Sub, LLC, as guarantor, the DIP Agent, and the DIP Lenders, as may be amended, modified, or supplemented from time to time in accordance with the terms thereof.

"**DIP Facility**" means the $25 million, new-money, super-priority secured term loan debtor in possession financing facility.

"**DIP Facility Documents**" means the DIP Credit Agreement, all agreements, notes, instruments, and any other documents delivered pursuant thereto or in connection therewith, and the DIP Orders, together with all documentation executed or delivered in connection therewith as may be amended, modified, or supplemented from time to time, in accordance with the terms and conditions set forth therein.

"**DIP Lenders**" means the lenders from time to time under the DIP Credit Agreement, including their designees, successors, and permitted assigns.

"**DIP Orders**" means the Interim DIP Order and the Final DIP Order.

"**Disclosable Economic Interest**" means any Claim, Equity Interest, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a Claim or interest.

"**Disclosure Statement**" means the related disclosure statement with respect to the Plan.

"**Entity**" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"**Equity Interests**" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of Cutera, Inc., and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of the Cutera, Inc. (in each case whether or not arising under or in connection with any employment agreement).

"**Equity Rights Offering**" means the equity rights offering to be consummated by Reorganized Company on the Plan Effective Date in accordance with the Equity Rights Offering Documents, pursuant to which it shall issue shares of Reorganized Common Equity.

"**Equity Rights Offering Backstop Commitment Agreement**" means the backstop commitment agreement attached hereto as **Exhibit B**, as may be further amended, modified, or supplemented from time to time, in accordance with its terms.

"**Equity Rights Offering Backstop Commitment Order**" means an order or orders of the Bankruptcy Court approving, among other things, (i) Cutera, Inc.'s entry into and performance under the Equity Rights Offering Backstop Commitment Agreement, (ii) the Equity Rights Offering and the Equity Rights Offering Procedures, and (iii) the Common Equity Convenience Buyout and Common Equity Convenience Buyout Procedures, and (iv) as Administrative Claims, the Put Option Premium.

"**Equity Rights Offering Documents**" means, collectively, the Equity Rights Offering Procedures, the Equity Rights Offering Backstop Commitment Agreement, the Plan, and other material documents necessary to implement the Equity Rights Offering.

"**Equity Rights Offering Procedures**" means those certain rights offering procedures with respect to the Equity Rights Offering, as approved by the Bankruptcy Court, which shall be in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Company Parties.

"**Execution Date**" has the meaning set forth in the preamble to this Agreement.

"**Exit Facility Documents**" means the agreements memorializing the Exit Facility, including any amendments, modifications, supplements thereto, and together with any related notes, certificates, agreements, intercreditor agreements, security agreements, mortgages, deeds of trust, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection with the Exit Facility.

"**Exit Facility**" means the exit term loan credit facility initially consisting of (a) an aggregate outstanding principal amount equal to the principal amount the term loans outstanding under the DIP Facility Documents on the Plan Effective Date (including (i) the amount of any upfront payment payable pursuant to the DIP Facility Documents and (ii) the amount of any repayment premium payable pursuant to the DIP Facility Documents upon the repayment of the DIP Facility on such date, but excluding (x) accrued and unpaid interest as of such date, (y) Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel, and (z) indemnification obligations solely to the extent due and payable as of the Effective Date, which amounts in the foregoing clauses (x) through (z), for the avoidance of doubt, shall be paid in full in Cash on the Plan Effective Date), which term loans issued under the Exit Facility shall be funded on a cashless basis by rolling over such amounts outstanding under the DIP Facility Documents and (b) the Exit Facility New Money Term Loans to be provided by the Consenting Exit Facility Lenders on the Plan Effective Date on the terms and conditions set forth in the Exit Facility Documents.

"**Exit Facility New Money Commitments**" means the commitments of the Consenting Senior Noteholders, in their capacities as DIP Lenders, to fund Exit Facility New Money Term Loans on the terms and conditions set forth in the Exit Facility Term Sheet, as set forth on Schedule 1 to the Exit Facility Term Sheet.

"**Exit Facility New Money Term Loans**" has the meaning given to the term "New Money Term Loans" in the Exit Facility Term Sheet.

"**Final DIP Order**" means the final order of the Bankruptcy Court approving the DIP Facility.

"**Exit Facility Term Sheet**" means that certain term sheet attached to this Agreement as **Exhibit E**, setting forth the terms and conditions on which the Consenting Exit Facility Lenders shall agree to provide the term loans under the Exit Facility subject to the occurrence of the Closing Date (as defined in the Exit Facility Term Sheet) and the Plan Effective Date.

"**First Day Pleadings**" means the first-day pleadings that the Company Parties file upon commencement of the Chapter 11 Cases.

"**Interim DIP Order**" means an order of the Bankruptcy Court approving the DIP Facility on an interim basis, the form of which is attached to this Agreement as **Exhibit C**.

"**Law**" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

"**Milestones**" means the milestones set forth in Section 11.03, as such may be extended in accordance with the terms of this Agreement.

"**MIP Term Sheet**" means the management equity incentive plan term sheet.

"**New Corporate Governance Term Sheet**" means that certain term sheet attached to this Agreement as **Exhibit D**, setting forth the terms of certain agreements related to the corporate governance of the Reorganized Company.

"**New Organizational Documents**" means the organizational and governance documents for the Reorganized Company, including, without limitation, certificates of incorporation (including any certificate of designations), certificates of formation or certificates of limited partnership (or equivalent organizational documents), certificates of designation, bylaws, limited liability company agreements, shareholders' agreements, and limited partnership agreements (or equivalent governing documents), as applicable, in each case, materially consistent with the terms and conditions set forth in this Agreement (including the New Corporate Governance Term Sheet) and reasonably acceptable to the Required Consenting Senior Noteholders.

"**Non-Supporting Senior Noteholder**" has the meaning set forth in Section 11.02.

"**Parties**" has the meaning set forth in the preamble to this Agreement.

"**Permitted Transferee**" means each transferee of any Company Claims/Interests who meets the requirements of Section 8.01(a).

"**Petition Date**" means the date the Company Parties commence the Chapter 11 Cases.

"**Plan**" has the meaning set forth in the preamble to this Agreement.

"**Plan Effective Date**" means the occurrence of the Effective Date (as defined in the Plan) of the Plan according to its terms.

"**Plan Supplement**" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, including the MIP Term Sheet, that will be filed by the Debtors with the Bankruptcy Court.

"**Qualified Marketmaker**" means an entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Company Claims/Interests (or enter with customers into long and short positions in Company Claims/Interests), in its capacity as a dealer or market maker in Company Claims/Interests and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

"**Qualified Marketmaker Joinder Date**" has the meaning set forth in Section 8.05 of this Agreement.

"**Releases**" means the releases given by the Releasing Parties to the Released Parties under Article IX of the Plan.

"**Reorganized Common Equity**" means the units of common stock or other common equity Interests of the Reorganized Company authorized under the New Organizational Documents and issued pursuant to the Plan on the Plan Effective Date.

"**Reorganized Company**" means Cutera, Inc., or any successors thereto, by merger, consolidation, or otherwise, as reorganized on or after the Plan Effective Date.

"**Required Consenting Exit Facility Lenders**" means as of any date of determination, Consenting Exit Facility Lenders who own or control as of such date at least 50.1% of the aggregate principal amount of all Exit Facility New Money Commitments.

"**Required Consenting Senior Noteholders**" means as of any date of determination, Consenting Senior Noteholders who own or control as of such date at least 50.1% of aggregate principal amount of all outstanding Senior Notes owned or controlled by all Consenting Senior Noteholders.

"**Restructuring Expenses**" means the reasonable and documented prepetition and postpetition fees and out-of-pocket expenses incurred or accrued by the Ad Hoc Committee of Consenting Senior Noteholders Advisors (in each case payable in accordance with the applicable fee reimbursement letters entered into by any Debtor and such professionals and to the extent not otherwise paid pursuant to the DIP Orders or DIP Facility Documents); in each case, without further order of, or application to, the Bankruptcy Court by such consultant or professionals, including the requirement for the filing of retention applications, fee applications, or any other applications in the Chapter 11 Cases.

"**Restructuring Transactions**" has the meaning set forth in the recitals to this Agreement.

"**Rules**" means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

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

"**Senior Notes**" means, collectively, (i) the 2026 Senior Notes, (ii) the 2028 Senior Notes, and (iii) the 2029 Senior Notes.

"**Senior Notes Claim**" means any Claim on account of the Senior Notes.

"**Solicitation Materials**" means (i) the Ballot and applicable voting instructions, (ii) the Disclosure Statement and all exhibits thereto, including the Plan, and (iii) any other documents necessary to effect or approve the solicitation of votes with respect to the Restructuring Transactions to be consummated pursuant to the Plan, each of which shall be in form and substance as set forth in, and consistent with, this Agreement.

"**Solicitation Procedures Order**" means the order of the Bankruptcy Court approving, among other things, the Solicitation Materials and scheduling the Combined Hearing.

"**Termination Date**" means the date on which termination of this Agreement as to a Party is effective in accordance with Sections 11.01, 11.02, 11.03, 11.04, or 11.05.

"**Transfer**" means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate, or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales, or other transactions).

"**Transfer Agreement**" means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement and substantially in the form attached hereto as **Exhibit F**.

"**Trustee**" means U.S. Bank Trust Company, National Association, and its successors and assigns, in its capacity as Trustee under the 2026 Senior Notes Indenture, 2028 Senior Notes Indenture and 2029 Senior Notes Indenture, as applicable.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(d) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(e) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(f) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(g) references to "shareholders," "directors," or "officers" shall also include "members" or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(h) the use of "include" or "including" is without limitation, whether stated or not;

(i) the phrase "counsel to the Consenting Senior Noteholders" refers in this Agreement to each counsel specified in Section 13.11 other than counsel to the Company Parties;

(j) unless otherwise specified herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein; and

(k) the word "or" shall not be exclusive.

Section 2. ***Effectiveness of this Agreement***. This Agreement shall become effective and binding upon each of the Parties at 12:01 a.m., prevailing Eastern Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to the Consenting Senior Noteholders;

(b) holders of at least two-thirds of the aggregate outstanding principal amount of the Senior Notes shall have executed and delivered counterpart signature pages of this Agreement to counsel to the Company Parties;

(c) counsel to the Company Parties shall have given notice to counsel to the Consenting Senior Noteholders in the manner set forth in Section 13.11 hereof (by email) that the other conditions to the Agreement Effective Date set forth in this Section 2 have occurred; and

(d) the Company Parties shall have paid, or caused to be paid, all Restructuring Expenses for which invoices with detail in accordance with the applicable fee reimbursement letters have been delivered to the Company Parties no later than two (2) Business Days prior to the Agreement Effective Date.

Section 3. ***Definitive Documents***.

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following: (a) the New Organizational Documents; (b) DIP Facility Documents; (c) Equity Rights Offering Documents; (d) Exit Facility Documents; (e) the Common Equity Convenience Buyout Documents; (f) the Plan; (g) the Disclosure Statement; (h) the Confirmation Order; (i) the Plan Supplement; (j) First Day Pleadings and all orders sought pursuant thereto; (k) the Equity Rights Offering Backstop Commitment Agreement and Equity Rights Offering Backstop Commitment Order; (l) the Solicitation Materials, the Solicitation Procedures Order, and any motion seeking approval thereof; (m) such other agreements and documentation reasonably desired or necessary to consummate and document the Restructuring Transactions, and (n) any other document that has or may have a material or adverse impact on the legal or economic rights of the Consenting Senior Noteholders; provided, that, for the avoidance of doubt, Definitive Documents shall not include any retention applications, procedures with respect to ordinary course professionals or professional compensation or applications for professional compensation; provided, further, that, each of the Consenting Senior Noteholders' rights to object to any retention applications, procedures with respect to ordinary course professionals or professional compensation or applications for professional compensation are fully preserved.

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date (a) remain subject to negotiation and completion and (b) shall be consistent in all material respects with and shall contain, the material terms and conditions set forth in this

Agreement. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with Section 12. Further, unless otherwise set forth herein, the Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date shall otherwise be in a form and substance reasonably acceptable to the Company Parties and the Required Consenting Senior Noteholders.

Section 4. ***Commitments of the Consenting Senior Noteholders***.

4.01. General Commitments, Forbearances, and Waivers.

(a) During the Agreement Effective Period, each Consenting Senior Noteholder severally, and not jointly, agrees, in respect of all of its Company Claims/Interests, to:

(i) support the Restructuring Transactions and validly and timely vote (and not withdraw) and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions;

(ii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in the immediately preceding clauses (i) or (ii);

(iii) use commercially reasonable efforts to cooperate with and assist the Company Parties in obtaining additional support for the Restructuring Transactions from the Company Parties' other stakeholders;

(iv) use commercially reasonable efforts to cooperate with and assist the Company Parties' efforts to obtain, as applicable, any and all federal, state, local, and foreign governmental, regulatory, and/or third-party approvals as may be reasonably requested by the Company Parties;

(v) use commercially reasonable efforts to oppose any Party from taking any actions contemplated in Section 4.02(b);

(vi) if permitted to do so under applicable law, promptly notify the Company Parties in writing of any material governmental or third-party complaints, litigations, investigations, or hearings (or written communications indicating that the same may be contemplated or threatened) with respect to the Restructuring Transactions;

(vii) upon request by the Company Parties or their advisors, promptly provide the aggregate principal amount of Company Claims/Interests held by the Consenting Senior Noteholders on an issuance-by-issuance basis;

(viii) use commercially reasonable efforts to give any notice, order, instruction, or direction to the applicable Trustees or the DIP Agent, as applicable, necessary to give effect to the Restructuring Transactions; and

(ix) negotiate in good faith and execute and implement the Definitive Documents that are consistent with this Agreement to which it is required to be a party.

(b) During the Agreement Effective Period, each Consenting Senior Noteholder severally, and not jointly, agrees to:

(i) in its capacity as a DIP Lender, upon entry of the Interim DIP Order and Final DIP Order, as applicable, execute the applicable DIP Facility Documents and to provide (or cause to be provided), a portion of the DIP Facility opposite such DIP Lender's name in the amounts set forth on Schedule 2.1(T-1) and Schedule 2.1(T-2) of the DIP Credit Agreement, in accordance with the terms and conditions set forth in the DIP Facility Documents; and

(ii) in its capacity as a Consenting Exit Facility Lender, (A) provide (or cause to be provided), either directly or through a fronting institution to be reasonably agreed, a portion of the New Money Term Loans opposite such Consenting Exit Facility Lender's name in the amount set forth on Schedule 1 to the Exit Facility Term Sheet, and (B) satisfy the principal amount of its loans under the DIP Facility through the issuance of term loans under the Exit Facility on a dollar for dollar basis, in each case (A) and (B) subject to the occurrence of the Closing Date (as defined in the Exit Facility Term Sheet) and the Plan Effective Date and in accordance with the terms and conditions set forth in the Exit Facility Term Sheet; and

(c) During the Agreement Effective Period, each Consenting Senior Noteholder severally, and not jointly, agrees, in respect of all of its Company Claims/Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action (including by directing, proposing, facilitating, assisting, or supporting any other Entity to take any action) to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(ii) propose, file, seek, solicit, support, or vote for any Alternative Restructuring Proposal;

(iii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to any Chapter 11 Case, this Agreement, or the other Restructuring Transactions contemplated herein against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(v) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any of Claims against or Interests in the Company Parties; or

(vi) object to, delay, impede, or take any other action (including by directing, proposing, facilitating, assisting, or supporting any other Entity to take any action) to interfere with the Company Parties' ownership and possession of its assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code.

4.02. Commitments with Respect to Chapter 11 Cases.

(a) During the Agreement Effective Period, each Consenting Senior Noteholder that is entitled to vote to accept or reject the Plan pursuant to its terms, severally, and not jointly, agrees that it shall, subject to receipt by such Consenting Senior Noteholder, whether before or after the commencement of the Chapter 11 Cases, of the Solicitation Materials:

(i) vote each of its Company Claims/Interests entitled to vote on the Plan to accept the Plan by delivering its duly executed and completed ballot accepting the Plan on a timely basis following the commencement of the solicitation of the Plan and its actual receipt of the Solicitation Materials and the ballot;

(ii) (A) to the extent it is permitted to elect whether to opt out of the Releases, elect not to opt out of the Releases by timely delivering its duly executed and completed ballot(s) or form, as applicable, indicating such election, and (B) to the extent it is required to opt in to the Releases, elect to opt in to the Releases by timely delivering its duly executed and completed ballot(s) or form, as applicable, indicating such election;

(iii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clauses (i) and (ii) above;

(iv) not object to, join in any objection to, delay, impeded, or take any other action (including by directing, proposing, facilitating, assisting, or supporting any other Entity to take any action) to interfere with any pleading or document filed by the Company Parties that is consistent with this Agreement; and

(v) use commercially reasonable efforts to support the Company Parties in opposing any motion filed with the Bankruptcy Court by any party seeking the entry of an order (A) directing the appointment of a trustee or examiner (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code), (B) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or (C) dismissing the Chapter 11 Cases.

(b) During the Agreement Effective Period, each Consenting Senior Noteholder severally, and not jointly, agrees in respect of each of its Company Claims/Interests, that it will support, and will not directly or indirectly object to, delay, impede, or take any other action (including by directing, proposing, facilitating, assisting, or supporting any other Entity to take any action) to interfere with any motion or other pleading or document filed by the Company Parties in the Bankruptcy Court that is consistent with this Agreement.

Section 5. ***Additional Provisions Regarding the Consenting Senior Noteholders' Commitments***.

Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Senior Noteholder to consult with any other Consenting Senior Noteholder, the Company Parties, or any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee); (b) impair or waive the rights of any Consenting Senior Noteholder to assert or raise any objection permitted under this Agreement; (c) prevent any Consenting Senior Noteholder from enforcing this Agreement or any Definitive Document, including the DIP Credit Agreement and the DIP Orders (in accordance therewith), or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or any Definitive Document, including, without limitation, by filing an objection or initiating a contested matter or other proceeding with the Bankruptcy Court, or exercising its rights or remedies reserved herein or in the Definitive Documents, including upon the occurrence and continuance of an "Event of Default" under the DIP Credit Agreement (in accordance with the DIP Credit Agreement and the DIP Orders); (d) prevent any Consenting Senior Noteholder from taking any action that is required by applicable Law (as determined by such Consenting Senior Noteholder in good faith after consultation with legal counsel), provided that if such Consenting Senior Noteholder proposes to take any action that is otherwise materially inconsistent with this Agreement and is reasonably expected to have an adverse impact on the Restructuring Transactions in order to comply with applicable Law, such Consenting Senior Noteholder shall, to the extent permitted by applicable law, provide at least five (5) Business Days' advance written notice to the other Parties prior to taking any such action; (e) require any Consenting Senior Noteholder to take any action that is prohibited by applicable Law or to waive or forego the benefit of any applicable legal privilege (as determined by them in good faith after consultation with legal counsel), provided that if such Consenting Senior Noteholder plans to refuse to take any action in a manner that is otherwise inconsistent with this Agreement and is reasonably expected to have an adverse impact on the Restructuring Transactions in order to comply with applicable Law, such Consenting Senior Noteholder shall provide at least five (5) Business Days' advance written notice to the other Parties prior to taking such action; (f) be construed to prohibit or limit any Consenting Senior Noteholder from appearing as a party in interest in any matter to be adjudicated concerning any matter arising in any Chapter 11 Case; or (g) be construed to prevent the Consenting Senior Noteholders from exercising any consent rights or their rights or remedies specifically reserved herein or in the Definitive Documents.

Section 6. ***Commitments of the Company Parties.***

6.01. Affirmative Commitments. During the Agreement Effective Period, the Company Parties agree to:

(a) support and take all steps reasonably necessary and desirable to consummate the Restructuring Transactions in accordance with this Agreement;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all commercially reasonable steps necessary and desirable to address any such impediment;

(c) use commercially reasonable efforts to obtain any and all required regulatory and third-party approvals for the Restructuring Transactions;

(d) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(e) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from their other material stakeholders to the extent reasonably prudent;

(f) use commercially reasonable efforts to oppose any party or person taking or seeking to take any actions contemplated in Section 6.02 of this Agreement;

(g) timely pay all Restructuring Expenses for which an invoice with detail in accordance with the applicable fee reimbursement letters has been received by the Company Parties or their counsel and in accordance with Section 13.05;

(h) except as otherwise expressly set forth in this Agreement or with the express consent of the Required Consenting Senior Noteholders, use commercially reasonable efforts to (i) conduct its businesses and operations in the ordinary course in a manner that is consistent with past practices and in compliance with Law, (ii) maintain its books and records in the ordinary course in a manner that is consistent with past practices, and in compliance with Law, (iii) maintain all insurance policies, or suitable replacements therefor, in full force and effect, in a manner that is consistent with past practices, and in compliance with Law, and (iv) preserve intact its business organizations and relationships with third parties (including creditors, lessors, licensors, and contract counterparties) and employees in the ordinary course in a manner that is consistent with past practices, and in compliance with Law;

(i) timely file a formal objection to any motion filed with the Bankruptcy Court seeking the entry of an order (i) directing the appointment of a trustee or examiner (with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code), (ii) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, and/or (iii) dismissing the Chapter 11 Cases;

(j) negotiate in good faith and use commercially reasonable efforts to execute and deliver any appropriate additional or alternative provisions or agreements to address any legal, financial or structural impediment that may arise that would prevent, hinder, impede, delay or are necessary to effectuate the consummation of the Restructuring Transactions;

(k) in the event that the Company Parties seek to disseminate (i) a press release, public filing, public announcement or other public communications or (ii) a communication to all or substantially all of the employees of any of the Company Parties or their Subsidiaries (collectively, an "**Announcement**") regarding this Agreement, the commencement of any Chapter 11 Case, the Restructuring Transactions or any terms thereof, it shall provide a draft of such Announcement to counsel to the Consenting Senior Noteholders for review and comment as soon as reasonably practicable before making such Announcement and shall act in good faith in considering and consulting with counsel to the Consenting Senior Noteholders regarding the form and substance of any such Announcement; and

(l) provide to the Ad Hoc Committee of Consenting Senior Noteholders Advisors (i) a copy of any written Alternative Restructuring Proposal as soon as practicable but in any event within two (2) calendar days of the Company Parties' receipt of such Alternative Restructuring Proposal and (ii) such information as necessary to keep the Ad Hoc Committee of Consenting Senior Noteholders Advisors reasonably informed as to the status and substance of such discussions, in each case to the extent that the board of directors of the Company Parties determines the foregoing is not inconsistent with applicable Law or their fiduciary obligations under applicable Law.

6.02. Negative Commitments. During the Agreement Effective Period, the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation and consummation of the Restructuring Transactions described in, this Agreement or the Plan;

(c) modify the Plan, in whole or in part, in a manner that is not consistent with this Agreement in all material respects;

(d) except as set forth in Section 7.02, solicit, initiate, or propose any Alternative Restructuring Proposal; or

(e) file (i) any motion or pleading with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan or (ii) any Definitive Document that is not in form and substance reasonably acceptable to the Required Consenting Senior Noteholders.

Section 7. ***Additional Provisions Regarding Company Parties' Commitments***.

7.01. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require the Company Parties or the board of directors of the Company Parties, after consulting with counsel, to take any action or to refrain from taking any action with respect to the Restructuring Transactions to the extent taking or failing to take such action would be inconsistent with applicable Law or their fiduciary obligations under applicable Law, and any such action or inaction pursuant to this Section 11.01 shall not be deemed to constitute a breach of this Agreement; provided, however, that notwithstanding the foregoing, the Company Parties shall give notice (email being sufficient) as soon as practicable but in any event within two (2) calendar days to the Ad Hoc Committee of Consenting Senior Noteholders Advisors if the Company Parties or board of directors of the Company Parties, acting in good faith and after consulting with counsel, determine (i) to pursue, assist in, consent to, vote for, or enter into any agreement regarding any Alternative Restructuring Proposal in accordance with Section 7.02, or (ii) that proceeding with, taking any action, or refraining from taking any action with respect to the Restructuring

Transactions would be inconsistent with the exercise of their fiduciary duties or applicable Law in accordance with this Section 7.01.

7.02. Notwithstanding anything to the contrary in this Agreement (but subject to Section 7.01), the Company Parties and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the rights to: (a) consider, respond to, and facilitate Alternative Restructuring Proposals received by the Company Parties; (b) provide access to non-public information concerning the Company Parties to any Entity or enter into Confidentiality Agreements or nondisclosure agreements with any Entity; (c) maintain or continue discussions or negotiations with respect to Alternative Restructuring Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals; and (e) enter into or continue discussions or negotiations with holders of Claims against or Equity Interests in the Company Parties (including any Consenting Senior Noteholder), any other party in interest in any Chapter 11 Case (including any official committee and the United States Trustee), or any other Entity regarding the Restructuring Transactions or Alternative Restructuring Proposals.

7.03. Nothing in this Agreement shall: (a) impair or waive the rights of the Company Parties to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; or (b) prevent the Company Parties from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 8. ***Transfer of Interests and Securities***.

8.01. During the Agreement Effective Period:

(a) no Consenting Senior Noteholder shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Company Claims/Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless:

(i) the authorized transferee is either (i) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (ii) an institutional accredited investor (as defined in the Rules), or (iii) a Consenting Senior Noteholder; and

(ii) either (A) the transferee executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (B) the transferee is a Consenting Senior Noteholder and the transferee provides written notice of such Transfer (including the amount and type of Company Claim/Interest Transferred) to counsel to the Company Parties within two (2) Business Days of such acquisition; and

(b) in the case of Exit Facility New Money Commitments, each Consenting Exit Facility Lender's Exit Facility New Money Commitments may be freely assigned or transferred, in whole or in part, by such Consenting Exit Facility Lender to (i) any other Consenting Exit Facility Lender, (ii) any Affiliate of a Consenting Exit Facility Lender, or (iii) any other Person not referred to in clauses (i) or (ii) above so long as such Person is approved in writing by the Required Consenting Exit Facility Lenders and the Company Parties (such approval not to be

unreasonably withheld, conditioned, or delayed), prior to such assignment, delegation, or transfer and shall be deemed granted if not denied by the Company Parties or the Required Consenting Exit Facility Lenders within four (4) Business Days after the assigning Consenting Exit Facility Lender provides notice to the other Consenting Exit Facility Lenders and the Company Parties (for purposes of this clause (iii), the Consenting Exit Facility Lender proposing to make such assignment or transfer, and all of its Affiliates, shall be excluded from the calculation of Required Consenting Exit Facility Lenders for purposes of determining whether the definition of "Required Consenting Exit Facility Lenders" has been satisfied). Following any such Transfer, Schedule 1 to the Exit Facility Term Sheet shall be updated by the Required Consenting Exit Facility Lenders (in consultation with the Company Parties) (it being understood and agreed that updates to Schedule 1 to the Exit Facility Term Sheet shall not result in overall changes to the aggregate amount of Exit Facility New Money Commitments). Any update to Schedule 1 to the Exit Facility Term Sheet described in the immediately preceding sentence shall not be deemed an amendment to this Agreement. Notwithstanding the foregoing or any other provisions herein, unless otherwise agreed in any instance by the Company Parties and the Required Consenting Exit Facility Lenders (for purposes of this sentence, the Consenting Exit Facility Lender making such assignment, and all of its Affiliates, shall be excluded from the calculation of Required Consenting Exit Facility Lenders for purposes of determining whether the definition of "Required Consenting Exit Facility Lenders" has been satisfied), no assignment of Exit Facility New Money Commitments by a Consenting Exit Facility Lender to an Affiliate of such Consenting Exit Facility Lender will relieve the assigning Consenting Exit Facility Lender of its obligations hereunder if any such Affiliate assignee fails to perform such obligations.

8.02. Upon compliance with the requirements of Section 8.01(a), the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Company Claims/Interests. Any Transfer in violation of Section 8.01(a) shall be void *ab initio*.

8.03. This Agreement shall in no way be construed to preclude the Consenting Senior Noteholders from acquiring additional Company Claims/Interests; provided, however, that (a) such additional Company Claims/Interests shall automatically and immediately upon acquisition by a Consenting Senior Noteholder be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Senior Noteholders), and (b) such Consenting Senior Noteholder must provide notice of such acquisition (including the amount and type of Company Claim/Interest acquired) to counsel to the Company Parties within two (2) Business Days of such acquisition.

8.04. This Section 8 shall not impose any obligation on the Company Parties to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Senior Noteholder to Transfer any of its Company Claims/Interests. Notwithstanding anything to the contrary herein, to the extent any Company Party and another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

8.05. Notwithstanding Section 8.01(a), any Consenting Senior Noteholder may Transfer any Company Claims/Interests to a Qualified Marketmaker and such Qualified Marketmaker that acquires any Company Claims/Interests with the purpose and intent of acting as a Qualified Marketmaker for such Company Claims/Interests shall not be required to execute and deliver a Transfer Agreement in respect of such Company Claims/Interests if: (i) such Qualified Marketmaker subsequently transfers such Company Claims/Interests (by purchase, sale assignment, participation, or otherwise) within five (5) Business Days of its acquisition to a transferee that is an entity that is not an affiliate, affiliated fund, or affiliated entity with a common investment advisor; (ii) the transferee otherwise is a Permitted Transferee under Section 8.01(a); and (iii) the Transfer otherwise is a permitted Transfer under Section 8.01(a). To the extent that a Consenting Senior Noteholder is acting in its capacity as a Qualified Marketmaker, it may Transfer (by purchase, sale, assignment, participation, or otherwise) any right, title or interests in Company Claims/Interests that the Qualified Marketmaker acquires from a holder of the Company Claims/Interests who is not a Consenting Senior Noteholder without the requirement that the transferee be a Permitted Transferee. Notwithstanding the foregoing, if, at the time of the proposed Transfer of such Company Claims/Interests to the Qualified Marketmaker, such Company Claims/Interests (x) may be voted on the Plan, the proposed transferor Consenting Senior Noteholder must first vote such Company Claims/Interests in accordance with the requirements of Section 4.01(a)(i), or (y) have not yet been and may not yet be voted on the Plan and such Qualified Marketmaker does not Transfer such Company Claims/Interests to a subsequent transferee prior to the fifth (5th) Business Day prior to the expiration of the voting deadline (such date, the "**Qualified Marketmaker Joinder Date**"), such Qualified Marketmaker shall be required to (and the transfer documentation to the Qualified Marketmaker shall have provided that it shall), on the first Business Day immediately following the Qualified Marketmaker Joinder Date, become a Consenting Senior Noteholder with respect to such Company Claims/Interests in accordance with the terms hereof (provided that the Qualified Marketmaker shall automatically, and without further notice or action, no longer be a Consenting Senior Noteholder with respect to such Company Claims/Interests at such time that the transferee of such Company Claims/Interests becomes a Consenting Senior Noteholder with respect to such Company Claims/Interests).

8.06. Notwithstanding anything to the contrary in this Section 8, the restrictions on Transfer set forth in this Section 8 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

8.07. The Company Parties understand that the Consenting Senior Noteholders are engaged in a wide range of financial services and businesses, and, in furtherance of the foregoing, the Company Parties acknowledge and agree that the obligations set forth in this Agreement shall only apply to the trading desk(s) and/or business group(s) of the Consenting Senior Noteholders that principally manage and/or supervise the Consenting Senior Noteholders' investment in the Company Parties or that are expressly a party hereto, and shall not apply to any other trading desk or business group of any Consenting Senior Noteholder so long as they are not acting at the direction or for the benefit of such Consenting Senior Noteholder or in connection with such Consenting Senior Noteholder's investment in the Company Parties, unless they separately become a party hereto.

Section 9. ***Representations and Warranties of Consenting Senior Noteholders***. Each Consenting Senior Noteholder severally, and not jointly, represents and warrants that, as of the date such Consenting Senior Noteholder executes and delivers this Agreement:

(a) it is the beneficial or record owner of the face amount of the Company Claims/Interests or is the nominee, investment manager, or advisor for beneficial holders of the Company Claims/Interests reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Interests other than those reflected in, such Consenting Senior Noteholder's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 8);

(b) it has the full power and authority to act on behalf of, vote, and consent to matters concerning, such Company Claims/Interests;

(c) such Company Claims/Interests are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, transfer, or encumbrances of any kind, that would adversely affect in any material way such Consenting Senior Noteholder's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Interests referable to it as contemplated by this Agreement subject to applicable Law; and

(e) (i) it is (A) a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or (B) an institutional "accredited investor" (as described in the Rules), and (ii) although none of the Parties intend that this Agreement should constitute, and each of the Parties believe it does not constitute, an offering of securities, such holder represents, warrants, and acknowledges that (1) it has been furnished with all materials it considers relevant to making an investment decision with respect to any securities acquired by it in connection with the Restructuring Transactions, (2) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in such securities, and the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment, and acknowledges that such investment involves a high degree of risk, (3) any securities acquired by it in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act, and (4) it understands that any securities of the Reorganized Company contemplated by this Agreement and any Definitive Document have not been, and are not contemplated to be, registered under the Securities Act, and may not be resold without registration under the Securities Act except pursuant to an exemption from the registration requirements under the Securities Act or Section 1145 of the Bankruptcy Code, to the extent applicable.

Section 10. ***Mutual Representations, Warranties, and Covenants***. Each of the Consenting Senior Noteholders, severally and not jointly, and the Company Parties, but solely with respect to the Company Parties, subject to any necessary Bankruptcy Court approval, as and to the extent applicable, hereby represents, warrants, and covenants to each other, as of the date such Party executed and delivers this Agreement:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Plan, and the Bankruptcy Code, no consent or approval is required by any other person or entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

Section 11. ***Termination Events***.

11.01. Consenting Senior Noteholder Termination Events. This Agreement may be terminated by the Required Consenting Senior Noteholders by the delivery to the Company Parties of a written notice in accordance with Section 13.11 hereof upon the occurrence of the following events:

(a) the occurrence of a material breach of this Agreement by any Company Party which breach has not been cured (if susceptible to cure) within five (5) Business Days after written notice in accordance with Section 13.11 hereof detailing any such breach;

(b) (i) the occurrence of any "Event of Default" under the DIP Facility Documents that results in an acceleration of the DIP obligations or (ii) a termination of the Equity Rights Offering Backstop Commitment Agreement;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for ten (10) Business Days after such terminating Consenting Senior Noteholders transmit a written notice in accordance with Section 13.11 hereof detailing any such issuance; provided, that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(d) if (i) any Definitive Document does not materially comply with this Agreement, including Section 3 hereof or (ii) any Company Party withdraws the Plan without the consent of the Required Consenting Senior Noteholders;

(e) any Company Party (i) makes an Announcement that it intends to accept an Alternative Restructuring Proposal or (ii) enters into a definitive agreement with respect to an Alternative Restructuring Proposal;

(f) any Company Party files, amends, or modifies, or files a pleading seeking approval of, any Definitive Document or authority to amend or modify any Definitive Document, in a manner that is materially inconsistent with, or constitutes a material breach of, this Agreement without the prior written consent of the Required Consenting Senior Noteholders and such pleading is not withdrawn within one (1) Business Day;

(g) the failure to meet a Milestone, which has not been waived or extended in a manner consistent with this Agreement, unless such failure is result of any act, omission, or delay on the part of the terminating Consenting Senior Noteholders in violation of its obligations under this Agreement;

(h) the Bankruptcy Court enters any order (i) authorizing the use of post-petition financing (other than the DIP Orders) that is not in form and substance acceptable to the Required Consenting Senior Noteholders or (ii) denying confirmation of the Plan;

(i) other than as contemplated pursuant to the Restructuring Transactions, any Company Party files any pleading seeking authority to sell any material assets without the prior written consent of the Required Consenting Senior Noteholders;

(j) if the Bankruptcy Court enters an order in the Chapter 11 Cases terminating any Company Party's exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof pursuant to section 1121 of the Bankruptcy Code;

(k) the Bankruptcy Court enters an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code that would materially and adversely affect the Company Parties' and their subsidiaries' ability to operate their businesses in the ordinary course and such order is not reversed after fourteen (14) calendar days from the Bankruptcy Court's entry;

(l) if (i) any of the Confirmation Order, Solicitation Procedures Order, or the order(s) approving the Disclosure Statement is reversed, stayed, dismissed, vacated, reconsidered, modified or amended without the consent of the Required Consenting Senior Noteholders, or (ii) a motion for reconsideration, reargument, or rehearing with respect to any such order has been filed and the Company Parties have failed to timely object to such motion;

(m) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Required Consenting Senior Noteholders), (i) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in section 1106(a)(3) and section 1106(a)(4) of the Bankruptcy Code or a trustee in the Chapter 11 Cases, (iii) dismissing the Chapter 11 Cases, or (iv) rejecting this Agreement; or

(n) any Company Party delivers a written notice in connection with Section 7.01**Error! Reference source not found.** hereof (or breaches its obligation to deliver such a notice);

provided that, the above events, as applicable, may be cured, if possible, or waived at any time prior to delivery of a written notice terminating this Agreement in accordance with Section 13.11.

11.02. Company Party Termination Events. The Company Parties may terminate this Agreement as to all Parties or any Non-Supporting Senior Noteholder, as applicable, consistent with the proviso in the last paragraph of this Section 11.02, upon prior written notice to all Parties in accordance with Section 13.11 hereof upon the occurrence of any of the following events:

(a) breach in any material respect by one or more of the Consenting Senior Noteholders of any provision or obligation set forth in this Agreement (including, for the avoidance of doubt, the Plan or other applicable Definitive Document) that remains uncured for a period of five (5) Business Days after the receipt by the Consenting Senior Noteholders of notice of such breach;

(b) the board of directors of the Company Parties determines, after consulting with counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of their fiduciary duties or applicable Law or (ii) in the exercise of their fiduciary duties, to pursue an Alternative Restructuring Proposal;

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions, and (ii) remains in effect for thirty (30) Business Days after the Company Parties transmit a written notice in accordance with Section 13.11 hereof detailing any such issuance;

(d) any Consenting Senior Noteholder (i) makes an Announcement that it intends not to support the Restructuring Transaction or (ii) delivers a notice pursuant to the provisos in clauses (d) or (e) of Section 5 of this Agreement;

(e) if any Consenting Senior Noteholder takes any action pursuant to clauses (d) or (e) of Section 5 of this Agreement that is materially inconsistent with this Agreement and such action is reasonably expected to have an adverse impact on the Restructuring Transaction;

(f) any Consenting Senior Noteholder files, amends, or modifies, or files a pleading seeking approval of, any Definitive Document or authority to amend or modify any Definitive Document, in a manner that constitutes a material breach of this Agreement and such action creates an adverse impact on the Restructuring Transaction without the Company Parties' prior written consent;

(g) any Consenting Senior Noteholder files a motion in any Chapter 11 Case seeking to terminate any Company Party's exclusive right to file a plan or plans of reorganization or to solicit acceptances thereof pursuant to section 1121 of the Bankruptcy Code;

(h) any Consenting Senior Noteholder files a motion in any Chapter 11 Case seeking to reverse, stay, dismiss, vacate, reconsider, modify, or amend any of the Confirmation Order,

Solicitation Procedures Order, or the order(s) approving the Disclosure Statement in a manner inconsistent with this Agreement without the consent of the Company Parties, or (ii) a motion for reconsideration, reargument, or rehearing with respect to any such order has been filed in a manner inconsistent with this Agreement and any Consenting Senior Noteholder has failed to timely object to such motion; or

(i) the entry of an order by the Bankruptcy Court, or the filing of a motion or application by any Consenting Senior Noteholder seeking an order (without the prior written consent of the Company Parties), (i) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (ii) appointing an examiner with expanded powers beyond those set forth in section 1106(a)(3) and section 1106(a)(4) of the Bankruptcy Code or a trustee in the Chapter 11 Cases, or (iii) dismissing the Chapter 11 Cases;

(any Consenting Senior Noteholder taking any action in clauses (a) and (d)–(i) of this Section 11.02, the "**Non-Supporting Senior Noteholder**"); provided, however, that so long as the Consenting Senior Noteholders (without counting the Non-Supporting Senior Noteholder) continue to hold or control at least two-thirds of the then outstanding principal amounts of Senior Notes, such termination shall be effective only with respect to such Non-Supporting Senior Noteholder.

11.03. Milestones. The following Milestones shall apply to this Agreement unless extended or waived in writing by the Required Consenting Senior Noteholders in their sole discretion:

(a) By no later than one (1) Business Day after the Agreement Effective Date, each Company Party shall have commenced a Chapter 11 Case;

(b) On the Petition Date, the Debtors shall have filed the Plan, Disclosure Statement, First Day Pleadings, and Solicitation Materials;

(c) By no later than five (5) days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Company Parties;

(d) By no later than five (5) days after the Petition Date, the Bankruptcy Court shall have entered an order (i) conditionally approving the Disclosure Statement and (ii) authorizing the distribution of the Solicitation Materials;

(e) By no later than thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered (i) the Final DIP Order and (ii) the Equity Rights Offering Backstop Commitment Order in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Company Parties;

(f) By no later than fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Company Parties; and

(g) By no later than sixty-five (65) days after the Petition Date, the Plan Effective Date shall have occurred.

11.04. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Required Consenting Senior Noteholders and (b) the Company Parties.

11.05. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately after the Plan Effective Date.

11.06. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or causes of action. In no event shall any such termination relieve a Party from (i) liability for its breach or non-performance of its obligations hereunder prior to the date of such termination, notwithstanding any termination of this Agreement by any other Party, and (ii) obligations under this Agreement which expressly survive any such termination. The right to terminate this Agreement pursuant to Sections 11.01, 11.02, or 11.04 (other than pursuant to Section 11.02(b)) shall not be available to any Party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the occurrence of a termination event. Upon the occurrence of a Termination Date prior to the Confirmation Order being entered by a Bankruptcy Court, any and all consents or ballots tendered by the applicable Parties subject to such termination before a Termination Date shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Restructuring Transactions and this Agreement or otherwise; provided, however, any Consenting Senior Noteholder withdrawing or changing its vote pursuant to this Section 11.06 shall promptly provide written notice of such withdrawal or change to each other Party to this Agreement and, if such withdrawal or change occurs on or after the Petition Date, file notice of such withdrawal or change with the Bankruptcy Court. Nothing in this Agreement shall be construed as prohibiting the Company Parties or any of the Consenting Senior Noteholders from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of the Company Party or the ability of the Company Parties to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Senior Noteholder, and (b) any right of any Consenting Senior Noteholder, or the ability of any Consenting Senior Noteholder, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against the Company Parties or Consenting Senior Noteholders. Nothing in this Section 11.06 shall restrict the Company Parties' right to terminate this Agreement in accordance with Section 11.02(b).

Section 12. ***Amendments and Waivers***.

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 12.

(b) Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 12 shall be ineffective and void *ab initio*.

(c) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in writing by: (a) the Company Parties and (b) the Required Consenting Senior Noteholders; provided, however, that if the proposed modification, amendment, waiver, or supplement has a material, disproportionate, and adverse effect on any of the Company Claims/Interests held by a Consenting Senior Noteholder, then the consent of each such affected Consenting Senior Noteholder shall also be required to effectuate such modification, amendment, waiver or supplement.

(d) At any time prior to the Termination Date, the Company Parties, on the one hand, and the Required Consenting Senior Noteholders, on the other, to the extent legally permitted, may (i) extend the time for the performance of any of the obligations of any other Party, (ii) waive any inaccuracies in the representations and warranties made to such Party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements, covenants or conditions for the benefit of such Party contained herein.

(e) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 13. ***Miscellaneous***

13.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, or other applicable Law.

13.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

13.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

13.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

13.05. Fees and Expenses. On or prior to the Plan Effective Date, the Company Parties shall pay or reimburse (a) any unpaid transaction fee of Centerview triggered in connection with the occurrence of the Plan Effective Date, (b) all unpaid fees and expenses of the Ad Hoc Committee of Consenting Senior Noteholders Advisors for which an invoice has been received by the Company Parties (which invoice may include estimates of Restructuring Expenses to be incurred through the Plan Effective Date), and (c) all unpaid fees and expenses of any DIP Secured Party (as defined in the DIP Credit Agreement) payable pursuant to the DIP Credit Agreement or the DIP Orders; provided that, so long as the Company Parties provide at least three (3) Business Days' notice of the occurrence of the Plan Effective Date, such invoices (which may include estimates of Restructuring Expenses to be incurred through the Plan Effective Date) shall be provided to the Company Parties at least two (2) Business Days prior to the Plan Effective Date; provided, further, that the Company Parties shall remain liable for paying all Restructuring Expenses following the Plan Effective Date in accordance with any Company Party's fee reimbursement letters with the applicable Ad Hoc Committee of Consenting Senior Noteholders Advisors regardless of whether an invoice has been received by the Company Parties for such Restructuring Expenses prior to the Plan Effective Date.

13.06. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Notwithstanding the foregoing consent to jurisdiction in either a state or federal court of competent jurisdiction in the State and County of New York, upon the commencement of the Chapter 11 Cases, each of the Parties hereby agrees that, if the Chapter 11 Cases are pending, the Bankruptcy Court shall have exclusive jurisdiction over all matters arising out of or in connection with this Agreement. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in the Bankruptcy Court, and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party hereto.

13.07. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING

ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.08. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

13.09. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Senior Noteholders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Senior Noteholders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

13.10. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

13.11. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to the Company Parties, to:

Cutera, Inc.
3240 Bayshore Blvd.
Brisbane, CA 94005
Attn: Stephana E. Patton
Email: SPatton@cutera.com

with copies to:

Ropes & Gray, LLP
1211 Avenue of Americas
New York, NY 10036-8704
Attn: Ryan Preston Dahl
Natasha S. Hwangpo
Sam Badawi
Email: Ryan.Dahl@ropesgray.com
Natasha.Hwangpo@ropesgray.com
Sam.Badawi@ropesgray.com

(b) if to a Consenting Senior Noteholder, to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Attn: Jacob A. Adlerstein
Sean A. Mitchell
Joshua A. Esses
Email: JAdlerstein@paulweiss.com
SMitchell@paulweiss.com
JEsses@paulweiss.com

Any notice given by delivery, mail, or courier shall be effective when received.

13.12. Independent Due Diligence and Decision Making. Each Consenting Senior Noteholder hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties. Each Consenting Senior Noteholder acknowledges and agrees that it is not relying on any representation or warranties other than as set forth in this Agreement.

13.13. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

13.14. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

13.15. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

13.16. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

13.17. Remedies Cumulative; Specific Performance.

(a) All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the

exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

(b) It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

(c) Without limiting any of the Company Parties' foregoing remedies, it is understood and agreed that, in addition to any other remedy in favor of the Company Parties arising at law or in equity, (i) the Company Parties' remedies shall include the Company Parties' right to seek designation pursuant to section 1126(e) of the Bankruptcy Code, of any vote by a Consenting Senior Noteholder where such Consenting Senior Noteholder is in breach of its obligations under this Agreement and (ii) such Consenting Senior Noteholder shall be permitted to object to such request or motion seeking designation on any grounds.

13.18. Capacities of Consenting Senior Noteholders. Each Consenting Senior Noteholder has entered into this agreement on account of all Company Claims/Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Interests.

13.19. Survival. Notwithstanding (i) any Transfer of any Company Claims/Interests in accordance with this Agreement or (ii) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 7.01, Section 11.06, Section 13, and the Confidentiality Agreements shall survive such Transfer or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof.

13.20. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3.02, Section 12, or otherwise, including a written approval by the Company Parties or the Required Consenting Senior Noteholders, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

13.21. Representation by Counsel. Each Party acknowledges that it has had an opportunity to receive information from the Company Parties and that it has been, or is part of a group that has been, or has had an opportunity to be, represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.

13.22. Tax. To the extent practicable and applicable, and subject to the consent of the Required Consenting Senior Noteholders (such consent not to be unreasonably conditioned,

delayed, or withheld), the Restructuring Transactions will be structured so as to preserve or otherwise maximize the availability and/or use of favorable tax attributes (including tax basis) of the Company Parties and to otherwise obtain the most beneficial structure for the Company Parties or the Reorganized Company and the holders of the equity of the Reorganized Company from and after the Plan Effective Date, and the Company Parties will cooperate on a reasonable basis with the Consenting Senior Noteholders in connection with making such determination, including by timely providing the Consenting Senior Noteholders with reasonable information relevant to making such determination.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CUTERA, INC.

By: DocuSigned by: Taylor Harris 5303BA3709B7466...

Name: Taylor Harris

Title: Chief Executive Officer

Docusign Envelope ID: 97EDD2F4-9890-4ED3-A874-C85DE52631A9

CRYSTAL SUB, LLC

By: DocuSigned by: Taylor Harris 5293BA3709B7466

Name: Taylor Harris

Title: Chief Executive Officer

[CONSENTING SENIOR NOTEHOLDER]

_____

Name:
Title:

Address:

E-mail address(es):

Aggregate Amounts Beneficially Owned or Managed on Account of:	
2026 Senior Notes	
2028 Senior Notes	
2029 Senior Notes	
Equity Interests	
Other Disclosable Economic Interests in relation to the Company Party (including participation interests, hedges, swaps, and derivatives)	

EXHIBIT A

Plan

IMPORTANT: THE SOLICITATION MATERIALS ACCOMPANYING THIS PLAN OF REORGANIZATION HAVE NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF 11 U.S.C. § 1125(a). THE DEBTORS EXPECT TO SEEK AN ORDER OR ORDERS OF THE BANKRUPTCY COURT, AMONG OTHER THINGS: (1) APPROVING THE SOLICITATION OF VOTES AS HAVING BEEN IN COMPLIANCE WITH 11 U.S.C. § 1126(b); AND (2) CONFIRMING THIS PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1129.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
Cutera, Inc. *et al.*,[1]	Case No. 25-[_____] ([___])
Debtors.	

JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF CUTERA, INC. AND ITS AFFILIATED DEBTORS

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Conor P. McNamara (*pro hac vice* pending)
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Proposed Co-Counsel to the Debtors and Debtors in Possession

Dated: March 4, 2025
Houston, Texas

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Cutera, Inc. (2262) and Crystal Sub, LLC (6339). The Debtors' service address is 3240 Bayshore Boulevard, Brisbane, CA 94005.

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JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF CUTERA, INC. AND ITS AFFILIATED DEBTORS

Cutera, Inc. and Crystal Sub, LLC (each, a "Debtor" and together, the "Debtors") propose this joint prepackaged plan of reorganization (this "Plan") for the resolution of the outstanding Claims against and Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in this Plan and not otherwise defined have the meanings ascribed to such terms in Article I hereof.

The Debtors seek to consummate the Restructuring Transactions on the Effective Date of this Plan. Each Debtor is a proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code. The Plan shall apply as a separate Plan for each Debtor, and the classification of Claims and Interests set forth herein shall apply separately for each Debtor.

Reference is made to the accompanying Disclosure Statement for a discussion of the Debtors' history, businesses, results of operations, historical financial information, projections, and future operations, as well as a summary and analysis of this Plan and certain related matters, including distributions to be made under this Plan.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE STRONGLY ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

Section 1.1 Defined Terms.

The following terms shall have the respective meanings specified below when used in capitalized form in this Plan:

1. "***1145 Securities***" has the meaning set forth in Section 4.15 of this Plan.

2. "***2026 Senior Notes***" means those certain unsecured convertible senior notes issued pursuant to the 2026 Senior Notes Indenture.

3. "***2026 Senior Notes Indenture***" means that certain *First Supplemental Indenture*, dated as of February 24, 2025 to that certain *Indenture* dated as of March 9, 2021, between Cutera, Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank National Association, as trustee, for 2.25% Senior Notes due March 15, 2026.

4. "***2028 Senior Notes***" means those certain unsecured convertible senior notes issued pursuant to the 2028 Senior Notes Indenture.

5. "***2028 Senior Notes Indenture***" means that certain *First Supplemental Indenture*, dated as of February 24, 2025 to that certain *Indenture* dated as of May 27, 2022, between Cutera,

Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank Trust Company, National Association, as trustee, for 2.25% Senior Notes due June 1, 2028.

6. "***2029 Senior Notes***" means those certain unsecured convertible senior notes issued pursuant to the 2029 Senior Notes Indenture.

7. "***2029 Senior Notes Indenture***" means that certain *First Supplemental Indenture*, dated as of February 24, 2025 to that certain *Indenture* dated as of December 12, 2022, between Cutera, Inc., as issuer, Crystal Sub, LLC, as guarantor, and U.S. Bank Trust Company, National Association, as trustee, for 4.00% Senior Notes due June 1, 2029.

8. "***Accredited Investor***" has the meaning ascribed to it in the Securities Act.

9. "***Ad Hoc Committee of Consenting Senior Noteholders***" means the group of Consenting Senior Noteholders represented by the Ad Hoc Committee of Consenting Senior Noteholder Advisors.

10. "***Ad Hoc Committee of Consenting Senior Noteholder Advisors***" means, collectively: (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel; (ii) Porter Hedges LLP, as co-counsel; and (iii) Centerview Partners LLC, as financial advisor and investment banker.

11. "***Administrative Claims***" means any and all requests for payment of costs or expenses (other than DIP Claims) of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority under section 507 of the Bankruptcy Code, including, but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Bankruptcy Fees; (c) Allowed Professional Fee Claims; (d) the Restructuring Expenses; and (e) Put Option Premium Claims.

12. "***Administrative Claims Bar Date***" means the first Business Day that is the thirtieth (30^{th}) day after the Effective Date.

13. "***Affiliate***" has the meaning set forth in section 101(2) of the Bankruptcy Code, including non-Debtor Entities.

14. "***Allowed***" means, with respect to a Claim or Interest: (i) any Claim or Interest as to which no objection to allowance has been interposed (either in the Bankruptcy Court or in the ordinary course of business) on or before the applicable time period fixed by applicable non-bankruptcy law or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order, either before or after the Effective Date, to the extent such objection is determined in favor of the respective Holder; (ii) any Claim or Interest as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court, either before or after the Effective Date; or (iii) any Claim or Interest expressly deemed Allowed by this Plan. A Claim or Interest that is Allowed shall include a Claim or Interest that is Disputed to the extent such Claim or Interest becomes Allowed after the Effective

Date. A Claim that is Allowed shall be net of any valid setoff exercised with respect to such Claim pursuant to the provisions of the Bankruptcy Code and applicable non-bankruptcy law. Unless otherwise specified herein, in section 506(b) of the Bankruptcy Code, or by Final Order of the Bankruptcy Court, a Claim that is Allowed shall not, for purposes of distributions under this Plan, include interest on such Claim accruing from or after the Petition Date.

15. "***Ballot***" means a ballot accompanying the Disclosure Statement upon which certain Holders of Impaired Claims entitled to vote on this Plan shall, among other things, indicate their acceptance or rejection of this Plan in accordance with this Plan and the procedures governing the solicitation process.

16. "***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended.

17. "***Bankruptcy Court***" means the United States Bankruptcy Court for the Southern District of Texas or such other court as may have jurisdiction over these Chapter 11 Cases.

18. "***Bankruptcy Fees***" means any and all fees or charges assessed against the Debtors' Estates under section 1930 of title 28 of the United States Code.

19. "***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, promulgated under section 2075 of title 28 of the United States Code, the Official Bankruptcy Forms, or the local rules of the Bankruptcy Court, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

20. "***Business Day***" means any day, other than a Saturday, Sunday, or a "legal holiday" (as such term is defined in Bankruptcy Rule 9006(a)).

21. "***Cash***" means the legal tender of the United States of America or the equivalent thereof.

22. "***Cash-Out Reduction***" has the meaning set forth in Section 3.3(c)(iii)2 of this Plan.

23. "***Cash-Out Shares***" has the meaning set forth in Section 3.3(c)(iii)2 of this Plan.

24. "***Causes of Action***" means any and all claims, interests, damages, remedies, causes of action, demands, rights, debts, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, asserted or assertable, direct or derivative, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, including but not limited to: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by Law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542

through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

25. "***Chapter 11 Cases***" means the cases pending for the Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

26. "***Claim***" has the meaning set forth in section 101(5) of the Bankruptcy Code.

27. "***Claims Register***" means the official register of Claims maintained by the Notice and Claims Agent.

28. "***Class***" means a group of Claims or Interests classified together pursuant to section 1122(a)(1) of the Bankruptcy Code.

29. "***Combined Hearing***" means the hearing to be held by the Bankruptcy Court to consider the adequacy of the Disclosure Statement and confirmation of this Plan under sections 1125 and 1129 of the Bankruptcy Code, respectively, as such hearing may be adjourned or continued from time to time.

30. "***Common Equity Convenience Buyout***" means the option of Holders of Allowed Senior Notes Claims who are not Consenting Senior Noteholders to elect the Senior Notes Claim Cash Option in lieu of receiving the Senior Notes Claim Equity Recovery on account of such Senior Notes Claims, pursuant to which certain of the Consenting Senior Noteholders shall purchase Reorganized Common Equity on the terms set forth in Section 4.14 of this Plan and the Common Equity Convenience Buyout Documents.

31. "***Common Equity Convenience Buyout Cap***" means $7,040,000.

32. "***Common Equity Convenience Buyout Documents***" means the definitive documents and agreements required to effectuate the Common Equity Convenience Buyout, including the Common Equity Convenience Buyout Procedures, the Equity Rights Offering Backstop Commitment Order, and the Equity Rights Offering Backstop Commitment Agreement.

33. "***Common Equity Convenience Buyout Premium***" means an amount equal to 10% of the Common Equity Convenience Buyout Cap, payable to the Equity Rights Offering Backstop Parties in accordance with the Equity Rights Offering Backstop Commitment Agreement (i) on the Effective Date, in Reorganized Common Equity, issuable at the Equity Rights Offering Share Price, or (ii) if the Equity Rights Offering Backstop Commitment Agreement is terminated prior to the Effective Date, in Cash in accordance with the Equity Rights Offering Backstop Commitment Order.

34. "***Common Equity Convenience Buyout Procedures***" means those certain procedures with respect to the Common Equity Convenience Buyout, as approved by the Bankruptcy Court, which shall be in form and substance reasonably acceptable to the Required Consenting Senior Noteholders and the Debtors.

35. "***Common Equity Convenience Buyout Share Price***" means $5.00 per share, which reflects the plan equity value per share giving effect to the proceeds received on account of the Equity Rights Offering Amount, discounted by 50%.

36. "***Common Equity Convenience Buyout Shares***" has the meaning set forth in Section 4.14(c) of this Plan.

37. "***Company***" means Cutera, Inc. and all of its direct and indirect subsidiaries.

38. "***Confirmation***" means the entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

39. "***Confirmation Date***" means the date upon which the Confirmation Order is entered on the docket maintained by the Bankruptcy Court pursuant to Bankruptcy Rule 5003.

40. "***Confirmation Order***" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, which order shall be in form and substance as set forth in, and consistent with, the Restructuring Support Agreement.

41. "***Consenting 2026 Senior Noteholders***" means those certain beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2026 Senior Notes and are party to the Restructuring Support Agreement.

42. "***Consenting 2028 Senior Noteholders***" means those certain beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2028 Senior Notes and are party to the Restructuring Support Agreement.

43. **"*Consenting 2029 Senior Noteholders*"** means those certain beneficial holders of, or investment advisors, sub-advisors, or managers of discretionary accounts or funds that beneficially hold, 2029 Senior Notes and are party to the Restructuring Support Agreement.

44. "***Consenting Senior Noteholders***" means, collectively, the Consenting 2026 Senior Noteholders, the Consenting 2028 Senior Noteholders, and the Consenting 2029 Senior Noteholders.

45. "***Consummation***" means the occurrence of the Effective Date.

46. "***Cure Cost***" means any amount required to cure any monetary default under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by parties to an Executory Contract or Unexpired Lease) that is assumed by the Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code.

47. "***D&O Liability Insurance Policies***" means all insurance policies issued to or providing coverage at any time to the Debtors for directors', managers', and officers' liability existing as of the Petition Date (including any "tail policy") and all agreements, documents, or instruments relating thereto.

48. "***Debtors***" has the meaning set forth in the introductory paragraph of this Plan.

49. "***Definitive Documents***" means (i) each of the documents in the Plan Supplement, (ii) the Equity Rights Offering Documents, (iii) the Common Equity Convenience Buyout Documents, (iv) the Equity Rights Offering Backstop Commitment Order, (v) the Confirmation Order, (vi) the Solicitation Materials and the Solicitation Procedures Order, (vii) such other agreements and documentation reasonably desired or necessary to consummate and document the Restructuring Transactions, and (viii) any other document that has or may have a material or adverse impact on the legal or economic rights of the Consenting Senior Noteholders; *provided* that each Definitive Document shall be in form and substance reasonably satisfactory to the Required Consenting Senior Noteholders (unless otherwise provided for herein).

50. "***DIP Agent***" means Wilmington Savings Fund Society, FSB, as administrative and collateral agent for the DIP Lenders under the DIP Facility Documents, or any successor agents thereunder.

51. "***DIP Claims***" means any and all Claims against the Debtors related to, arising out of, arising under, or arising in connection with the DIP Facility Documents.

52. "***DIP Credit Agreement***" means that certain credit agreement evidencing the DIP Facility by and among Cutera, Inc., as borrower, Crystal Sub, LLC as guarantor, the DIP Agent, and the DIP Lenders, as may be amended, modified, or supplemented from time to time in accordance with the terms thereof.

53. "***DIP Facility***" means the $25 million, new-money, super-priority secured term loan debtor in possession financing facility.

54. "***DIP Facility Documents***" means the DIP Credit Agreement, all agreements, notes, instruments, and any other documents delivered pursuant thereto or in connection therewith, including the DIP Agent fee letter and the DIP Orders, together with all documentation executed or delivered in connection therewith as may be amended, modified, or supplemented from time to time, in accordance with the terms and conditions set forth therein.

55. "***DIP Lenders***" means the lenders from time to time under the DIP Credit Agreement, including their designees, successors, and permitted assigns.

56. "***DIP Orders***" means the Interim DIP Order and Final DIP Order.

57. "***Direct Investment Shares***" has the meaning set forth in Section 4.13(b) of this Plan.

58. "***Disallowed***" means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is an Administrative Claim for which no request for payment of an Administrative Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy

Court or otherwise deemed timely filed under applicable law or the Plan; (c) has been withdrawn by agreement of the Debtors and the Holder thereof; or (d) has been withdrawn by the Holder thereof.

59. "***Disclosure Statement***" means the disclosure statement for this Plan, including all exhibits and schedules thereto, as it may be amended from time to time, that is prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable Law.

60. "***Disclosure Statement Order***" means the order of the Bankruptcy Court approving the Disclosure Statement, which order may be a part of the Confirmation Order.

61. "***Disputed***" means, with respect to any Claim or Interest, except as otherwise provided herein, a Claim or Interest that has not been Allowed or Disallowed.

62. "***Distribution Date***" means the date on which Holders of Claims or Interests are eligible to receive distributions under this Plan, which date shall be the Effective Date, or such other date agreed to by the Debtors and the Required Consenting Senior Noteholders.

63. "***DTC***" means the Depository Trust Company.

64. "***Effective Date***" means the date that is the first day on which all conditions to the effectiveness of this Plan set forth in Section 8.1 hereof have been satisfied or waived in accordance with the terms of this Plan.

65. "***Entity***" has the meaning set forth in section 101(15) of the Bankruptcy Code.

66. "***Equity Rights Offering***" means the equity rights offering to be consummated by the Reorganized Company on the Effective Date in accordance with the Equity Rights Offering Documents, pursuant to which it shall issue shares of Reorganized Common Equity.

67. "***Equity Rights Offering Amount***" means $30 million.

68. "***Equity Rights Offering Backstop Commitment***" means the commitment of the Equity Rights Offering Backstop Parties to fully backstop the Equity Rights Offering.

69. "***Equity Rights Offering Backstop Commitment Agreement***" means the backstop commitment agreement, as may be further amended, modified, or supplemented from time to time, in accordance with its terms, entered into in connection with the Equity Rights Offering and the Common Equity Convenience Buyout, which shall be in the form and substance as attached to the Restructuring Support Agreement.

70. "***Equity Rights Offering Backstop Commitment Order***" means an order or orders of the Bankruptcy Court approving, among other things, (i) Cutera, Inc.'s entry into and performance under the Equity Rights Offering Backstop Commitment Agreement, (ii) the Equity Rights Offering and Equity Rights Offering Procedures, (iii) the Common Equity Convenience

Buyout and Common Equity Convenience Buyout Procedures, and (iv) as Administrative Claims, the Put Option Premium.

71. "***Equity Rights Offering Backstop Parties***" means the Holders of Senior Notes Claims (and their permitted assigns) who have agreed, as applicable, to backstop the Equity Rights Offering Amount and Common Equity Convenience Buyout and to act as Equity Rights Offering Holdback Parties, in each case pursuant to the Equity Rights Offering Backstop Commitment Agreement.

72. "***Equity Rights Offering Backstop Premium***" means an amount equal to 10% of the Equity Rights Offering Amount, payable to the Equity Rights Offering Backstop Parties in accordance with the Equity Rights Offering Backstop Commitment Agreement (i) on the Effective Date, in Reorganized Common Equity, issuable at the Equity Rights Offering Share Price, or (ii) if the Equity Rights Offering Backstop Commitment Agreement is terminated prior to the Effective Date, in Cash in accordance with the Equity Rights Offering Backstop Commitment Order.

73. "***Equity Rights Offering Documents***" means, collectively, the Equity Rights Offering Procedures and related subscription form, the Equity Rights Offering Backstop Commitment Agreement, the Equity Rights Offering Backstop Commitment Order, and other material documents necessary to implement the Equity Rights Offering.

74. "***Equity Rights Offering Holdback Parties***" means the Equity Rights Offering Backstop Parties who have agreed to purchase their respective portions (pursuant to the terms of the Equity Rights Offering Backstop Commitment Agreement) of the Holdback Rights Offering Amount.

75. "***Equity Rights Offering Procedures***" means those certain rights offering procedures with respect to the Equity Rights Offering, as approved by the Bankruptcy Court, which shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Senior Noteholders.

76. "***Equity Rights Offering Share Price***" means $7.55 per share, which reflects the plan equity value per share after discounting by 35% the pre-Equity Rights Offering Amount proceeds valuation portion thereof.

77. "***Equity Rights Offering Shares***" means the shares of Reorganized Common Equity issued pursuant to the Equity Rights Offering.

78. "***Equity Security***" has the meaning set forth in section 101(16) of the Bankruptcy Code.

79. "***Estate***" means, as to each Debtor, the estate created for the Debtor pursuant to section 541 of the Bankruptcy Code upon the commencement of its Chapter 11 Case.

80. "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

81. "***Exculpated Parties***" means, to the fullest extent permitted by law, the Debtors.

82. "***Executory Contract***" means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

83. "***Existing Common Interests***" means any Interest in Cutera, Inc. in existence immediately before the Effective Date.

84. "***Exit Facility***" means the exit term loan credit facility initially consisting of (a) an aggregate outstanding principal amount equal to the principal amount the term loans outstanding under the DIP Facility Documents on the Effective Date (including (i) the amount of any upfront payment payable pursuant to the DIP Facility Documents and (ii) the amount of any repayment premium payable pursuant to the DIP Facility Documents upon the repayment of the DIP Facility on such date, but excluding (x) accrued and unpaid interest as of such date, (y) Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel, and (z) indemnification obligations solely to the extent due and payable as of the Effective Date, which amounts in the foregoing clauses (x) through (z), for the avoidance of doubt, shall be paid in full in Cash on the Effective Date), which term loans issued under the Exit Facility shall be funded on a cashless basis by rolling over such amounts outstanding under the DIP Facility Documents and (b) a $10 million new money term loan to be provided by the Exit Lenders on the Effective Date on the terms and conditions set forth in the Exit Facility Documents.

85. "***Exit Facility Documents***" means the agreements memorializing the Exit Facility, including any amendments, modifications, supplements thereto, and together with any related notes, certificates, agreements, intercreditor agreements, security agreements, mortgages, deeds of trust, documents, and instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection with the Exit Facility.

86. "***Exit Lenders***" means the DIP Lenders on the Effective Date and the other lenders from time to time under the Exit Facility, including their designees, successors, and permitted assigns.

87. "***Federal Judgment Rate***" means the federal judgment rate in effect as of the Petition Date.

88. "***Final DIP Order***" means the Final Order of the Bankruptcy Court approving the DIP Facility.

89. "***Final Order***" means, as applicable, an order, ruling, or judgment of the Bankruptcy Court or any other court of competent jurisdiction, as applicable, which has not been

reversed, vacated, or stayed and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for reargument or rehearing is pending, or as to which any right to appeal, petition for certiorari, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtors or, on and after the Effective Date, the Reorganized Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court, or other court of competent jurisdiction (as applicable) has been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing has been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing has expired; *provided*, *however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state or provincial court rules of civil procedure, may be filed with respect to such order, ruling, or judgment shall not cause an order, ruling, or judgment not to be a Final Order.

90. "***General Unsecured Claims***" means any and all unsecured Claims (other than an Administrative Claim (including any Professional Fee Claim or Put Option Premium Claim), an Intercompany Claim, a Senior Notes Claim, a Priority Tax Claim, an Other Priority Claim, or any Claim subject to subordination under section 510(b) of the Bankruptcy Code) against any Debtor, including (a) Claims arising from the rejection of Unexpired Leases and Executory Contracts to which any Debtor is a party and (b) Claims arising from any litigation or other court, administrative, or regulatory proceeding, including damages or judgments entered against, or settlement amounts owing by any Debtor related thereto.

91. "***Governmental Unit***" has the meaning set forth in section 101(27) of the Bankruptcy Code.

92. "***Holdback Rights Offering Amount***" has the meaning set forth in Section 4.13(b) of this Plan.

93. "***Holder***" means the beneficial holder of, or investment advisor, sub-advisor, or manager of discretionary accounts or funds that beneficially hold, any Claim or Interest.

94. "***Impaired***" means, with respect to a Claim or Interest, such Claim or Interest that falls within a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

95. "***Indemnification Obligation***" means the Debtors' obligations to indemnify, reimburse, or otherwise hold financially harmless the Indemnified Parties with respect to or based upon any act or omission taken or omitted in any of the relevant capacities, or for or on behalf of the Debtors, pursuant to and to the maximum extent provided by the Debtors' certificates of incorporation, certificates of formation, bylaws and similar corporate documents, as in effect as of the Petition Date.

96. "***Indemnified Parties***" means the Debtors' current and former directors, officers, managers, employees, attorneys, other professionals, and agents, and such current and former directors', officers', managers', and employees' respective Affiliates to the extent set forth herein,

that were employed or served in such capacity on or after the Petition Date and that are entitled to be indemnified by the Debtors pursuant to, among other things, the Debtors' bylaws, certificates of incorporation (or other formation documents), board resolutions, employment contracts, or other agreements.

97. "***Insurance Policies***" means all insurance policies, including all D&O Liability Insurance Policies, that have been issued at any time that provide coverage, benefits, or proceeds to the Debtors (or their predecessors) and all agreements, documents, or instruments relating thereto.

98. "***Intercompany Claims***" means any and all Claims against a Debtor held by any Debtor or direct or indirect subsidiary of a Debtor.

99. "***Intercompany Interests***" means any and all Equity Securities or other ownership interests in an Affiliate of the Debtors held by one or more of the Debtors.

100. "***Interests***" means any Equity Security or other ownership interest in any Debtor, including any and all issued, unissued, authorized, or outstanding shares of common stock, preferred stock, membership, limited liability company interests (whether certificated or uncertificated), or partnership interests, or other instrument evidencing an ownership interest in any Debtor, whether or not transferable, together with any warrants, equity-based awards or contractual rights to purchase or acquire such equity interests at any time and all rights arising with respect thereto.

101. "***Interim DIP Order***" means an order of the Bankruptcy Court approving the DIP Facility on an interim basis.

102. "***Law***" means any federal, state, local, or foreign "law" (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

103. "***Lien***" has the meaning set forth in section 101(37) of the Bankruptcy Code.

104. "***Management Incentive Plan***" means a management incentive plan of the Reorganized Company to be implemented on the Effective Date, in form and substance reasonably acceptable to the Debtors and Required Consenting Senior Noteholders and filed with the Plan Supplement.

105. "***New Organizational Documents***" means, on or after the Effective Date, the organizational and governance documents for the Reorganized Company and the Reorganized Debtors, including, without limitation, certificates of incorporation (including any certificate of designations), certificates of formation or certificates of limited partnership (or equivalent organizational documents), certificates of designation, bylaws, limited liability company agreements, shareholders' agreements, and limited partnership agreements (or equivalent governing documents), as applicable, including the New Shareholders Agreement, if any.

106. "***New Shareholders Agreement***" means any agreement entered into by holders of Reorganized Common Equity governing the rights and obligations with respect to the Reorganized Common Equity.

107. "***Non-Holdback Rights Offering Amount***" has the meaning set forth in Section 4.13(b) of this Plan.

108. "***Non-Voting Classes***" means Classes 1, 2, 4, 5, 6, 7, and 8 of this Plan.

109. "***Notice and Claims Agent***" means Kurtzman Carson Consultants, LLC d/b/a Verita Global in its capacity as noticing, claims, and solicitation agent for the Debtors.

110. "***Opt-Out Form***" means the form by which Holders of Claims and Interests in Non-Voting Classes may opt-out of becoming a Releasing Party by checking the applicable box on such form.

111. "***Other Priority Claims***" means any and all Claims against any of the Debtors entitled to priority in right of payment under section 507(a) of the Bankruptcy Code that are not Administrative Claims or Priority Tax Claims.

112. "***Other Secured Claims***" means any and all Secured Claims against any of the Debtors that are not DIP Claims.

113. "***Person***" has the meaning set forth in section 101(41) of the Bankruptcy Code.

114. "***Petition Date***" means the date on which the Debtors filed petitions for relief commencing the Chapter 11 Cases.

115. "***Placement Securities***" has the meaning set forth in Section 4.15 of this Plan.

116. "***Plan***" means this joint prepackaged plan of reorganization filed by the Debtors under chapter 11 of the Bankruptcy Code that embodies the Restructuring Transactions, including all exhibits and schedules to this Plan, and any Plan Supplement, as they may be amended, supplemented or modified from time to time in accordance with the terms hereof, the terms of the Restructuring Support Agreement, the Bankruptcy Code, and the Bankruptcy Rules.

117. "***Plan Supplement***" means the compilation of documents and forms of documents, schedules, and exhibits to this Plan, as the same may be amended, modified, or supplemented, and including, without limitation, the following: (a) the identity of the known members of the Reorganized Board and the nature and compensation for any director who is an "insider" under the Bankruptcy Code; (b) the New Organizational Documents; (c) the Management Incentive Plan; (d) the Schedule of Retained Causes of Action; (e) the Schedule of Rejected Executory Contracts and Unexpired Leases; (f) the Exit Facility Documents; (g) the Restructuring Transactions Memorandum, if any, (h) all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing; and (i) any additional documents filed with the

Bankruptcy Court before the Effective Date as additional documents or amendments to the Plan Supplement; *provided*, that each Plan Supplement document shall be in form and substance reasonably satisfactory to the Debtors and the Required Consenting Senior Noteholders (unless otherwise provided for herein).

118. "***Priority Tax Claims***" means any and all Claims against a Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

119. "***Professional Fee Claims***" means any and all Claims of a Professional against a Debtor seeking a payment of compensation for services rendered or reimbursement of expenses incurred on or as of the Petition Date and through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

120. "***Professional Fee Escrow Account***" means an interest-bearing escrow account in an amount equal to the Professional Fee Reserve Amount to be funded and maintained by the Reorganized Debtors on and after the Effective Date solely for the purpose of paying all Allowed and unpaid Professional Fee Claims.

121. "***Professional Fee Reserve Amount***" means the aggregate accrued and unpaid Professional Fee Claims through the Effective Date as reasonably estimated by the Retained Professionals in accordance with Article II of this Plan.

122. "***Professionals***" means (a) any and all professionals employed in the Chapter 11 Cases pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) any and all professionals or other Entities seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

123. "***Pro-Rata Share***" means with respect to any distribution on account of any Allowed Claim in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in such Class.

124. "***Proof of Claim***" has the meaning set forth in Bankruptcy Rule 3001, or a motion or request for payment of fees, costs, or expenses made pursuant to section 503 of the Bankruptcy Code filed in the Chapter 11 Cases.

125. "***Put Option Premium***" means, collectively, (i) the Common Equity Convenience Buyout Premium and (ii) the Equity Rights Offering Backstop Premium.

126. "***QIB***" means 'qualified institutional buyer,' as that term is defined in the Securities Act.

127. "***Reinstated***" or "***Reinstatement***" mean, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

128. "***Related Parties***" means, to the fullest extent permitted by law, with respect to any Entity, such Entity's predecessors, successors, assigns, and affiliates (whether by operation of Law or otherwise) and subsidiaries, and each of their respective managed accounts or funds or investment vehicles, and each of their respective current and former equity holders (regardless of whether such equity interests are held directly or indirectly), officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, actuaries, investment bankers, consultants, representatives, management companies, fund advisors, direct and indirect parent Entities, "controlling persons" (within the meaning of the federal securities law), heirs, administrators and executors, and other professionals, in each case acting in such capacity whether current or former, including in their capacity as directors of the Company, as applicable.

129. "***Released Parties***" means, collectively, (a)(i) the Company, (ii) the Reorganized Debtors, (iii) the Trustee, (iv) the DIP Lenders, (v) the DIP Agent, (vi) each Holder of a Senior Notes Claim that votes to accept the Plan, and does not affirmatively opt out of, or timely object to, the releases set forth in Section 9.3 of the Plan, and (vii) the Ad Hoc Committee of Consenting Senior Noteholders and each member thereof; (b) with respect to each of the foregoing Entities and Persons in clause (a), all of their respective Related Parties to the maximum extent permitted by law; *provided*, that any Entity or Person that affirmatively opts out of, or timely objects either through (1) a formal objection filed on the docket of the Chapter 11 Cases or (2) an informal objection provided to the Debtors by electronic mail, and such objection is not resolved or withdrawn on the docket of the Chapter 11 Cases or via electronic mail, as applicable, before Confirmation shall not be deemed a Released Party.

130. "***Releases***" means the releases given by the Releasing Parties to the Released Parties under Article IX hereof.

131. "***Releasing Parties***" means, collectively, each of the following in their capacity as such: (i) all Holders of Claims or Interests that vote to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan, (ii) all Holders of Claims or Interests that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan, (iii) all Holders of Claims or Interests that vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan, (iv) all Holders of Claims or Interests who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (v) each Released Party, (vi) each Related Party to each Entity in clause (i) through (v) solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (i) through (v); *provided*, *that*, in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases set forth in Section 9.3 of the Plan; or (y) timely objects to the releases set forth in Section 9.3 of the Plan, either through (1) a formal objection filed on the docket of the Chapter 11 Cases or (2) an informal objection provided to the Debtors by electronic mail, and such objection is not withdrawn on the docket of the Chapter 11 Cases or via electronic mail, as applicable, before Confirmation.

132. "***Reorganized Board***" means the board of managers of the Reorganized Company, as determined in accordance with the New Organizational Documents.

133. "***Reorganized Common Equity***" means the units of common stock or other common equity Interests of the Reorganized Company authorized under the New Organizational Documents and issued pursuant to this Plan on the Effective Date.

134. "***Reorganized Company***" means Cutera, Inc. and any successors thereto, by merger, consolidation, or otherwise, as reorganized on or after the Effective Date.

135. "***Reorganized Debtors***" means collectively, the Debtors and any successors thereto, by consolidation, or otherwise, including, without limitation, the Reorganized Company, as reorganized on or after the Effective Date, in accordance with this Plan.

136. "***Required Consenting Senior Noteholders***" means as of any date of determination, Consenting Senior Noteholders who own or control as of such date at least 50.1% of the aggregate principal amount of all outstanding Senior Notes owned or controlled by all Consenting Senior Noteholders.

137. "***Residual Fee Escrow Interest***" has the meaning set forth in Section 2.3(b) of this Plan.

138. "***Restructuring Expenses***" means the reasonable and documented prepetition and postpetition fees and out-of-pocket expenses incurred or accrued by the Ad Hoc Committee of Consenting Senior Noteholder Advisors (in each case payable in accordance with the applicable fee reimbursement letters entered into by Cutera, Inc. and such professionals and to the extent not otherwise paid pursuant to the DIP Orders or DIP Facility Documents); in each case, without further order of, or application to, the Bankruptcy Court by such consultant or professionals, including the requirement for the filing of retention applications, fee applications, or any other applications in the Chapter 11 Cases.

139. "***Restructuring Support Agreement***" means that certain restructuring support agreement, dated as of March 4, 2025, by and among the Debtors and the Consenting Senior Noteholders, and any person or Entity that subsequently becomes a party thereto, including any exhibits thereto, as may be further amended, modified, or supplemented from time to time, in accordance with its terms.

140. "***Restructuring Transactions***" means the transactions necessary to complete this Plan, as further described in Section 4.3 hereof.

141. "***Restructuring Transactions Memorandum***" means a document which may be included in the Plan Supplement setting forth a summary of the transaction steps to complete the Restructuring Transactions.

142. "***Retained Professional***" means an Entity: (a) employed in these Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to (i) sections 327, 328, 329, 330, or 331 of the Bankruptcy Code or (ii) an order entered by the

Bankruptcy Court authorizing such retention; or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

143. "***Schedule of Rejected Executory Contracts and Unexpired Leases***" means the schedule of certain Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to this Plan.

144. "***Schedule of Retained Causes of Action***" means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to this Plan, as the same may be amended, modified, or supplemented from time to time.

145. "***Section 510(b) Claims***" means any Claim against any Debtor (i) arising from the rescission of a purchase or sale of a Security of a Debtor or any Affiliate of a Debtor; (ii) for damages arising from the purchase or sale of such a Security; or (iii) for reimbursement or contribution Allowed under section 502 of the Bankruptcy Code on account of such Claim.

146. "***Secured Claims***" means any and all Claims against any of the Debtors that are secured by a Lien on, or security interest in, property in which any of the Debtors has an interest, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, which Lien or right of setoff, as the case may be, is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law, but only to the extent of the value of the Holder's interest in the Debtors' interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

147. "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

148. "***Security***" has the meaning set forth in section 101(49) of the Bankruptcy Code.

149. "***Senior Notes***" means, collectively, (i) the 2026 Senior Notes, (ii) the 2028 Senior Notes, and (iii) the 2029 Senior Notes.

150. "***Senior Notes Claim***" means any Claim on account of the Senior Notes.

151. "***Senior Notes Claim Cash Amount***" has the meaning set forth in Section 3.3(c)(iii)2 of this Plan.

152. "***Senior Notes Claim Cash Option***" has the meaning set forth in Section 3.3(c)(iii)2 of this Plan.

153. "***Senior Notes Claim Equity Recovery***" has the meaning set forth in Section 3.3(c)(iii)1 of this Plan.

154. "***Senior Notes Documents***" means the Senior Notes Indentures and all related agreements and documents executed by the Debtors in connection with the Senior Notes Indentures, including the Senior Notes.

155. "***Senior Notes Indentures***" means, collectively, (i) the 2026 Senior Notes Indenture, (ii) the 2028 Senior Notes Indenture, and (iii) the 2029 Senior Notes Indenture.

156. "***Solicitation Materials***" means (i) the Ballot and applicable voting instructions, (ii) the Disclosure Statement and all exhibits thereto, including this Plan, the Equity Rights Offering Procedures and Common Equity Convenience Buyout Procedures and related subscription forms, (iii) the Opt-Out Form, and (iv) any other documents necessary to effect or approve the solicitation of votes with respect to the Restructuring Transactions to be consummated pursuant to this Plan, each of which shall be in form and substance as set forth in, and consistent with, the Restructuring Support Agreement.

157. "***Solicitation Procedures Order***" means any order(s) of the Bankruptcy Court approving, among other things, the Solicitation Materials and scheduling the Combined Hearing.

158. "***Stamp or Similar Tax***" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax, privilege taxes, and other similar taxes imposed or assessed by any Governmental Unit.

159. "***Subscription Rights***" means the non-certified rights to purchase Reorganized Common Equity issued in connection with the Equity Rights Offering.

160. "***Surviving Senior Notes Provisions***" means any provisions of the Senior Notes Documents that by their terms survive the termination of the Senior Notes Documents.

161. "***Trustee***" means U.S. Bank Trust Company, National Association, and its successors and assigns, in its capacity as Trustee under the 2026 Senior Notes Indenture, 2028 Senior Notes Indenture and 2029 Senior Notes Indenture, as applicable.

162. "***U.S. Trustee***" means the Office of the United States Trustee for the Southern District of Texas.

163. "***Unexpired Lease***" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

164. "***Unimpaired***" means, with respect to any Claim or Interest, such Claim or Interest that is not Impaired.

Section 1.2 Rules of Interpretation and Computation of Time.

(a) For purposes herein: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(ii) unless otherwise specified, any reference herein to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (iii) unless otherwise specified, any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, restated, amended and restated, supplemented, waived or otherwise modified; (iv) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, of this Plan; (v) the words "herein," "hereof," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (vi) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitations, and shall be deemed to be followed by the words "without limitation"; (vii) references to "shareholders," "directors," or "officers" shall also include "members" or "managers," as applicable, as such terms are defined under the applicable state limited liability company Laws; (viii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; and (ix) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

(b) The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein, unless otherwise provided for herein.

(c) All references in this Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

(d) In the event of an inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control. In the event of an inconsistency between this Plan and the Confirmation Order, the Confirmation Order shall control.

(e) Notwithstanding anything to the contrary in the Plan, any and all consent rights set forth in the Restructuring Support Agreement, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by reference (including to the applicable definitions in Section 1.1 of the Plan) and be fully enforceable as if stated in full in the Plan. Failure to reference in the Plan the rights referred to in the immediately preceding sentence shall not impair such rights and obligations. In case of a conflict between the consent rights in the Plan and the consent rights in the Restructuring Support Agreement, the consent rights in the Plan shall govern.

ARTICLE II.
UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article III hereof.

Section 2.1 Administrative Claims.

(a) Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, to less favorable treatment, to the extent an Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the unpaid portion of such Allowed Administrative Claim in accordance with the following: (i) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Administrative Claim is due or as soon as reasonably practicable thereafter); (ii) if such Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (iii) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

(b) All requests for payment of an Administrative Claim (other than DIP Claims, Restructuring Expenses, Put Option Premium Claims, or Professional Fee Claims) that accrued on or before the Effective Date that were not otherwise paid in the ordinary course of business must be filed with the Bankruptcy Court and served on the Debtors no later than the Administrative Claims Bar Date. Holders of Administrative Claims (other than DIP Claims, Restructuring Expenses, Put Option Premium Claims, or Professional Fee Claims) that are required to, but do not, file and serve a request for payment of such Administrative Claims by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, the Estates, or the Reorganized Debtors, and such Administrative Claims shall be deemed discharged, compromised, settled, and released as of the Effective Date.

(c) The Reorganized Debtors may settle Administrative Claims (other than DIP Claims, Restructuring Expenses, and Put Option Premium Claims) in the ordinary course of business without further Bankruptcy Court approval. The Debtors or the Reorganized Debtors, as applicable, may also choose to object to any Administrative Claim (other than DIP Claims, Restructuring Expenses, and Put Option Premium Claims) no later than sixty (60) days after the Administrative Claims Bar Date, subject to extensions by the Bankruptcy Court, agreement in writing of the parties, or on motion of a party in interest approved by the Bankruptcy Court. Unless the Debtors or the Reorganized Debtors (or other party with standing) objects to a timely-filed and properly served Administrative Claim, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtors or the Reorganized Debtors (or other party with standing) objects to an Administrative Claim, the parties may confer to try to reach a settlement and, failing that, the Bankruptcy Court shall determine whether such Administrative Claim should be allowed and, if so, in what amount.

Section 2.2 Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim

shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid on the later of (i) in accordance with the terms of any agreement between the Debtors and the Holder of such Allowed Priority Tax Claim, (ii) when such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy Law, or (iii) in the ordinary course of business. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

Section 2.3 Professional Fee Claims.

(a) All final requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses must be filed no later than the first Business Day that is sixty (60) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

(b) On or before the Effective Date, the Reorganized Debtors shall establish (if not already established) and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. Subject to the last sentence of this Section 2.3(b), the Professional Fee Escrow Account shall be maintained in trust solely for the benefit of the Retained Professionals, and such funds shall not be considered property of the Debtors' Estates, the Debtors, or the Reorganized Debtors. Subject to the last sentence of this Section 2.3(b), no Liens, Claims, or Interests shall encumber the Professional Fee Escrow Account in any way; *provided* that Liens granted pursuant to the DIP Facility Documents and Exit Facility Documents, as applicable, shall encumber amounts in the Professional Fee Escrow Account constituting the Residual Fee Escrow Interest. The Reorganized Debtors shall be obligated to pay Allowed Professional Fee Claims in excess of the Professional Fee Reserve Amount. The amount of Professional Fee Claims owing to the Retained Professionals shall be paid in Cash to such Retained Professionals from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by a Final Order of the Bankruptcy Court; *provided* that in the event the Professional Fee Reserve Amount is insufficient to satisfy the Professional Fee Claims, the Reorganized Debtors shall be required to satisfy the Allowed amounts of the remainder of any outstanding Professional Fee Claims. When all such Allowed amounts owing to Retained Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account (the "Residual Fee Escrow Interest") shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court or any other Entity.

(c) The Retained Professionals shall reasonably estimate in good faith their accrued Professional Fee Claims prior to and as of the Effective Date and shall deliver such estimate to the Debtors no later than three (3) Business Days before the anticipated Effective Date; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide such estimate, the Reorganized Debtors may estimate the unbilled fees and expenses of such Retained Professional; *provided* that such estimate shall not be considered an admission or limitation with

respect to the fees and expenses of such Retained Professional. The total amount estimated as of the Effective Date shall consist of the Professional Fee Reserve Amount; *provided* that the Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

(d) From and after the Confirmation Date, but prior to the Effective Date, any requirement that Retained Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors or Reorganized Debtors (as applicable) may employ and pay any Retained Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court. On and after the Effective Date, the Reorganized Debtors shall pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Debtors or the Reorganized Debtors (as applicable) after the Confirmation Date but prior to the Effective Date in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, except as otherwise specifically provided in this Plan. The Reorganized Debtors shall pay, within ten (10) Business Days after submission of a detailed invoice to the Reorganized Debtors, such reasonable Claims for compensation or reimbursement of expenses incurred by the Retained Professionals of the Debtors after the Confirmation Date but prior to the Effective Date. If the Debtors or Reorganized Debtors (as applicable) dispute the reasonableness of any such invoice, the Debtors or Reorganized Debtors (as applicable) or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

Section 2.4 DIP Claims.

(a) The DIP Claims shall be Allowed Claims in the full amount outstanding under the DIP Credit Agreement as of the Effective Date, including principal, interest, fees, costs, other charges, and expenses, and all other obligations related to the DIP Facility.

(b) Notwithstanding anything to the contrary herein, except to the extent that a Holder of an Allowed DIP Claim agrees to less favorable treatment, on the Effective Date, the Holders of all Allowed DIP Claims, in full and final satisfaction, settlement, release, and discharge of and in exchange for all such DIP Claims, shall receive (i) term loans issued under the Exit Facility in an aggregate outstanding principal amount equal to the principal amount the term loans outstanding under the DIP Facility Documents on the Effective Date (including (A) the amount of any upfront payment payable pursuant to the DIP Facility Documents and (B) the amount of any repayment premium payable pursuant to the DIP Facility Documents upon the repayment of the DIP Facility on such date, but excluding (x) accrued and unpaid interest as of such date, (y) Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel, and (z) indemnification obligations solely to the extent due and payable as of the Effective Date payable in Cash on the Effective Date, which amounts in the foregoing clauses (x) through (z), for the avoidance of doubt, shall be paid in full in Cash on the Effective Date), which term loans issued under the Exit Facility shall be funded on a cashless basis by rolling over such amounts outstanding under the DIP Facility Documents.

Section 2.5 Statutory Fees.

The Debtors and the Reorganized Debtors, as applicable, shall pay all quarterly fees under 28 U.S.C § 1930(a), plus any interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' or Reorganized Debtors' business, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

Section 3.1 Classification of Claims.[2]

(a) In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims (including Professional Fee Claims and Put Option Premium Claims), Priority Tax Claims, and DIP Claims, as described in Article II hereof.

(b) All Claims and Interests required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code are set forth below. Such classification is for all purposes, including for purposes of voting, Confirmation, and distribution pursuant to this Plan.

Section 3.2 Class Identification.

The following chart sets forth the classification of the Claims against and Interests in each Debtor, whether that Class of Claims or Interests is Impaired, and the voting rights of the members of such Class.

Class	Claims and Interests	Status	Voting Rights
1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Senior Notes Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Deemed to Reject)
6	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / Deemed to Reject

[2] The Debtors reserve the right to separately classify Claims to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable Law.

Class	Claims and Interests	Status	Voting Rights
6	Existing Common Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

Section 3.3 Treatment and Voting Rights of Claims and Interests.

Except to the extent that the Debtors and a Holder of an Allowed Claim or Allowed Interest, as applicable, agree to less favorable treatment, such Holder shall receive under this Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter, or, if payment is not due, in accordance with its terms in the ordinary course.

(a) *Class 1—Other Secured Claims.*

(i) *Classification:* Class 1 consists of all Other Secured Claims.

(ii) *Treatment:* Subject to the conditions described in the first paragraph of Section 3.3 of this Plan, on the Effective Date, each Holder of an Allowed Other Secured Claim shall receive, at the election of the Debtor: (A) payment in full in Cash of the unpaid portion of its Allowed Other Secured Claim; (B) the collateral securing its Allowed Other Secured Claim; (C) Reinstatement of its Allowed Other Secured Claim; or (D) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(iii) *Impairment and Voting*: Class 1 is Unimpaired under this Plan. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Thus, Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject this Plan.

(b) *Class 2—Other Priority Claims.*

(i) *Classification*: Class 2 consists of all Other Priority Claims.

(ii) *Treatment*: Subject to the conditions described in the first paragraph of Section 3.3 of this Plan, on the Effective Date, each Holder of an Allowed Other Priority Claim shall receive treatment in a manner consistent with Section 1129(a)(9) of the Bankruptcy Code.

(iii) *Impairment and Voting*: Class 2 is Unimpaired under this Plan. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted

this Plan pursuant to section 1126(f) of the Bankruptcy Code. Thus, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject this Plan.

(c) *Class 3—Senior Notes Claims.*

(i) *Classification*: Class 3 consists of Senior Notes Claims.

(ii) *Allowed Amount:* The Senior Notes Claims shall be Allowed in an amount not less than $429,125,000 of principal plus accrued and unpaid interest owed under the Senior Notes Indentures through the Petition Date.

(iii) *Treatment*: Subject to the conditions described in the first paragraph of Section 3.3 of this Plan, on the Effective Date, each Holder of an Allowed Senior Notes Claim shall receive either:

1. (A) its Pro-Rata Share of 100% of the Reorganized Common Equity, subject to dilution from the Equity Rights Offering, the Put Option Premium, and Management Incentive Plan; and (B) the right to participate in the Equity Rights Offering for its Pro-Rata Share of the Non-Holdback Rights Offering Amount ((A) and (B), collectively, the "Senior Notes Claim Equity Recovery"); or

2. if such Holder of an Allowed Senior Notes Claim elects to participate in the Common Equity Convenience Buyout (the "Senior Notes Claim Cash Option"), in lieu of all of its Senior Notes Claim Equity Recovery, (A) Cash in an amount (the "Senior Notes Claim Cash Amount") equal to the product of the Common Equity Convenience Buyout Share Price times the number of shares of Reorganized Common Equity such Holder was entitled to receive pursuant to clause (A) of the Senior Notes Claim Equity Recovery (the "Cash-Out Shares"), with the number of Cash-Out Shares of such Holder subject to reduction on a *pro rata* basis to ensure the aggregate Senior Notes Claim Cash Amount does not exceed the Common Equity Convenience Buyout Cap (the "Cash-Out Reduction") and (B) to the extent the Cash-Out Reduction occurs, shares of Reorganized Common Equity equal to the number of Cash-Out Shares of such Holder that were reduced in accordance with the Cash-Out Reduction;

provided that only those Holders which vote to accept the Plan are eligible to exercise the Senior Notes Claim Cash Option, absent the consent of the Debtors and the Required Consenting Senior Noteholders.

(iv) *Impairment and Voting*: Class 3 is Impaired under this Plan. Holders of Allowed Senior Notes Claims are entitled to vote to accept or reject this Plan.

(d) *Class 4—General Unsecured Claims.*

(i) *Classification*: Class 4 consists of all General Unsecured Claims.

(ii) *Treatment*: Subject to the conditions described in the first paragraph of Section 3.3 of this Plan, on the Effective Date, each Holder of an Allowed General Unsecured Claim shall (1) receive payment in full in Cash of the unpaid portion of its Allowed General Unsecured Claim paid on the later of (A) the Effective Date and (B) in the ordinary course of business, (2) have its Allowed General Unsecured Claim Reinstated, or (3) receive such other treatment in rendering its Allowed General Unsecured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(iii) *Impairment and Voting*: Class 4 is Unimpaired under this Plan. Holders of Allowed General Unsecured Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Thus, Holders of Allowed General Unsecured Claims are not entitled to vote to accept or reject this Plan.

(e) *Class 5—Intercompany Claims.*

(i) *Classification*: Class 5 consists of all Intercompany Claims.

(ii) *Treatment*: On the Effective Date, each Holder of an Allowed Intercompany Claim shall have its Claim either reinstated, converted to equity, or otherwise set off, settled, distributed, contributed, cancelled or released without any distribution, at the Debtors' election with the reasonable consent of the Required Consenting Senior Noteholders.

(iii) *Impairment and Voting*: Class 5 is either Impaired with no distribution or Unimpaired under this Plan. Holders of Allowed Intercompany Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or deemed to not have accepted this Plan pursuant to section 1126(g) of the Bankruptcy Code. In either case, Holders of Allowed Intercompany Claims are not entitled to vote to accept or reject this Plan.

(f) *Class 6—Intercompany Interests.*

(i) *Classification*: Class 6 consists of all Intercompany Interests

(ii) *Treatment*: On the Effective Date, each Holder of an Allowed Intercompany Interest in the Debtors shall have its Interest (1) Reinstated or (2) cancelled,

released, and extinguished and without any distribution at the Debtors' election.

(iii) *Impairment and Voting*: Class 6 is either Impaired with no distribution or Unimpaired under this Plan. Holders of Allowed Intercompany Interests in the Debtors are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code or deemed to not have accepted this Plan pursuant to section 1126(g) of the Bankruptcy Code. In either case, Holders of Allowed Intercompany Interests are not entitled to vote to accept or reject this Plan.

(g) *Class 7—Existing Common Interests.*

(i) *Classification*: Class 7 consists of all Existing Common Interests.

(ii) *Treatment*: On the Effective Date, all Existing Common Interests shall be cancelled, released, and extinguished, and Holders of Existing Common Interests shall not receive or retain any property or distributions under this Plan.

(iii) *Impairment and Voting*: Class 7 is Impaired under this Plan. Holders of Allowed Existing Common Interests are deemed to not have accepted this Plan pursuant to section 1126(g) of the Bankruptcy Code. Thus, Holders of Allowed Existing Common Interests will not be entitled to vote to accept or reject this Plan.

(h) *Class 8—Section 510(b) Claims.*

(i) *Classification*: Class 8 consists of all Section 510(b) Claims.

(ii) *Treatment*: Section 510(b) Claims shall be cancelled, released, discharged, and extinguished as of the Effective Date and shall be of no further force or effect, and Holders of Section 510(b) Claims shall not receive any distribution on account of such Section 510(b) Claims.

(iii) *Impairment and Voting*: Class 8 is Impaired under this Plan. Holders of Allowed Section 510(b) Claims are deemed to not have accepted this Plan pursuant to section 1126(g) of the Bankruptcy Code. Thus, Holders of Allowed Section 510(b) Claims will not be entitled to vote to accept or reject this Plan.

Section 3.4 Special Provision Governing Unimpaired Claims.

Except as otherwise provided in this Plan, the DIP Orders, or the DIP Facility Documents, nothing under this Plan shall affect the Debtors' or the Reorganized Debtors' rights in respect of any Unimpaired Claim, including, but not limited to, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

Section 3.5 Voting; Presumptions; Solicitation.

(a) *Acceptance by Certain Impaired Classes*. Only Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject this Plan. An Impaired Class of Claims shall have accepted this Plan if (i) the Holders of at least two-thirds (2/3) in amount of the Allowed Claims actually voting in such Class have voted to accept this Plan and (ii) the Holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept this Plan. Holders of Allowed Claims or Interests in Class 3 have received Ballots containing detailed voting instructions.

(b) *Conclusively Presumed Acceptance by Unimpaired Classes*. Holders of Claims in Classes 1, 2, and 4, and certain Holders of Claims in Class 5 are conclusively presumed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject this Plan.

(c) *Deemed Not to Accept by Certain Impaired Classes*. Holders of Claims in Classes 7 and 8, certain Holders of Claims in Class 5, and certain Holders of Interests in Class 6 are deemed not to accept this Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject this Plan.

(d) *Disputes Regarding Impairment*. If a Holder of a Claim or Interest disputes the classification of such Holder's Claim or Interest, then upon the filing of an objection to the Plan by such Holder, the Bankruptcy Court shall, after notice and a hearing, determine the proper classification of such Claim or Interest on or before the Confirmation Date.

Section 3.6 Nonconsensual Confirmation.

Because certain Classes of Claims or Interests are deemed not to vote to accept this Plan, the Debtors will seek Confirmation of this Plan under section 1129(b) of the Bankruptcy Code.

Section 3.7 Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Interests, and the respective distributions and treatments under this Plan, shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Debtors reserve the right to reclassify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

Section 3.8 *Vacant Classes*.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Combined Hearing shall not be deemed to have voted on this Plan for purposes of

determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

Section 3.9 *No Waiver.*

Nothing contained in this Plan shall be construed to waive the Debtors' or Reorganized Debtors' right to object on any basis to any Claim, including after the Effective Date.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN

Section 4.1 Compromise or Settlement of Controversies.

(a) Other than as specifically set forth herein, this Plan shall be deemed a motion to approve the good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies, pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to Article VI hereof, all distributions made to Holders of Allowed Claims and Allowed Interests (as applicable) in any Class are intended to be and shall be final.

(b) Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classifications, distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies resolved under this Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

Section 4.2 Sources of Consideration for Plan Distribution.

(a) The Debtors shall fund distributions under this Plan with: (1) Cash on hand, including Cash from operations; (2) the proceeds of the Exit Facility; (3) the proceeds of the Equity Rights Offering (including the Equity Rights Offering Backstop Commitment); and (4) the amounts being funded by the Equity Rights Offering Backstop Parties to fund the Senior Notes Claim Cash Amount related to the Common Equity Convenience Buyout in an amount up to the Common Equity Convenience Buyout Cap. Cash payments to be made pursuant to this Plan will be made by the Debtors or the Reorganized Debtors. The Reorganized Debtors shall be entitled to transfer funds between and among their affiliates as they determine to be necessary or appropriate to enable the Debtors or the Reorganized Debtors to satisfy their obligations under this Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers shall be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and shall not violate the terms of this Plan.

(b) From and after the Effective Date, subject to any applicable limitations set forth in any post-Effective Date agreement (including, without limitation, the Exit Facility Documents, the Equity Rights Offering Documents, and the New Organizational Documents), the Reorganized

Debtors shall have the right and authority without further order of the Bankruptcy Court to raise additional capital and obtain additional financing as the Reorganized Board (or other applicable governing body) deems appropriate.

Section 4.3 Restructuring Transactions.

Following the Confirmation Date and subject to any applicable limitations set forth in any post-Effective Date agreements, the Debtors and the Reorganized Debtors may take all actions as may be reasonably necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan (the "Restructuring Transactions"), including but not limited to: (a) the execution and delivery of appropriate agreements or other documents of reorganization containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable Law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of this Plan; (c) the filing of appropriate certificates of conversion, formation or incorporation or consolidation with the appropriate governmental authorities pursuant to applicable Law; (d) the execution, delivery, and filing, if applicable, of the Equity Rights Offering Documents, Common Equity Convenience Buyout Documents, and Exit Facility Documents; (e) such other transactions that are required to effectuate the Restructuring Transactions including any mergers, consolidations, restructurings, conversions, dispositions, transfers, formations, organizations, dissolutions, or liquidations; and (f) all other actions that the Reorganized Debtors reasonably determine are necessary or appropriate. For the purposes of effectuating this Plan, none of the Restructuring Transactions contemplated herein shall constitute a change of control under any agreement, contract, or document of the Debtors.

Section 4.4 Continued Corporate Existence.

Except as otherwise provided in this Plan, or as otherwise may be agreed between the Debtors and the Required Consenting Senior Noteholders, each Debtor, as a Reorganized Debtor, shall continue to exist on and after the Effective Date as a separate legal Entity with all of the powers available to such legal Entity under applicable Law and pursuant to the New Organizational Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with such applicable Law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with a Reorganized Debtor, each Reorganized Debtor may, without the need for approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, take such action as permitted by applicable Law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (a) the Reorganized Debtor to be merged into another Debtor or one or more of its Affiliates; (b) the Reorganized Debtor to be dissolved; (c) the conversion of the Reorganized Debtor from one entity type to another entity type; (d) the legal name of the Reorganized Debtor to be changed; (e) the closure of the Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (f) the reincorporation of the Reorganized Debtor under the Law of a jurisdiction other than the Law under which the Debtor is currently incorporated.

Section 4.5 Private Company

The Reorganized Company (a) shall emerge from the Chapter 11 Cases on the Effective Date as a private company and the Reorganized Common Equity shall not be listed on a public stock exchange, (b) shall not be a public reporting company pursuant to the Exchange Act and the rules and regulations promulgated thereunder, nor shall it be voluntarily subjected to any reporting requirements promulgated by the SEC, and (c) shall not be required to list the Reorganized Common Equity on a U.S. or any foreign stock exchange. To the extent the following actions have not been completed on or prior to the Effective Date, the Reorganized Company shall (i) take all actions reasonably necessary or desirable to delist the Existing Common Interests from the Nasdaq Global Select Market and to deregister under the Exchange Act as promptly as practicable in compliance with SEC rules, (ii) file post-effective amendments to terminate all of the Company's and Reorganized Company's effective registration statements under the Securities Act and deregister any and all unsold securities thereunder, (iii) file a Form 15 to terminate the Debtors' registration under the Exchange Act and to suspend the Debtors' reporting obligations under the Exchange Act with respect to the Existing Common Interests, and (iv) take all actions reasonably necessary or desirable to ensure (A) that the Reorganized Common Equity shall not be listed on a public securities exchange and that the Reorganized Debtors shall not be required to list the Reorganized Common Equity on a recognized securities exchange, except, in each case, as otherwise may be required pursuant to the New Organizational Documents, as applicable, and (B) that the Reorganized Debtors shall not be voluntarily subjected to any reporting requirements promulgated by the SEC.

Section 4.6 Corporate Action.

(a) On the Effective Date, all actions contemplated by this Plan and the Restructuring Transactions shall be deemed authorized and approved in all respects, including: (i) the selection of the managers or directors, as applicable, and officers of the Reorganized Debtors; (ii) the issuance of the Reorganized Common Equity under this Plan, including pursuant to the Equity Rights Offering and the Common Equity Convenience Buyout, and any related fees in connection therewith; (iii) the execution and entry into the Exit Facility Documents, the Equity Rights Offering Documents, the New Organizational Documents, and the Common Equity Convenience Buyout Documents; and (iv) all other actions contemplated by this Plan (whether to occur before, on, or after the Effective Date) or Restructuring Transactions, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All matters provided for in this Plan involving the corporate structure of the Debtors or the Reorganized Debtors and any corporate action required by the Debtors or the Reorganized Debtors in connection with this Plan shall be deemed to have timely occurred and shall be in effect and shall be authorized and approved in all respects, without any requirement of further action by the security holders, directors, or officers of the Debtors, Reorganized Debtors, or otherwise.

(b) On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed, to issue, execute, and deliver the agreements, documents, securities, certificates of conversion, certificates of formation, certificates of incorporation, operating agreements, and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan) in the name of and on behalf of the Reorganized Debtors, including the New

Organizational Documents, the Exit Facility Documents, the Equity Rights Offering Documents, the Common Equity Convenience Buyout Documents, and any and all agreements, documents, securities, and instruments relating to the foregoing.

(c) The authorizations and approvals contemplated by this Section 4.6 shall be effective notwithstanding any requirements under non-bankruptcy Law.

Section 4.7 Vesting of Assets.

Except as otherwise provided in (a) this Plan, (b) the Confirmation Order, (c) with respect to the Liens securing the DIP Facility, which Liens shall be retained by the DIP Agent to secure the Exit Facility and any remaining obligations under the DIP Facility, or (d) any agreement, instrument, or other document incorporated in, or entered into in connection with or pursuant to the Plan or the Plan Supplement, on the Effective Date, all property of the Estates of the Debtors, including all Claims, Intercompany Interests, rights, and Causes of Action, and any property acquired by the Debtors under or in connection with this Plan, shall vest in the Reorganized Debtors free and clear of all Claims, Liens, charges, other encumbrances, and interests. Subject to the terms of this Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims), Intercompany Interests, and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

Section 4.8 Indemnification Provisions in Organizational Documents.

Any D&O Liability Insurance Policies (including, without limitation, any "tail policy" and all agreements, documents, or instruments related thereto) pursuant to which any of the Debtors' current or former directors, officers, managers, or other employees are insured shall remain in force through the expiration of any such Insurance Policy (or "tail policy," as applicable).

On or before the Effective Date, to the extent not already obtained, the Debtors shall obtain a new D&O Liability Insurance Policy and a "tail policy" for the existing D&O Liability Insurance Policy for the benefit of the Debtors' current and former directors, officers, managers, or other employees on terms no less favorable than the Debtors' existing director, officer, manager, and employee coverage and with an available aggregate limit of liability upon the Effective Date of no less than the aggregate limit of liability under the existing director, officer, manager, and employee coverage upon placement, and at an expense reasonably acceptable to the Debtors and the Required Consenting Senior Noteholders. Alternatively, if the D&O Liability Insurance Policy has not expired, the Debtors shall assume (and assign to the Reorganized Debtors if necessary), pursuant to section 365(a) of the Bankruptcy Code, pursuant to the terms of the Plan and Confirmation Order, the D&O Liability Insurance Policy.

All Indemnification Obligations (and provisions) currently in place (whether in the by-laws, certificates of incorporation, articles of limited partnership, limited liability company agreements, board resolutions, management agreements or employment or indemnification contracts, or otherwise) for the current and former directors, officers, employees, attorneys, other professionals, and agents of the Debtors and such current and former directors' and officers'

respective affiliates shall be assumed by the Debtors pursuant to the provisions in Article V herein, to the extent assumable, and shall remain obligations of the Reorganized Debtors, irrespective of when such obligation arose.

No Reorganized Debtor shall amend or restate its certificate of incorporation, bylaws, or similar organizational document after the Effective Date to terminate or materially adversely affect (a) any Reorganized Debtor's obligations referred to in this Section 4.8 or (b) the rights of such managers, directors, officers, employees, or agents referred to in this Section 4.8.

Section 4.9 Cancellation of Existing Securities and Agreements.

(a) On the Effective Date, except as otherwise specifically provided for in this Plan or the Confirmation Order, including, for the avoidance of doubt, with respect to the Exit Facility Documents and the Liens securing the DIP Facility, which Liens shall be retained by the DIP Agent to secure the Exit Facility and any remaining obligations under the DIP Facility: (i) the obligations of the Debtors under any certificate, share, note, bond, agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to this Plan, if any) shall be cancelled, terminated and of no further force or effect, without further act or action, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder, except, with respect to the Senior Notes Documents, as necessary to (a) enforce the rights, claims and interests of the applicable Trustee and any predecessor thereof vis-a-vis parties other than the Released Parties; (b) allow the receipt of and to make distributions under the Plan in accordance with the terms of the Senior Notes Documents, as applicable; (c) to permit the applicable Trustee to preserve any rights of the applicable Trustee and any predecessor thereof as against any money or property distributable to Holders of Senior Notes Claims; and (d) allow the applicable Trustee to appear and participate in the Chapter 11 Cases or any other proceeding with respect to clauses (a) through (c) above, as applicable, and any other proceedings or appeals related to the Plan; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, certificates of designation, bylaws or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated or assumed pursuant to this Plan, if any) shall be released and discharged; *provided*, that notwithstanding Confirmation or the occurrence of the Effective Date, any agreement that governs the rights of a Holder of a Senior Notes Claim shall also continue in effect to allow the applicable Trustee to appear and be heard in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court or any other court to enforce the respective obligations owed to such parties under the Plan. Holders of or parties to such cancelled or terminated certificates, shares, notes, bonds, agreements, indentures, purchase rights, options, warrants, or other instruments or documents directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest shall have no rights arising from or related thereto, or the cancellation thereof, except the rights, distributions, and treatment provided for pursuant to this Plan or the Confirmation Order.

(b) Notwithstanding such cancellation and discharge, subject to the applicable provisions of this Plan and the Confirmation Order:

(i) The interests of the Debtors or Reorganized Debtors, as applicable, in their direct and indirect subsidiaries shall remain unaffected by this Plan.

(ii) The DIP Facility Documents shall continue in effect solely for purposes of allowing the DIP Agent to (A) receive distributions from the Debtors under this Plan and to make further distributions to the Holders of the DIP Claims on account of such DIP Claims, as set forth in Article VI hereof; (B) enforce its interests with respect to the DIP Lenders; (C) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of DIP Claims, including any rights to priority of payment with respect to the DIP Lenders; and (D) appear and be heard in the Bankruptcy Court or in any other court of competent jurisdiction to enforce any obligation owed to the DIP Agent or Holders of DIP Claims under this Plan.

Except for the foregoing, subject to the performance by the applicable Trustee and the DIP Agent of their obligations under the Plan, such Trustee and DIP Agent and their agents shall be relieved of all further duties and responsibilities related to the Senior Notes Documents upon the occurrence of the Effective Date (*provided*, that the Surviving Senior Notes Provisions shall survive in accordance with the terms of the Senior Notes Documents).

Section 4.10 Cancellation of Certain Existing Security Interests.

(a) Upon the full payment or other satisfaction of an Allowed Other Secured Claim or Allowed DIP Claim or promptly thereafter, the Holder of such Claims shall deliver to the Debtors or Reorganized Debtors, as applicable, any collateral or other property of the Debtors held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Claims that may be reasonably required to terminate any related financing statements, guaranties, mortgages, mechanics' or other Liens, or *lis pendens*, or similar interests or documents.

(b) Furthermore, upon full payment or other satisfaction of the foregoing Claims, on or after the Effective Date, the Debtors or the Reorganized Debtors, at their expense, may, in their sole discretion, take any action necessary to terminate, cancel, extinguish, or evidence the release of any and all guaranties, mortgages, deeds of trust, Liens, pledges, and other security interests with respect to such Claims, including, without limitation, the preparation and filing of any and all documents necessary to terminate, satisfy, or release any guaranties, mortgages, deeds of trust, Liens, pledges, and other security interests, including, without limitation, UCC-3 termination statements.

Section 4.11 Approval of the Exit Facility and the Exit Facility Documents.

(a) On the Effective Date, the Reorganized Debtors' funded debt shall consist of the Exit Facility. The Reorganized Debtors may use the Exit Facility for any purpose permitted by the

Exit Facility Documents, including the funding of obligations under this Plan and satisfaction of ongoing working capital needs.

(b) Confirmation of this Plan shall be deemed to constitute approval of the Exit Facility, the Exit Facility Documents (including all transactions contemplated thereby, such as any supplementation or additional syndication of the Exit Facility, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein), and, subject to the occurrence of the Effective Date, authorization for the Reorganized Debtors to enter into and perform their obligations under the Exit Facility Documents, and such other documents as may be reasonably required or appropriate, in each case, in accordance therewith.

(c) The Exit Facility Documents shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Facility Documents are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy Law.

(d) On the Effective Date, all of the Liens and security interests granted or to be granted in accordance with the Exit Facility Documents shall: (i) be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents; (ii) be deemed automatically, without any further action being required by the Debtors, the Reorganized Debtors, or any of the lenders under the Exit Facility, perfected on the Effective Date on a first-priority basis, subject only to (solely with respect to the first-priority nature of such Liens and security interests) such Liens and security interests as may be permitted to be senior thereto under the Exit Facility Documents; and (iii) not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy Law. The Reorganized Debtors and the Entities granting such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other Law (whether domestic or foreign) that would be applicable in the absence of this Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable Law to give notice of such Liens and security interests to third parties.

Section 4.12 Issuance of the Reorganized Common Equity.

(a) Units of the Reorganized Common Equity (including the Direct Investment Shares and the Reorganized Common Equity issuable as Senior Notes Claim Equity Recovery or (i) upon the exercise of the Subscription Rights in the Equity Rights Offering, (ii) on account of the Equity

Rights Offering Backstop Commitment, the Equity Rights Offering Backstop Premium, and the Common Equity Convenience Buyout Premium, or (iii) in the Common Equity Convenience Buyout, as applicable) shall be authorized under the New Organizational Documents. Units of the Reorganized Common Equity shall be issued on the Effective Date and distributed as soon as practicable thereafter in accordance with this Plan. All such Reorganized Common Equity issuable in accordance with this Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance of the Reorganized Common Equity is authorized without the need for any further corporate action and without any further action by any Holder of a Claim or Interest. All Holders of Reorganized Common Equity, however issued, shall be deemed to be a party to, and bound by, the New Shareholders Agreement and the other applicable New Organizational Documents, in accordance with their terms, without the requirement to execute a signature page thereto.

(b) All Existing Common Interests outstanding prior to Consummation (including all rights exchangeable or exercisable for shares of Existing Common Interests) shall be extinguished upon Consummation, and Holders thereof shall not receive any payment or property on account of any such shares of capital stock.

Section 4.13 Rights Offering.

(a) The Equity Rights Offering shall be conducted by the Debtors or Reorganized Debtors and consummated in accordance with this Plan and on the terms and subject to the conditions set forth in the Equity Rights Offering Procedures and the related subscription form and the Equity Rights Offering Backstop Commitment Agreement. The Equity Rights Offering shall be fully backstopped by the Equity Rights Offering Backstop Parties in accordance with and subject to the terms and conditions of the Equity Rights Offering Backstop Commitment Agreement.

(b) In accordance with the Equity Rights Offering Procedures, the Debtors shall distribute the Subscription Rights to holders of Senior Notes Claims to purchase Reorganized Common Equity in an amount equal to the Equity Rights Offering Amount. In accordance with this Plan, the Equity Rights Offering Backstop Commitment Agreement, and the Equity Rights Offering Procedures and the related subscription form, (i) each Holder of a Senior Notes Claim shall be offered Subscription Rights entitling it to subscribe for and purchase its Pro-Rata Share of shares of Reorganized Common Equity in an aggregate amount equal to 55% of the Equity Rights Offering Amount (exclusive of the Equity Rights Offering Backstop Premium) (such amount, the "Non-Holdback Rights Offering Amount"), and (ii) the Equity Rights Offering Holdback Parties will agree to purchase (based on the respective amounts and percentages applicable thereto as set forth in the Equity Rights Offering Backstop Commitment Agreement) their respective portion of shares of Reorganized Common Equity in the Equity Rights Offering in an aggregate amount equal to 45% of the Equity Rights Offering Amount (exclusive of the Equity Rights Offering Backstop Premium) (such amount, the "Holdback Rights Offering Amount" and such aggregate number of Equity Rights Offering Shares to be purchased on account of the Holdback Rights Offering Amount, the "Direct Investment Shares"). The Equity Rights Offering Shares will be offered in the Equity Rights Offering for Cash at the Equity Rights Offering Share Price, which reflects the

plan equity value per share after discounting by 35% the pre-rights offering proceeds valuation portion thereof.

(c) The Subscription Rights are not detachable from the Senior Notes Claims and may not be sold, transferred, assigned, pledged, hypothecated, participated, donated or otherwise encumbered or disposed of, directly or indirectly (including through derivatives, options, swaps, forward sales or other transactions in which any person receives the right to own or acquire any current or future interest in the Subscription Rights) (such acts, collectively, "transfer" or "transferred"), except, in the case of the Equity Rights Offering Backstop Parties, as set forth in the Equity Rights Offering Backstop Commitment Agreement. Any transfer following the subscription record date of the corresponding Senior Note Claim (except as provided in the Equity Rights Offering Procedures) shall void the Subscription Right, and neither the transferring party nor the purported transferee will receive any Equity Rights Offering Shares otherwise purchasable on account of such transferred Subscription Rights.

(d) To facilitate the Equity Rights Offering and in exchange for the Equity Rights Offering Backstop Premium, the Equity Rights Offering Backstop Parties, all of whom are QIBs, and/or Accredited Investors, have entered into the Equity Rights Offering Backstop Commitment Agreement. In accordance with the Equity Rights Offering Backstop Commitment Agreement and subject to the terms and conditions thereof, (i) each of the Equity Rights Offering Backstop Parties and the Equity Rights Offering Holdback Parties shall fully exercise all of its Subscription Rights, (ii) each of the Equity Rights Offering Holdback Parties shall purchase its portion of the Direct Investment Shares in accordance with the Equity Rights Offering Backstop Commitment Agreement; and (iii) each of the Equity Rights Offering Backstop Parties shall purchase its respective share (in accordance with the amounts and percentages applicable thereto as set forth in the Equity Rights Offering Backstop Commitment Agreement) of any Equity Rights Offering Shares that are not subscribed and purchased by the Holders of Allowed Senior Notes Claims in the Equity Rights Offering. In exchange for providing the above commitments under the Equity Rights Offering Backstop Commitment Agreement, the Equity Rights Offering Backstop Parties will receive their respective allocations of the Equity Rights Offering Backstop Premium. The Equity Rights Offering Backstop Commitment shall be treated as a put option and the Equity Rights Offering Backstop Premium shall be treated as remuneration for agreeing to enter into such put option. The Equity Rights Offering Backstop Premium shall be paid in accordance with the Equity Rights Offering Backstop Commitment Order.

(e) The proceeds of the Equity Rights Offering shall be used to (1) fund Plan distributions, (2) provide the Reorganized Debtors with additional liquidity for working capital and general corporate purposes, and (3) pay all reasonable and documented Professional Fee Claims, Restructuring Expenses, and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel.

(f) Distribution of Reorganized Common Equity pursuant to the Equity Rights Offering, the Equity Rights Offering Backstop Commitment Agreement (including as payment of the Equity Rights Offering Backstop Premium), or the Plan may be made by means of book-entry registration on the books of the Reorganized Debtors or a transfer agent for the Reorganized Common Equity, or by means of book-entry exchange through the facilities of a depositary or

transfer agent reasonably satisfactory to the Debtors and the Required Consenting Senior Noteholders, in accordance with the customary practices of such agent, as and to the extent practicable. Any Entity's acceptance of Reorganized Common Equity in connection with the Equity Rights Offering (including as payment of Equity Rights Offering Backstop Premium) shall be deemed as its agreement to the New Organizational Documents, including the New Shareholders Agreement, if any. The New Organizational Documents may be amended or modified from time to time following the Effective Date in accordance with their respective terms.

(g) In order to subscribe to the Equity Rights Offering pursuant to this Section 4.13 with respect its Allowed Senior Notes Claims, a Holder of an Allowed Senior Notes Claim will be required to tender all of the underlying Senior Notes into a contra-CUSIP pursuant to DTC's ATOP procedures by the deadline specified in the Equity Rights Offering Documents, and the Senior Notes that are tendered into the contra-CUSIP will no longer be transferable.

(h) Entry of the Equity Rights Offering Backstop Commitment Order shall constitute Bankruptcy Court approval of the Equity Rights Offering and the Equity Rights Offering Documents, and all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the issuance of Reorganized Common Equity pursuant thereto and the payment of all fees, indemnities, expenses, and other payments provided for in connection therewith, and authorization of the Reorganized Debtors to enter into and execute any other documents necessary to effectuate the transactions in this Section 4.13.

Section 4.14 Common Equity Convenience Buyout.

(a) The Common Equity Convenience Buyout shall be conducted by the Debtors and consummated in accordance with this Plan and on the terms and subject to the conditions set forth in the Common Equity Convenience Buyout Procedures and the Equity Rights Offering Backstop Commitment Agreement. The Common Equity Convenience Buyout shall be fully backstopped by the Equity Rights Offering Backstop Parties in accordance with and subject to the terms and conditions of the Equity Rights Offering Backstop Commitment Agreement.

(b) In accordance with the Common Equity Convenience Buyout Procedures and this Plan, any Holder of an Allowed Senior Notes Claim may (solely at the option of such Holder) elect the Senior Notes Claim Cash Option in lieu of the Senior Notes Claim Equity Recovery such Holder would otherwise be entitled to receive under this Plan; *provided*, that only Holders which vote to accept the Plan are eligible to elect the Senior Notes Claim Cash Option, absent the consent of the Debtors and the Required Consenting Senior Noteholders.

(c) Pursuant to the Equity Rights Offering Backstop Commitment Agreement, the Equity Rights Offering Backstop Parties, all of whom are QIBs, and/or Accredited Investors, have agreed to (i) refrain from electing the Senior Notes Claim Cash Option, and (ii) fund on or prior to the Effective Date, severally but not jointly, their respective shares (as set forth in the Equity Rights Offering Backstop Commitment Agreement) of the incremental capital necessary to fund the aggregate Senior Notes Claim Cash Amount, up to the Common Equity Convenience Buyout Cap, in exchange for (x) shares of Reorganized Common Equity issued by the Reorganized Company that would have otherwise been issued to Holders of Allowed Senior Notes Claims that elected the

Senior Notes Claim Cash Option pursuant to clause (A) of the Senior Notes Claim Equity Recovery minus the number of shares of Reorganized Common Equity issued to Holders of Allowed Senior Notes Claims that elected the Senior Notes Claim Cash Option on account of the Cash-Out Reduction (the "Common Equity Convenience Buyout Shares") and (y) the Common Equity Convenience Buyout Premium. The Equity Rights Offering Backstop Commitment shall be treated as a put option and the Common Equity Convenience Buyout Premium shall be treated as remuneration for agreeing to enter into such put option. The Common Equity Convenience Buyout Premium shall be paid in accordance the Equity Rights Offering Backstop Commitment Order.

(d) To the extent any Senior Notes Claim Cash Option is elected, the Common Equity Convenience Buyout Shares will instead be issued and sold by Reorganized Debtors to the Equity Rights Offering Backstop Parties funding the Senior Notes Claim Cash Amount, for Cash equal to the aggregate Senior Notes Claim Cash Amount. For the avoidance of doubt, the Equity Rights Offering Backstop Parties shall not be required or authorized to fund more than an amount equal to the aggregate Common Equity Convenience Buyout Cap.

(e) In order to elect to receive the Senior Notes Claim Cash Option pursuant to this Section 4.14 with respect all of its Allowed Senior Notes Claim, a Holder of an Allowed Senior Notes Claim will be required to tender all of the underlying Senior Notes into a contra-CUSIP pursuant to DTC's ATOP procedures by the deadline specified in the Common Equity Convenience Buyout Documents, and the Senior Notes that are tendered into the contra-CUSIP will no longer be transferable.

(f) Entry of the Equity Rights Offering Backstop Commitment Order shall constitute Bankruptcy Court approval of the Common Equity Convenience Buyout and the Common Equity Convenience Buyout Documents, and all transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the issuance of Reorganized Common Equity pursuant thereto and the payment of all fees, indemnities, expenses, and other payments provided for in connection therewith, and authorization of the Reorganized Debtors to enter into and execute any other documents necessary to effectuate the transactions in this Section 4.14.

Section 4.15 *Exemption from Registration Requirements.*

The issuance, and distribution of the Subscription Rights and the Reorganized Common Equity under the Plan, including in connection with the Equity Rights Offering, shall be exempt from registration requirements under Securities Act, or any state or local law requiring registration for offer and sale of a security, in reliance upon the exemption provided in section 1145(a) of the Bankruptcy Code to the maximum extent permitted by law, or, if section 1145(a) of the Bankruptcy Code is not available, then the Reorganized Common Equity will be offered, issued, and distributed under the Plan pursuant to other applicable exemptions from registration under the Securities Act and any other applicable securities laws.

Any Reorganized Common Equity issued on account of the Common Equity Convenience Buyout Shares, any Reorganized Common Equity that is unsubscribed in the Equity Rights Offering and issued to the Equity Rights Offering Backstop Parties pursuant to the Equity Rights

Offering Backstop Commitment Agreement on account of the Equity Rights Offering Backstop Commitment, any Direct Investment Shares, and any Reorganized Common Equity issued to an entity that is an "underwriter" with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy Code (collectively, the "Placement Securities") shall be issued in reliance upon Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder and on equivalent state law registration exemptions or, solely to the extent such exemptions are not available, other available exemptions from registration under the Securities Act. The Subscription Rights and all of the Reorganized Common Equity issuable under the Plan other than the Placement Securities (collectively, the "1145 Securities") shall be exempt, without further act or actions by any Entity, from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code.

Subject to the transfer provisions, if any, and other applicable provisions of the New Organizational Documents, the Reorganized Common Equity comprising 1145 Securities may be resold without registration under the Securities Act or other federal securities Laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder (i) is an "underwriter" with respect to such securities, as that term is defined in section 1145(b) of the Bankruptcy code, (ii) is an "affiliate" of the Reorganized Debtors (as defined in rule 144(a)(1) in the Securities Act), or (iii) has been such an "affiliate" within ninety (90) days of such transfer. In addition, subject to the transfer provisions, if any, and other applicable provisions of the New Organizational Documents, such 1145 Securities may generally be resold without registration under state securities laws pursuant to various exemptions provided by the respective Laws of the several states.

The Placement Securities will be considered "restricted securities" and may not be transferred except pursuant to an effective registration statement or under an available exemption from the registration requirements of the Securities Act, such as, under certain conditions, the resale provisions of Rule 144 of the Securities Act, subject to, in each case, the transfer provisions, if any, and other applicable provisions set forth in the New Shareholders Agreement, if any, and the New Organizational Documents.

Neither the Debtors, the Reorganized Company, or any other Person shall be required to provide any further evidence other than the Plan or the Confirmation Order with respect to the treatment of the Reorganized Common Equity under applicable securities laws. DTC and any transfer agent (as applicable) shall be required to accept and conclusively rely upon the Plan or Confirmation Order in lieu of a legal opinion regarding whether the Reorganized Common Equity are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services (to the extent applicable).

Notwithstanding anything to the contrary in this Plan, no Person (including DTC and any transfer agent) shall be entitled to require a legal opinion regarding the validity of any transaction contemplated by the Plan, including whether the Reorganized Common Equity are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services.

Section 4.16 *Organizational Documents.*

On the Effective Date, the Reorganized Debtors shall enter into such agreements and amend their corporate governance documents to the extent necessary to implement the terms and provisions of this Plan. The New Organizational Documents shall comply with section 1123(a)(6) of the Bankruptcy Code.

Section 4.17 *Exemption from Certain Transfer Taxes and Recording Fees.*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfer from the Debtors to the Reorganized Debtors or to any Entity pursuant to, in contemplation of, or in connection with this Plan, the Restructuring Transactions, or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, securities, or other interest in the Debtors or the Reorganized Debtors, including the Reorganized Common Equity, (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means, including the grant of collateral as security for any or all of the Exit Facility; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be subject to any Stamp or Similar Tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, all sales, transfers, and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, this Plan.

Section 4.18 *Managers, Directors and Officers of the Reorganized Debtor.*

Except to the extent that a member of the board of directors or board of managers, or the sole manager, as applicable, of any Debtor is designated in the Plan Supplement to serve as a director, manager, or sole manager of the Reorganized Debtors on the Effective Date, the members of the board of directors or board of managers, or the sole manager, as applicable, of any Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to the Reorganized Debtors on or after the Effective Date, and each such director, manager, or sole manager shall be deemed to have resigned or shall otherwise cease to be a director, manager, or sole manager of the Reorganized Debtors on the Effective Date.

Each of the directors, managers, sole managers and officers of the Reorganized Debtors shall serve pursuant to the terms of the applicable New Organizational Documents of the Reorganized Debtors and may be designated, replaced, or removed in accordance with such New Organizational Documents. The members of the Reorganized Board, if known, shall be disclosed prior to the Combined Hearing in accordance with section 1129(a)(5) of the Bankruptcy Code.

Section 4.19 *Incentive Plans.*

(a) All existing equity incentive plans of the Debtors shall be terminated, or deemed terminated, as of the Effective Date.

(b) The Reorganized Company shall reserve for senior management a pool of 10% of the fully diluted Reorganized Common Equity that is issued and outstanding on the Effective Date for a post-Effective Date Management Incentive Plan.

(c) It is also expected that the Reorganized Company will provide a long-term incentive program with employee participation in continuation of historical practice and the Reorganized Board shall determine the performance criteria, structure, and form of compensation, in consultation with compensation consultant(s) and key holders of Reorganized Common Equity as appropriate.

Section 4.20 *Effectuating Documents; Further Transactions.*

(a) Prior to, on, and after the Effective Date, the Debtors and Reorganized Debtors and the directors, managers, officers, authorized persons, and members of the board of directors or managers and directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and provisions of this Plan, the Restructuring Support Agreement, the Exit Facility Documents, the Equity Rights Offering Documents, the Common Equity Convenience Buyout Documents, the New Organizational Documents, and any other securities issued pursuant to this Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant to this Plan.

(b) The Confirmation Order shall, and shall be deemed to, pursuant to both section 1123 and section 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effectuate any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan.

Section 4.21 *Restructuring Expenses and DIP Facility Expenses*.

The Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel, shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) without any requirement to file a fee application with the Bankruptcy Court, without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least three (3) Business Days before the anticipated Effective Date (or such other period as the Debtors and the Required Consenting Senior Noteholders may reasonably agree); *provided*, that such estimate shall not limit any party's entitlement to be paid or repaid its Restructuring Expenses or fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel. On or as

soon as reasonably practicable after the Effective Date (but no later than thirty (30) days after the Effective Date), final invoices for all Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel incurred prior to and as of the Effective Date, shall be submitted to the Debtors.

Section 4.22 *Retained Causes of Action.*

(a) Unless any Causes of Action or Claims against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan, the DIP Orders, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action or Claims in the ordinary course, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action and Claims shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such retained Causes of Action or Claims and may exercise any and all rights in connection therewith. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Section 4.22 include any Claim or Cause of Action with respect to, or against, a Released Party that is released under the Plan.

(b) **No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. Unless any such Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, assigned, or settled in the Plan, Confirmation Order, or a Final Order, all such Causes of Action shall be expressly reserved by the Reorganized Debtors for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation of this Plan. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.**

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 5.1 Assumption of Executory Contracts and Unexpired Leases.

(a) All Executory Contracts and Unexpired Leases of the Debtors shall be assumed absent an objection as set forth in Section 5.2 hereof or an order requiring rejection, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code as of the Effective Date, except for those Executory Contracts and Unexpired Leases that, in each case, (i) have been assumed or rejected by the Debtors by prior order of the Bankruptcy Court, (ii) are the subject of a motion to reject filed by the Debtors pending on the Effective Date, (iii) are identified as rejected Executory Contracts and Unexpired Leases by the Debtors on the Schedule of Rejected Executory Contracts and Unexpired Leases to be filed in the Plan Supplement, which may be amended by the Debtors up to and through the Effective Date

to add or remove Executory Contracts and Unexpired Leases by filing with the Bankruptcy Court a subsequent Plan Supplement and serving it on the affected non-Debtor contract parties; or (iv) are rejected or terminated pursuant to the terms of this Plan. Each Executory Contract and Unexpired Lease shall be fully enforceable by the Reorganized Debtors in accordance with the terms thereof, except as otherwise modified by the provisions of this Plan, or by any order of the Bankruptcy Court.

(b) The Confirmation Order shall constitute an order of the Bankruptcy Court: (i) approving the assumption of all Executory Contracts or Unexpired Leases, as described in this Plan, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2); (ii) providing that each assumption, assumption and assignment, or rejection, as the case may be, is in the best interests of the Reorganized Debtors, their Estates, and all parties in interest in the Chapter 11 Cases; and (iii) providing that the requirements for assumption or assumption and assignment of any Executory Contract or Unexpired Lease to be assumed have been satisfied. Unless otherwise indicated, all assumptions or rejections of Executory Contracts or Unexpired Leases pursuant to this Plan are effective as of the Effective Date.

(c) Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to this Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

Section 5.2 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

(a) Unless otherwise agreed in writing by such counterparty, any monetary defaults that are required to be cured to assume an Executory Contract or Unexpired Lease shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code in the ordinary course of business. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely raise any objection that could have been raised under section 365 of the Bankruptcy Code shall be deemed to have consented to the Debtors' assumption of such Executory Contract or Unexpired Lease, to the extent any such consent is required, and all such counterparties shall be forever enjoined and barred from objecting to the Debtors' assumption of such Executory Contract or Unexpired Lease for any reason.

(b) If there is a dispute regarding (i) the amount of any Cure Cost, (ii) the ability of the Reorganized Debtors to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or (iii) any other matter pertaining to assumption, then the Bankruptcy Court shall retain jurisdiction in all respects to hear such disputes; *provided* that the occurrence of any such dispute shall not prevent or delay Confirmation or Consummation of this Plan; *provided further* that the Debtors may settle any such dispute without any further notice to any party or any action, order, or approval of the Bankruptcy Court; *provided further* that notwithstanding anything to the contrary herein, the Debtors reserve the right to either reject or nullify the assumption of any Executory Contract or Unexpired Lease within forty-five (45) days after the entry of a Final Order resolving an objection to assumption, determining the Cure Cost under an Executory Contract or Unexpired Lease that was subject to a dispute, or resolving any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease.

(c) Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise, and the continued performance thereunder (or the payment of a Cure Cost, if any), shall result in the full release, satisfaction, and cure of any defaults thereunder, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of such assumption or assumption and assignment. Any and all Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned in the Chapter 11 Cases, including pursuant to the Confirmation Order, and for which any Cure Cost has been fully paid pursuant to this Section 5.2, shall be deemed Disallowed and expunged as of the Effective Date, without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

Section 5.3 Claims Based on Rejection of Executory Contracts or Unexpired Leases.

If the rejection by the Debtors, pursuant to this Plan or otherwise, of an Executory Contract or Unexpired Lease gives rise to a Claim, a Proof of Claim must be served upon the Debtors and their counsel within thirty (30) days after the earlier of (i) notice of entry of the Confirmation Order or (ii) other notice that the Executory Contract or Unexpired Lease has been rejected. Any Claims not served within the applicable time period will be forever barred from assertion against the Debtors, the Reorganized Debtors, their Estates, and their property.

Section 5.4 Indemnification Obligations.

Any and all Indemnification Obligations of the Debtors, including pursuant to its corporate charter, agreements, bylaws, memorandum, or other organizational documents, or board resolutions, employment contracts, or other agreements for the directors, officers, managers, employees, attorneys, other professionals, and agents employed by the Debtors to indemnify current and former officers, directors, agents, or employees with respect to all present and future actions, suits, and proceedings against the Debtors based upon any act or omission for or on behalf of the Debtors shall remain in full force and effect to the maximum extent permitted by applicable Law and shall not be discharged, impaired, or otherwise affected by this Plan. All such obligations shall be deemed and treated as Executory Contracts that are assumed by the Debtors under this

Plan and shall continue as obligations of the Reorganized Debtors. Any Claim based on the Debtors' obligations in this Section 5.4 herein shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code or otherwise.

Section 5.5 Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by the Debtors, including any Executory Contracts and Unexpired Leases assumed by the Debtors, shall be performed by the Debtors or Reorganized Debtors liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

Section 5.6 Insurance Policies.

All Insurance Policies pursuant to which the Debtors have any obligations in effect as of the Effective Date shall be deemed and treated as Executory Contracts pursuant to this Plan and shall be assumed by the Reorganized Debtors and shall continue in full force and effect thereafter in accordance with such policy's respective terms.

Section 5.7 Reservation of Rights.

Nothing contained in this Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtors have any liability thereunder.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

Section 6.1 Distribution on Account of Claims and Interests Allowed as of the Effective Date.

Except as otherwise provided in this Plan or a Final Order, or as agreed to by the relevant parties receiving such distributions, distributions under this Plan on account of Claims Allowed on or before the Effective Date shall be made on the Distribution Date; *provided* that (a) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or arising under Executory Contracts or Unexpired Leases assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, orders, course of dealing, course of business, or industry practice and (b) in accordance with Article II of this Plan, Allowed Priority Tax Claims, unless otherwise agreed, shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between a Debtor and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy Law, or in the ordinary course of business.

Section 6.2 Distribution on Account of Claims and Interests Allowed After the Effective Date.

(a) *Payments and Distributions on Disputed Claims*. Except as otherwise provided in this Plan, a Final Order, or as agreed to by the relevant parties, distributions under this Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made on the first day that is thirty (30) Business Days after the Disputed Claims become Allowed Claims; *provided* that (i) Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (ii) Disputed Priority Tax Claims that become Allowed Priority Tax Claims after the Effective Date shall be treated as Allowed Priority Tax Claims and paid in the ordinary course of business.

(b) *Special Rules for Distributions to Holders of Disputed Claims*. Notwithstanding any provision otherwise in this Plan and except as otherwise agreed to by the relevant parties, no payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or agreement among the relevant parties, or by Final Order.

(c) *Timing and Calculation of Amounts to Be Distributed*. Except as otherwise provided herein, on the Distribution Date (or if a Claim is not an Allowed Claim on the Distribution Date, on the date that such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim shall receive the full amount of the distributions that this Plan provides for such Allowed Claims in the applicable Class. Except as otherwise provided in this Plan, or any order of the Bankruptcy Court, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in this Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

Section 6.3 Delivery of Distributions.

(a) *Record Date for Distributions*. On the Distribution Date, the Claims Register shall be closed and any party responsible for making distributions shall be authorized and entitled to recognize only those Holders of Claims listed on the Claims Register as of the close of business on the Distribution Date, provided, that the foregoing shall not apply to any publicly held securities held in the name of, or by a nominee of, DTC (including, without limitation, the Senior Notes Claims), as to which distributions may be made on or promptly after the Distribution Date in accordance with the applicable procedures of DTC.

(b) *Delivery of Distributions in General*. Except as otherwise provided in this Plan, including with respect to any publicly held securities held in the name of, or by a nominee of, DTC (including, without limitation, the Senior Notes Claims), as to which distributions may be made on or promptly after the Distribution Date in accordance with the applicable procedures of DTC, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Date by the Reorganized Debtors at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided* that the manner of such

distributions shall be determined at the discretion of the Reorganized Debtors; *provided further* that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim filed by that Holder. All securities to be distributed under the Plan shall be issued in the names of such holders or their nominees in accordance with DTC's book-entry exchange procedures or on the books and records of a transfer agent or the Reorganized Debtors in accordance with the New Organizational Documents.

(c) *Delivery of Distributions on Account of Senior Notes Claims*. The applicable Trustee shall be deemed to be the Holders of the related Senior Notes Claims solely for purposes of Cash distributions to be made hereunder, and all Cash distributions on account of the Senior Notes Claims in Class 3 may be made to the applicable Trustee. As soon as practicable following compliance with the requirements set forth in Article VI hereof (as applicable), the applicable Trustee shall arrange to deliver or direct the delivery of such Cash distributions to or on behalf of the Holders of Allowed Senior Notes Claims in Class 3 in accordance with the terms of the Senior Notes Indentures and this Plan. Notwithstanding anything in this Plan to the contrary, and without limiting the exculpation and release provisions of this Plan, no Trustee shall have any liability to any Entity with respect to distributions made or directed to be made by such Trustee pursuant to this Plan.

(d) *Delivery of Distributions on Account of DIP Claims*. The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI hereof (as applicable), the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility, subject to any modifications to such distributions in accordance with the terms of this Plan. Notwithstanding anything in this Plan to the contrary, and without limiting the exculpation and release provisions of this Plan, the DIP Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the DIP Agent.

Section 6.4 Minimum Distributions.

No fractional units of Reorganized Common Equity shall be distributed, and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to this Plan on account of an Allowed Claim would otherwise result in the issuance of a number of units of Reorganized Common Equity that is not a whole number, the actual distribution of units of Reorganized Common Equity shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefore. The total number of authorized units of Reorganized Common Equity to be distributed to Holders of Allowed Claims shall be adjusted as necessary to account for the foregoing rounding.

Section 6.5 Foreign Currency Exchange Rate.

Except as otherwise provided in a Final Order of the Bankruptcy Court, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed

converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal, National Edition*, on the Effective Date.

Section 6.6 Delivery of Distributions; Undeliverable Distributions.

(a) Pursuant to Section 3.3(d) hereof, Holders of Allowed General Unsecured Claims may receive payment in full in Cash paid in the ordinary course of business if (i) not otherwise Reinstated, (ii) not given other less favorable treatment as reasonably agreed to by the Debtors and the Required Consenting Senior Noteholders, or (iii) not given such other treatment in rendering its Allowed General Unsecured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code. Distributions to Holders of Allowed General Unsecured Claims shall be made by the Reorganized Debtors at the address set forth in the Reorganized Debtors' books and records. Distributions to Holders of Allowed Senior Notes Claims shall be made in accordance with Section 6.3 hereof. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Reorganized Debtors or applicable Trustee is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. The applicable Trustee shall deliver any non-deliverable Cash to the Reorganized Debtors no later than ten (10) Business Days following the first anniversary of the Effective Date. All Claims for undeliverable distributions must be made within one (1) year after the Effective Date, after which date the Claim of any Holder or successor to such Holder with respect to such property will be discharged and forever barred. After such date, any unclaimed or undeliverable distribution of Cash to Holders of Allowed Claims shall become property of the Reorganized Debtors free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary. Any Reorganized Common Equity or amounts available pursuant to the Equity Rights Offering, Common Equity Convenience Buyout, or Exit Facility held for distribution shall be cancelled and of no further force or effect. Nothing contained in this Plan shall require the Reorganized Debtors or the Trustees to attempt to locate any Holder of an Allowed Claim.

(b) *Failure to Present Checks*. Checks issued by the Reorganized Debtors on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the issuance of such check. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within ninety (90) days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped, and enjoined from asserting any such Claim against the Reorganized Debtors or their property. Within ninety (90) days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment Laws, all such distributions shall revert to the Reorganized Debtors. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

Section 6.7 Compliance with Tax Requirements/Allocations.

In connection with this Plan, to the extent applicable, the Reorganized Debtors shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, the Reorganized Debtors

shall be authorized to take all actions reasonably necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances, and such distributions shall be treated as if distributed to the applicable Holder of the Allowed Claim or Allowed Interest.

Section 6.8 Surrender of Cancelled Instruments or Securities.

On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a certificate or instrument evidencing a Claim or Interest that is discharged by this Plan shall be deemed to have surrendered such certificate or instrument to the Reorganized Debtor. Except as otherwise expressly provided in this Plan, such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Interest, which shall continue in effect (as modified pursuant to this Plan, to the extent applicable). Notwithstanding anything to the contrary herein, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under this Plan.

Section 6.9 Claims Paid or Payable by Third Parties.

(a) *Claims Paid by Third Parties*. The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be Disallowed without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Reorganized Debtors, to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the amount of such Claim as of the date of any such distribution under this Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14)-day grace period specified above until the amount is repaid.

(b) *Claims Payable by Insurance*. No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to any of the Debtors' Insurance Policies, if any, until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policies. To the extent that one or more of the Debtors' insurers satisfies or agrees to satisfy in full or in part a Claim, if any, then immediately upon such insurers' agreement, the

applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(c) *Applicability of Insurance Policies*. Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any Insurance Policies, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING DISPUTED CLAIMS OR INTERESTS

Section 7.1 *No Filings of Proofs of Claim*

(a) Notwithstanding section 502(a) of the Bankruptcy Code, and in light of the Unimpaired status of all Allowed General Unsecured Claims under the Plan, except as provided otherwise in Section 2.1 and Section 5.3 of this Plan or by order of the Bankruptcy Court, Holders of Claims should not, and shall not be required to file Proofs of Claim with the Bankruptcy Court. The amount and validity of any disputed, contingent or unliquidated Claim shall be determined, resolved or adjudicated, as the case may be, in the manner in which such Claim would have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced and all of the Debtors' legal and equitable rights in respect of any such Claim may be asserted after the Confirmation Date and Effective Date to the same extent as if the Chapter 11 Cases had not been commenced; *provided*, *however*, that the Debtors reserve the right to file with the Bankruptcy Court an objection to any Claim as to which the Holder of such Claim has filed a Proof of Claim in the Chapter 11 Cases; *provided further* that this Section 7.1(a) shall not apply to any objections or disputes, including any objection or dispute that could have been raised under section 365 of the Bankruptcy Code, with respect to the Debtors' assumption of Executory Contracts and Unexpired Leases under this Plan, and any such objections or disputes shall be subject in all respects to Section 5.1 and Section 5.2 of this Plan. The Debtors shall be authorized to, and shall, resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction over the validity, nature, or amount thereof.

(b) The Debtors or the Holder of a contingent or unliquidated Claim may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claim objection, estimation, and resolution procedures are cumulative and are not

necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

Section 7.2 *Allowance of Claims and Interests.*

(a) Except as provided in Article IX hereof, the Reorganized Debtors after the Effective Date shall have and retain any and all rights and defenses the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date, except with respect to any Claim deemed Allowed under this Plan.

(b) Except as expressly provided in this Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under this Plan or the Bankruptcy Court has entered a Final Order (including the Confirmation Order) in the Chapter 11 Cases allowing such Claim. All settled Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019 or otherwise, shall be binding on all parties.

Section 7.3 *Prosecution of Objections to Claims.*

Except as otherwise specifically provided in this Plan or order of the Bankruptcy Court, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Reorganized Debtors shall have the sole authority: (1) to file, withdraw, or litigate to judgment objections to Claims or Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

Section 7.4 *Adjustment of Claims and Interests Without Objection.*

Any duplicate Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, superseded, cancelled, or otherwise expunged (including pursuant to the Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Reorganized Debtors without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court. Additionally, any Claim or Interest that is duplicative or redundant with another Claim against or Interest in the Debtors may be adjusted or expunged on the Claims Register by the Reorganized Debtors without the Reorganized Debtors having to file an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.5 *Disallowance of Certain Claims.*

Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may

not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or an order of the Bankruptcy Court with respect thereto has been entered and all sums due have been turned over or paid to the Reorganized Debtor. All Proofs of Claim filed on account of an Indemnification Obligation to a director, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to this Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.6 *Offer of Judgment.*

The Reorganized Debtors are authorized to serve upon a Holder of a Claim an offer to allow judgment to be taken on account of such Claim, and, pursuant to Bankruptcy Rules 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Claim or Interest must pay the costs incurred by the Reorganized Debtors after the making of such offer, the Reorganized Debtors are entitled to setoff such amounts against the amount of any distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.7 *Amendments to Claims or Interests.*

On or after the Effective Date, except as provided herein, a Claim or Interest may not be filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and, to the extent such prior authorization is not received, any such new or amended Claim or Interest filed shall be deemed Disallowed in full and expunged without any further action.

ARTICLE VIII.
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

Section 8.1 Conditions Precedent to the Effective Date.

The following are conditions precedent to the Effective Date that must be satisfied, waived pursuant to Section 8.2 hereof, or are conditions that must be satisfied substantially contemporaneous with consummation of the Restructuring Transactions, as applicable:

(a) the following documents shall be in full force and effect substantially contemporaneous with the consummation of the Restructuring Transactions, and shall not be stayed, modified, revised, or vacated, or subject to any pending appeal, and shall not have been terminated prior to the Effective Date: (a) the New Organizational Documents; (b) the Exit Facility Documents; (c) the Equity Rights Offering Documents; (d) the Management Incentive Plan; (e) the Common Equity Convenience Buyout Documents; (f) such other motions, orders, agreements, and documentation necessary or desirable to consummate and document the transactions contemplated by the Restructuring Support Agreement and this Plan; (g) to the extent not included in the foregoing, all financing documents needed to effectuate the Restructuring Transactions, and (h) all other material customary documents delivered in connection with transactions of this type (including,

without limitation, any and all other documents implementing, achieving, contemplated by or relating to the Restructuring Transactions);

(b) (i) the Restructuring Support Agreement shall not have been terminated by any party thereto in accordance with the provisions thereof; (ii) the Restructuring Support Agreement shall not have been invalidated or deemed unenforceable by the Bankruptcy Court or any other Governmental Unit; and (iii) to the extent not otherwise waived, there shall not be continuing any properly noticed cure period with respect to any event, occurrence, or condition that would permit the Required Consenting Senior Noteholders to terminate the Restructuring Support Agreement in accordance with its terms following the end of such cure period;

(c) each of the conditions precedent for consummation of the transactions contemplated in Section 7.1 of the Equity Rights Offering Backstop Commitment Agreement shall have been satisfied or waived in accordance with the terms thereof;

(d) the Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall be a Final Order;

(e) the Bankruptcy Court shall have entered the Equity Rights Offering Backstop Commitment Order, and the Equity Rights Offering Backstop Commitment Order shall be a Final Order;

(f) the Bankruptcy Court shall have entered the Disclosure Statement Order, and the Disclosure Statement Order shall be a Final Order;

(g) the Bankruptcy Court shall have entered the DIP Orders, and the Final DIP Order shall be a Final Order;

(h) no Default or Event of Default (each as defined in the DIP Credit Agreement or DIP Orders, as applicable) shall have occurred and be continuing under the DIP Credit Agreement or the DIP Order, as applicable, that has not been waived by the DIP Agent or cured by the Debtors in a manner consistent with the DIP Facility Documents;

(i) each of (a) the Exit Facility, (b) the Equity Rights Offering, (c) the Common Equity Convenience Buyout, and (d) the Reorganized Common Equity shall have been issued or completed, as applicable, and any funding required thereunder shall have occurred substantially contemporaneously with consummation of the Restructuring Transactions, in each case, in accordance with the terms of the Restructuring Support Agreement, the Equity Rights Offering Documents, the Common Equity Convenience Buyout Documents, and the documents and agreements governing the same;

(j) all documents, certificates, and agreements necessary to implement this Plan shall have been executed and tendered for delivery to the required parties and, to the

extent required, filed with the applicable Governmental Units in accordance with applicable Laws, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date);

(k) all actions necessary to implement this Plan shall have been effected;

(l) all requisite governmental, regulatory, and material third-party approvals, KYC requirements, and any other authorizations, consents, rulings, or documents required to implement and effectuate the Restructuring Transactions shall have been obtained;

(m) there shall be no ruling, judgment, or order issued by any Governmental Unit making illegal, enjoining or otherwise preventing or prohibiting the consummation of the Restructuring Transactions;

(n) the Professional Fee Escrow Account shall have been established and the Professional Fee Reserve Amount shall have been funded in accordance with this Plan;

(o) the Debtors shall have paid in full in Cash (or the Debtors shall pay in full in Cash substantially contemporaneously with consummation of the Restructuring Transactions) all Restructuring Expenses and fees and expenses payable to the DIP Agent under the DIP Facility Documents, including fees and expenses of counsel incurred or estimated to be incurred, through the Effective Date;

(p) the guarantees, mortgages, deeds of trust, Liens, pledges, or other security interests held by any Holders of Other Secured Claims shall be fully released and discharged (or will be fully released and discharged substantially contemporaneously with the consummation of the Restructuring Transactions);

(q) the conditions to the effectiveness of the Exit Facility set forth in the Exit Facility Documents (other than the occurrence of the Effective Date) shall have been or contemporaneously will be satisfied or waived;

(r) the conditions of the effectiveness of the Equity Rights Offering set forth in the Equity Rights Offering Documents (other than the occurrence of the Effective Date) shall have been satisfied or waived;

(s) the Equity Rights Offering Backstop Commitment Agreement shall not have terminated as to all parties thereto and shall continue to be in full force and effect;

(t) the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein (and any amendment thereto) shall have been filed in a manner consistent with the consent rights contained herein; and

(u) each Definitive Document shall be in form and substance reasonably satisfactory to the Debtors and the Required Consenting Senior Noteholders (unless otherwise provided for herein).

For the avoidance of doubt, any condition that requires any agreement, order or document to be in full force and effect, or entered by the Bankruptcy Court, as applicable, shall include a requirement that such agreement, order or document is consistent with the Restructuring Support Agreement and otherwise in form and substance as set forth in the Restructuring Support Agreement.

Section 8.2 Waiver of Conditions Precedent.

The Debtors or the Reorganized Debtors, as applicable, with the consent of the Required Consenting Senior Noteholders, may waive any of the conditions to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm this Plan. The failure of the Debtors or Reorganized Debtors, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of such rights or any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

Section 8.3 Effect of Failure of Conditions Precedent.

If the Effective Date does not occur, then: (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (c) nothing contained in this Plan, the Confirmation Order, or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims, Interests, or Causes of Action; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

Section 8.4 Substantial Consummation of Plan.

Substantial consummation of this Plan under section 1101(2) of the Bankruptcy Code shall be deemed to occur on the Effective Date.

ARTICLE IX.
EFFECT OF PLAN CONFIRMATION

Section 9.1 Binding Effect.

Subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of this Plan shall bind and inure to the benefit of the Debtors, the Reorganized Debtors, the Consenting Senior Noteholders, and each Holder of a Claim against or Interest in the Debtors or Reorganized Debtors and inure to the benefit of and be binding on the Debtors', Reorganized Debtors', the Consenting Senior Noteholders', and each Holder's respective successors and assigns, regardless of whether the Claim or Interest of such Holder is Impaired

under this Plan and whether such Holder has accepted or rejected this Plan or is deemed to have accepted or rejected this Plan.

Section 9.2 Discharge of Claims and Termination of Interests; Compromise and Settlement of Claims, Interests, and Controversies.

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan, the distributions, rights, and treatment that are provided in this Plan shall be in full and final satisfaction, settlement, release, and discharge, effective as of the Effective Date, of all Interests and Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against the Debtors, the Reorganized Debtors or any of their properties, including property of the Estates, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest is Allowed; or (iii) the Holder of such Claim or Interest has accepted or rejected, or been deemed to accept or reject, this Plan. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided in this Plan.

Section 9.3 Releases.

(a) ***RELEASES BY THE DEBTORS***. **NOTWITHSTANDING ANYTHING CONTAINED IN THIS PLAN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, EXCEPT FOR THE RIGHTS AND REMEDIES THAT REMAIN IN EFFECT TO ENFORCE THE PLAN, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING THE OBLIGATIONS OF THE DEBTORS UNDER THE PLAN AND THE CONTRIBUTIONS OF THE RELEASED PARTIES TO FACILITATE AND IMPLEMENT THE PLAN, ON AND AFTER THE EFFECTIVE DATE, THE RELEASED PARTIES ARE DEEMED CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER, RELEASED AND DISCHARGED BY AND ON BEHALF OF THE DEBTORS, THE REORGANIZED DEBTORS, AND THEIR ESTATES, IN EACH CASE ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, REPRESENTATIVES, AND ANY AND ALL OTHER PERSONS THAT MAY PURPORT TO ASSERT ANY CAUSE OF ACTION DERIVATIVELY, BY OR THROUGH THE FOREGOING PERSONS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE**

DEBTORS, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURE OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE THAT THE DEBTORS, THE REORGANIZED DEBTORS, THEIR ESTATES, OR THEIR AFFILIATES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER PERSON, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE CHAPTER 11 CASES, THE DEBTORS, ANY RESTRUCTURING TRANSACTION, THE GOVERNANCE, MANAGEMENT, TRANSACTIONS, OWNERSHIP, OR OPERATION OF THE DEBTORS, THE PURCHASE, SALE OR RESCISSION OF ANY SECURITY OF OR CLAIM AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, PREPARATION, EXECUTION, FILING, SOLICITATION, ENTRY INTO, AND/OR CONSUMMATION OF THE PLAN, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE RESTRUCTURING SUPPORT AGREEMENT, THE DIP FACILITY, DIP CREDIT AGREEMENT, EXIT FACILITY, THE EQUITY RIGHTS OFFERING AND EQUITY RIGHTS OFFERING DOCUMENTS, THE COMMON EQUITY CONVENIENCE BUYOUT AND COMMON EQUITY CONVENIENCE BUYOUT DOCUMENTS, OR ANY RELATED CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT (INCLUDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION) CREATED OR ENTERED INTO IN CONNECTION WITH THE FOREGOING, THE PURSUIT OF CONFIRMATION AND CONSUMMATION OF THE PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THE PLAN OR CONFIRMATION ORDER, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN (INCLUDING, BUT NOT LIMITED TO, THE REORGANIZED COMMON EQUITY), OR THE DISTRIBUTION OF PROPERTY UNDER THE PLAN, OR ANY OTHER AGREEMENT, ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASES SET FORTH IN THIS SECTION 9.3 SHALL NOT BE CONSTRUED AS (I) RELEASING ANY RELEASED PARTY FROM CLAIMS OR CAUSES OF ACTION ARISING FROM AN ACT OR OMISSION JUDICIALLY DETERMINED BY A FINAL ORDER TO HAVE CONSTITUTED INTENTIONAL FRAUD (PROVIDED THAT FRAUD SHALL NOT EXEMPT FROM THE SCOPE OF THESE DEBTORS RELEASES ANY CLAIMS OR CAUSES OF ACTION ARISING UNDER SECTIONS 544 OR 548 OF

THE BANKRUPTCY CODE OR STATE LAWS GOVERNING FRAUDULENT OR OTHERWISE AVOIDABLE TRANSFERS OR CONVEYANCES), GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT, (II) RELEASING ANY CONTRACTUAL, POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY OR ENTITY UNDER THE PLAN, THE CONFIRMATION ORDER, ANY RESTRUCTURING TRANSACTION, OR ANY DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THE PLAN, OR (III) TO THE EXTENT THE SPECIAL COMMITTEE OF CUTERA, INC. DETERMINES TO RECOMMEND THAT ANY DEBTOR SHOULD NOT GRANT RELEASES IN FAVOR OF ANY PARTY WITH RESPECT TO ANY CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING THOSE THAT ARE PROPOSED TO BE RELEASED HEREIN BY THE DEBTORS, ANY SUCH RELEASES GIVEN BY THE DEBTORS WILL BE NULL AND VOID AGAINST SUCH PARTY AND ITS RELATED PARTIES; *PROVIDED* HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 9.3, UPON THE RECOMMENDATION OF THE SPECIAL COMMITTEE OF CUTERA, INC., THE RELEASES SET FORTH IN THIS SECTION 9.3 MAY INCLUDE RELEASES IN FAVOR OF ANY RELEASED PARTY WITH RESPECT TO ANY CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING THOSE THAT ARE PROPOSED TO BE RELEASED HEREIN BY THE DEBTORS, INCLUDING THOSE IN THE ACTION STYLED NIQUETTE V. HARRIS ET AL., CASE NO. 1:23-CV-01371 (DE).

(b) ***RELEASES BY HOLDERS OF CLAIMS AND INTERESTS.*** **NOTWITHSTANDING ANYTHING CONTAINED IN THIS PLAN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, EXCEPT FOR THE RIGHTS AND REMEDIES THAT REMAIN IN EFFECT TO ENFORCE THE PLAN, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTEGRATED AFTER THE EFFECTIVE DATE, EACH RELEASING PARTY SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER, RELEASED, AND DISCHARGED THE DEBTORS, THE REORGANIZED DEBTORS, THEIR ESTATES, AND THE RELEASED PARTIES, IN EACH CASE ON BEHALF OF THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, REPRESENTATIVES, AND ANY AND ALL OTHER PERSONS THAT MAY PURPORT TO ASSERT ANY CAUSE OF ACTION DERIVATIVELY, BY OR THROUGH THE FOREGOING PERSONS, FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS OR CAUSES OF ACTION ASSERTED OR THAT MAY BE ASSERTED ON BEHALF OF THE DEBTORS OR THEIR ESTATES, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR**

COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURE OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT, OR OTHERWISE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, ANY ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, INCLUDING ANY CLAIMS OR CAUSES OF ACTION BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE CHAPTER 11 CASES, THE DEBTORS, ANY RESTRUCTURING TRANSACTION, THE GOVERNANCE, MANAGEMENT, TRANSACTIONS, OWNERSHIP, OR OPERATION OF THE DEBTORS, THE PURCHASE, SALE OR RESCISSION OF ANY SECURITY OF OR CLAIM AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, PREPARATION, EXECUTION, FILING, SOLICITATION, ENTRY INTO, AND/OR CONSUMMATION OF THE PLAN, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE RESTRUCTURING SUPPORT AGREEMENT, THE DIP FACILITY, DIP CREDIT AGREEMENT, EXIT FACILITY, THE EQUITY RIGHTS OFFERING AND EQUITY RIGHTS OFFERING DOCUMENTS, THE COMMON EQUITY CONVENIENCE BUYOUT AND COMMON EQUITY CONVENIENCE BUYOUT DOCUMENTS, OR ANY RELATED CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT (INCLUDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION) CREATED OR ENTERED INTO IN CONNECTION WITH THE FOREGOING, THE PURSUIT OF CONFIRMATION AND CONSUMMATION OF THE PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THE PLAN OR CONFIRMATION ORDER, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN (INCLUDING, BUT NOT LIMITED TO, THE REORGANIZED COMMON EQUITY), OR THE DISTRIBUTION OF PROPERTY UNDER THE PLAN, OR ANY OTHER AGREEMENT, ACT OR OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASES SET FORTH IN THIS SECTION 9.3 SHALL NOT BE CONSTRUED AS (I) RELEASING ANY RELEASED PARTY FROM CLAIMS OR CAUSES OF ACTION ARISING FROM AN ACT OR OMISSION JUDICIALLY DETERMINED BY A FINAL ORDER TO HAVE CONSTITUTED INTENTIONAL FRAUD (PROVIDED THAT FRAUD SHALL NOT EXEMPT FROM THE SCOPE OF THESE RELEASES ANY CLAIMS OR CAUSES OF ACTION ARISING UNDER SECTIONS 544 OR 548 OF THE BANKRUPTCY CODE OR

STATE LAWS GOVERNING FRAUDULENT OR OTHERWISE AVOIDABLE TRANSFERS OR CONVEYANCES), GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT, (II) RELEASING ANY CONTRACTUAL, POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY OR ENTITY UNDER THE PLAN, THE CONFIRMATION ORDER, ANY RESTRUCTURING TRANSACTION, OR ANY DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THE PLAN, OR (III) TO THE EXTENT THE SPECIAL COMMITTEE OF CUTERA, INC. DETERMINES TO RECOMMEND THAT ANY DEBTOR SHOULD NOT GRANT RELEASES IN FAVOR OF ANY PARTY WITH RESPECT TO ANY CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, ANY SUCH RELEASES GIVEN BY THE CONSENTING SENIOR NOTEHOLDERS WILL BE NULL AND VOID AND THE CONSENTING SENIOR NOTEHOLDERS WILL HAVE NO OBLIGATIONS TO OFFER OR CONSENT TO SUCH RELEASES OF SUCH PARTY OR ANY OF ITS RELATED PARTIES.

Section 9.4 Exculpation and Limitation of Liability.

WITHOUT AFFECTING OR LIMITING THE RELEASES SET FORTH IN SECTION 9.3 OF THIS PLAN, AND NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO EXCULPATED PARTY SHALL HAVE OR INCUR LIABILITY FOR, AND EACH EXCULPATED PARTY IS HEREBY RELEASED AND EXCULPATED FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE CHAPTER 11 CASES, THE PLAN, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE RESTRUCTURING SUPPORT AGREEMENT, THE DIP FACILITY, DIP CREDIT AGREEMENT, EXIT FACILITY, THE EQUITY RIGHTS OFFERING AND EQUITY RIGHTS OFFERING DOCUMENTS, THE COMMON EQUITY CONVENIENCE BUYOUT AND COMMON EQUITY CONVENIENCE BUYOUT DOCUMENTS, THE FORMULATION, PREPARATION, DISSEMINATION, NEGOTIATION OF ANY OF THE FOREGOING OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH ANY OF THE FOREGOING, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE SOLICITATION OF VOTES ON THE PLAN, OR PARTICIPATION IN THE COMMON EQUITY CONVENIENCE BUYOUT AND THE EQUITY RIGHTS OFFERING, THE PURSUIT OF CONSUMMATION OF THE PLAN, THE ADMINISTRATION AND IMPLEMENTATION OF THE PLAN, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN, OR THE DISTRIBUTION OF PROPERTY UNDER THE PLAN OR ANY OTHER RELATED AGREEMENT, OR UPON ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATED OR RELATING TO THE FOREGOING,

EXCEPT FOR CLAIMS OR CAUSES OF ACTION ARISING FROM AN ACT OR OMISSION THAT IS JUDICIALLY DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED INTENTIONAL FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE, BUT IN ALL RESPECTS, SUCH EXCULPATED PARTIES SHALL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES. THE EXCULPATED PARTIES HAVE, AND UPON COMPLETION OF THE PLAN, SHALL BE DEEMED TO HAVE, PARTICIPATED IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE LAWS WITH REGARD TO THE SOLICITATION OF, VOTES AND DISTRIBUTION OF CONSIDERATION PURSUANT TO, THE PLAN AND, THEREFORE, ARE NOT, AND ON ACCOUNT OF SUCH DISTRIBUTIONS SHALL NOT BE, LIABLE AT ANY TIME FOR THE VIOLATION OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THE PLAN. THIS EXCULPATION SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS, AND ANY OTHER APPLICABLE LAWS, RULES, OR REGULATIONS PROTECTING SUCH EXCULPATED PARTIES FROM LIABILITY.

Section 9.5 Injunction.

UPON ENTRY OF THE CONFIRMATION ORDER, ALL HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST, ALONG WITH THEIR RESPECTIVE PRESENT OR FORMER EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PRINCIPALS, AFFILIATES, AND RELATED PARTIES SHALL BE ENJOINED FROM TAKING ANY ACTIONS TO INTERFERE WITH THE IMPLEMENTATION OR CONSUMMATION OF THE PLAN IN RELATION TO ANY CLAIM EXTINGUISHED, DISCHARGED, OR RELEASED PURSUANT TO THE PLAN. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES THAT HAVE HELD, HOLD, OR MAY HOLD CLAIMS AGAINST OR INTERESTS IN THE DEBTORS AND OTHER PARTIES IN INTEREST (OTHER THAN CLAIMS THAT ARE REINSTATED UNDER THE PLAN), ALONG WITH THEIR RESPECTIVE PRESENT OR FORMER EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PRINCIPALS, AFFILIATES, AND RELATED PARTIES, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE DEBTORS, THE REORGANIZED DEBTORS, THE RELEASED PARTIES, OR THE EXCULPATED PARTIES (TO THE EXTENT OF THE EXCULPATION PROVIDED PURSUANT TO SECTION 9.4 OF THE PLAN WITH RESPECT TO THE EXCULPATED PARTIES): (I) COMMENCING, CONDUCTING, OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR CAUSES OF ACTION; (II) ENFORCING, LEVYING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS, WHETHER DIRECTLY OR INDIRECTLY, ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH ENTITIES ON

ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR CAUSES OF ACTION; (III) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST SUCH ENTITIES OR THE PROPERTY OR THE ESTATES OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR CAUSES OF ACTION; (IV) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE PROPERTY OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR CAUSES OF ACTION UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF RIGHT IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT ON OR BEFORE THE EFFECTIVE DATE EXPLICITLY PRESERVING SUCH SETOFF, AND NOTWITHSTANDING AN INDICATION OF A CLAIM OR INTEREST OR OTHERWISE THAT SUCH ENTITY ASSERTS, HAS, OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO APPLICABLE LAW OR OTHERWISE; AND (V) COMMENCING, CONDUCTING, OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, INTERESTS, OR CAUSES OF ACTION RELEASED OR SETTLED PURSUANT TO THE PLAN. NO PERSON OR ENTITY MAY COMMENCE OR PURSUE A CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, OR THE RELEASED PARTIES THAT RELATES TO OR IS REASONABLY LIKELY TO RELATE TO ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF A CLAIM OR CAUSE OF ACTION RELATED TO THE CHAPTER 11 CASES PRIOR TO THE EFFECTIVE DATE, WITHOUT REGARD TO WHETHER SUCH PERSON OR ENTITY IS A RELEASING PARTY, WITHOUT THE BANKRUPTCY COURT (1) FIRST DETERMINING, AFTER NOTICE AND A HEARING, THAT SUCH CLAIM OR CAUSE OF ACTION REPRESENTS A COLORABLE CLAIM AND (2) SPECIFICALLY AUTHORIZING SUCH PERSON OR ENTITY TO BRING SUCH CLAIM OR CAUSE OF ACTION AGAINST THE DEBTORS, REORGANIZED DEBTORS, OR RELEASED PARTY. AT THE HEARING FOR THE BANKRUPTCY COURT TO DETERMINE WHETHER SUCH CLAIM OR CAUSE OF ACTION REPRESENTS A COLORABLE CLAIM OF ANY KIND, THE BANKRUPTCY COURT MAY, OR SHALL IF ANY DEBTOR, REORGANIZED DEBTOR, EXCULPATED PARTY, RELEASED PARTY, OR OTHER PARTY IN INTEREST REQUESTS BY MOTION (ORAL MOTION BEING SUFFICIENT), DIRECT THAT SUCH PERSON OR ENTITY SEEKING TO COMMENCE OR PURSUE SUCH CLAIM OR CAUSE OF ACTION FILE A PROPOSED COMPLAINT WITH THE BANKRUPTCY COURT EMBODYING SUCH CLAIM OR CAUSE OF ACTION, SUCH COMPLAINT SATISFYING THE APPLICABLE RULES OF FEDERAL PROCEDURE, INCLUDING, BUT NOT LIMITED TO, RULE 8 AND RULE 9 (AS APPLICABLE), WHICH THE BANKRUPTCY COURT SHALL ASSESS BEFORE MAKING A DETERMINATION. FOR THE AVOIDANCE OF DOUBT, ANY PARTY THAT OBTAINS SUCH DETERMINATION AND AUTHORIZATION AND SUBSEQUENTLY WISHES TO AMEND THE AUTHORIZED COMPLAINT OR PETITION TO ADD ANY CLAIMS OR

CAUSES OF ACTION NOT EXPLICITLY INCLUDED IN THE AUTHORIZED COMPLAINT OR PETITION MUST OBTAIN AUTHORIZATION FROM THE BANKRUPTCY COURT BEFORE FILING ANY SUCH AMENDMENT IN THE COURT WHERE SUCH COMPLAINT OR PETITION IS PENDING. THE BANKRUPTCY COURT WILL HAVE SOLE AND EXCLUSIVE JURISDICTION TO ADJUDICATE THE UNDERLYING COLORABLE CLAIM OR CAUSE OF ACTION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE INJUNCTION DOES NOT ENJOIN ANY PARTY UNDER THIS PLAN, THE CONFIRMATION ORDER, OR UNDER ANY OTHER DEFINITIVE DOCUMENT OR OTHER DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THOSE IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN OR THE CONFIRMATION ORDER, FROM BRINGING AN ACTION TO ENFORCE THE TERMS OF THIS PLAN, THE CONFIRMATION ORDER, OR SUCH DOCUMENT, INSTRUMENT, OR AGREEMENT (INCLUDING THOSE IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN OR THE CONFIRMATION ORDER.

THE INJUNCTIONS IN THIS SECTION 9.5 SHALL EXTEND TO ANY SUCCESSORS OF THE DEBTORS, THE REORGANIZED DEBTORS, THE RELEASED PARTIES, AND THE EXCULPATED PARTIES AND THEIR RESPECTIVE PROPERTY AND INTERESTS IN PROPERTY.

Section 9.6 Setoffs and Recoupment.

(a) Except as otherwise provided herein or in the DIP Orders, the Reorganized Debtors pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy or non-bankruptcy Law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the Debtors or Reorganized Debtors may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to this Plan, a Final Order or otherwise); *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to this Plan shall constitute a waiver or release by such Reorganized Debtors of any such Claims, rights, and Causes of Action.

(b) In no event shall any Holder of Claims be entitled to set off or recoup any Claim against any Claim, right, or Cause of Action of a Debtor or a Reorganized Debtor, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Section 11.12 hereof on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

Section 9.7 Release of Liens.

(a) Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates (other than Liens securing the DIP Facility, which Liens shall be retained by the DIP Agent to secure the Exit Facility and any remaining obligations under the DIP Facility) shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns.

(b) To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any Liens or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation or extinguishment of such Liens or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

ARTICLE X.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

(a) Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, nature, validity, amount, or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance, priority or amount of Claims or Interests;

(b) Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Retained Professionals authorized pursuant to the Bankruptcy Code or this Plan;

(c) Resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which any Debtor is party or with respect to which any Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Costs arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

(d) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

(e) Adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(f) Adjudicate, decide, or resolve any and all matters related to Causes of Action;

(g) Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

(h) Resolve any and all avoidance or recovery actions under sections 105, 502(d), 542 through 551, and 553 of the Bankruptcy Code;

(i) Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;

(j) Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan or the Disclosure Statement;

(k) Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

(l) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of this Plan;

(m) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

(n) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid;

(o) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

(p) Determine any other matters that may arise in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order, the Restructuring Support Agreement, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan or the Disclosure Statement;

(q) Enter an order or final decree concluding or closing the Chapter 11 Cases;

(r) Adjudicate any and all disputes arising from or relating to distributions under this Plan;

(s) Consider any modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(t) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan (other than any dispute arising after the Effective Date under, or directly with respect to, the Exit Facility Documents, Equity Rights Offering Documents, Common Equity Convenience Buyout Documents, the New Organizational Documents, and the Management Incentive Plan, which such disputes shall be adjudicated in accordance with the terms of the Exit Facility Documents, Equity Rights Offering Documents, Common Equity Convenience Buyout Documents, the New Organizational Documents, and the respective documents evidencing the Management Incentive Plan, respectively).

(u) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(v) Hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;

(w) Enforce all orders previously entered by the Bankruptcy Court; and

(x) Hear any other matter not inconsistent with the Bankruptcy Code, this Plan, or the Confirmation Order.

ARTICLE XI.
MISCELLANEOUS PROVISIONS

Section 11.1 Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan and the final versions of the documents contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims and Interests (irrespective of whether Holders of such Claims or Interests have or are deemed to have accepted this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan, each Entity acquiring property under this Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e) and 7062.

Section 11.2 Payment of Statutory Fees.

All Bankruptcy Fees as determined by the Bankruptcy Court or as agreed to by the U.S. Trustee and Debtors or Reorganized Debtors, as applicable, shall be paid when due and payable

for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

Section 11.3 No Substantive Consolidation.

The Plan is being proposed as a joint plan of reorganization of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan of reorganization for each Debtor. The Plan is not premised upon the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan.

Section 11.4 Amendments.

(a) *Plan Modifications*. Subject to the limitations contained in this Plan, the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules: (a) to amend or modify this Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan; *provided* that such amendment in (a) or (b) above shall be reasonably acceptable to the Required Consenting Senior Noteholders.

(b) *Effect of Confirmation on Modifications*. Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

(c) *Certain Technical Amendments*. Prior to the Effective Date, with the reasonable consent of the Required Consenting Senior Noteholders, the Debtors may make appropriate technical adjustments and modifications to this Plan without further order or approval of the Bankruptcy Court.

Section 11.5 Revocation or Withdrawal of Plan.

Subject to the conditions to the Effective Date and subject to the terms of the Restructuring Support Agreement, the Debtors reserve the right to revoke or withdraw this Plan prior to the entry of the Confirmation Order and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) this Plan with respect to the Debtors shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void with respect to the Debtors; and (c) nothing contained in this Plan with respect to the Debtors shall: (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

Section 11.6 Governing Law.

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules, or other federal Law, rule, or regulation is applicable, or to the extent that an exhibit, supplement, or other document related to this Plan (including, without limitation, the DIP Facility Documents, the Exit Facility Documents, the Equity Rights Offering Documents, the Common Equity Convenience Buyout Documents, the New Organizational Documents, and the Management Incentive Plan), provides otherwise, this Plan shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to the principles of conflict of Laws thereof that would require application of the Law of another jurisdiction.

Section 11.7 Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in this Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, Affiliate, assign, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each such Entity.

Section 11.8 *No Successor Liability*.

Except as otherwise expressly provided in this Plan and the Confirmation Order, the Reorganized Debtors (a) are not, and shall not be deemed to assume, agree to perform, pay or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other Person relating to or arising out of the operations or the assets of the Debtors on or prior to the Effective Date, (b) are not, and shall not be, successors to the Debtors by reason of any theory of law or equity or responsible for the knowledge or conduct of the Debtors prior to the Effective Date and (c) shall not have any successor or transferee liability of any kind or character.

Section 11.9 *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to render it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remaining terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Section 11.10 *Filing of Additional Documents.*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further

evidence the terms and conditions of this Plan, subject to the terms of this Plan and the Restructuring Support Agreement. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims or Interests receiving distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

Section 11.11 *Reservation of Rights.*

This Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by the Debtors with respect to this Plan or the Disclosure Statement, shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests or any other matter prior to the Effective Date.

Section 11.12 *Service of Documents.*

Any pleading, notice, or other document required by this Plan to be served on or delivered to the Debtors or Reorganized Debtors shall be served on:

Cutera, Inc.
3240 Bayshore Boulevard
Brisbane, CA 94005-1021
Attn: Stephana Patton
Email: spatton@cutera.com

with copies to:

Ropes & Gray LLP
191 North Wacker Drive, 32nd Floor
Chicago, IL 60606
Attn: Ryan Preston Dahl
Conor P. McNamara
Email: Ryan.Dahl@ropesgray.com
Conor.McNamara@ropesgray.com

-and-

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Attn: Natasha S. Hwangpo
Email: Natasha.Hwangpo@ropesgray.com

Proposed Co-Counsel to the Debtors

and

Hunton Andrews Kurth LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Attn: Timothy A. ("Tad") Davidson II
Philip M. Guffy
Catherine A. Rankin
E-mail: taddavidson@hunton.com
philipguffy@hunton.com
catherinerankin@hunton.com

Proposed Co-Counsel to the Debtors

and

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Jacob A. Adlerstein
Sean A. Mitchell
Email: jadlerstein@paulweiss.com
smitchell@paulweiss.com

Counsel to the Ad Hoc Committee of Consenting Senior Noteholders

and

Porter Hedges LLP
1000 Main St., 36th Floor
Houston, TX 77002
Attn: John F. Higgins
E-mail: jhiggins@porterhedges.com

Co-Counsel to Ad Hoc Committee of Consenting Senior Noteholders

and

Office of the United States Trustee
Southern District of Texas
515 Rusk Street, Suite 3516
Houston, TX 77002
Attn: Ha Nguyen
Vianey Garza
Email: ha.nguyen@usdoj.gov
vianey.garza@usdoj.gov

After the Effective Date, the Reorganized Debtors are authorized to send a notice to Entities informing them that in order to continue to receive documents pursuant to Bankruptcy Rule 2002, they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

Section 11.13 *Section 1125(e) of the Bankruptcy Code.*

As of the Confirmation Date, (a) the Debtors shall be deemed to have solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code, and any applicable non-bankruptcy Law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation and (b) the Debtors and the Consenting Senior Noteholders and each of their respective Affiliates, agents, directors, officers, employees, advisors, and attorneys shall be deemed to have participated in good faith, and in compliance with the applicable provisions of the Bankruptcy Code, in the offer and issuance of any securities under this Plan, and, therefore, are not, and on account of such offer, issuance and solicitation shall not be, liable at any time for any violation of any applicable Law, rule or regulation governing the solicitation of acceptances or rejections of this Plan or the offer and issuance of any securities under this Plan.

Section 11.14 *Tax Reporting and Compliance.*

The Reorganized Debtors shall be authorized to request an expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Debtors for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

Section 11.15 *Exhibits, Schedules, and Supplements.*

All exhibits, schedules, and supplements to this Plan are incorporated into and are a part of this Plan as if fully set forth herein.

Section 11.16 *Entire Agreement.*

Except as otherwise indicated, on the Effective Date, this Plan shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

Section 11.17 *Allocation of Payments.*

To the extent that any Allowed Claim entitled to distribution hereunder is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for all U.S. federal income tax purposes, be allocated to the principal amount of such Claim first, and then, to the extent that the consideration exceeds such principal amount, to the portion of such Claim representing accrued but unpaid interest (but solely to the extent that interest is an allowable portion of such Allowed Claim).

Section 11.18 *Prepayment*.

Except as otherwise provided in the Plan or the Confirmation Order, the Debtors shall have the right to prepay, without penalty, all or any portion of an Allowed Claim at any time; *provided*, *however*, that any such prepayment shall not be violative of, or otherwise prejudice, the relative priorities and parities among the Classes of Claims.

Section 11.19 *Conflicts.*

In the event of a conflict or inconsistency between this Plan and the Disclosure Statement, the terms of this Plan shall control in all respects. In the event of a conflict between this Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided* that if there is determined to be any inconsistency between any Plan provision and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern and any such provision of the Confirmation Order shall be deemed a modification of this Plan and shall control and take precedence.

Section 11.20 *Closing of Chapter 11 Cases.*

After an Estate has been fully administered, the Reorganized Debtors shall seek authority from the Bankruptcy Court to close the applicable Chapter 11 Case(s) in accordance with the Bankruptcy Code and Bankruptcy Rules; *provided* that, as of the Effective Date, the Reorganized Debtors may submit orders to the Bankruptcy Court under certification of counsel closing one of the Chapter 11 Cases and changing the caption of the Chapter 11 Cases accordingly; *provided* further that, matters concerning Claims may be heard and adjudicated in any Debtor's Chapter 11 Case that remains open regardless of whether the applicable Claim is against a Debtor in a Chapter 11 Case that is closed.

Section 11.21 *Term of Injunctions or Stays.*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

Section 11.22 *Dissolution of Committee.*

On the Effective Date, any official committees appointed in the Chapter 11 Cases, shall dissolve; *provided that* following the Effective Date, any such committees shall continue in existence solely for the purpose of filing and prosecuting applications for allowance of Professional Fee Claims. Upon the dissolution of any official committees appointed in the Chapter

11 Case such committee members and their respective Professionals shall cease to have any duty, obligation, or role arising from or related to the Chapter 11 Cases and shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

Respectfully submitted,

Cutera, Inc.
(on behalf of itself and its affiliated Debtors)

By: /s/ Taylor Harris
Name: Taylor Harris
Title: Chief Executive Officer

EXHIBIT B

Equity Rights Offering Backstop Commitment Agreement

Execution Version

BACKSTOP COMMITMENT AGREEMENT

AMONG

CUTERA, INC.,

AND

THE COMMITMENT PARTIES NAMED HEREIN AND

THE DIRECT ALLOCATION PARTIES NAMED HEREIN

Dated as of March 4, 2025

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THIS BACKSTOP COMMITMENT AGREEMENT (as amended, supplemented, amended and restated, or otherwise modified from time to time, together with any schedules, exhibits, and annexes hereto, this "Agreement") is entered into as of March 4, 2025 (the "Execution Date"), by and among (a) Cutera, Inc., a Delaware corporation (including as a debtor-in-possession in the Chapter 11 Case (as defined below) and as a reorganized debtor, and including reorganized Cutera, as applicable, the "Company"), (b) each of the "Backstop Parties" named on the signature pages hereto (each, a "Backstop Party" and, collectively, the "Backstop Parties"), and (c) each of the "Direct Allocation Parties" named on the signature pages hereto (each, a "Direct Allocation Party" and, collectively, the "Direct Allocation Parties"). The Backstop Parties and the Direct Allocation Parties are sometimes referred to herein, collectively, as the "Commitment Parties" and each, a "Commitment Party" and, as the context requires, refer to the designees named on Schedule 1 and Schedule 2 hereto, respectively. Certain capitalized terms used in this Agreement are defined or referenced in Section 14 hereof.

RECITALS

WHEREAS, the Company, Crystal Sub, LLC, and the Commitment Parties (and/or certain of their Affiliates) have entered into a Restructuring Support Agreement, dated as of March 4, 2025 (as amended, supplemented, amended and restated, or otherwise modified from time to time, together with any schedules, exhibits, and annexes thereto, the "RSA"), which provides for restructuring and recapitalization transactions with respect to the Company's capital structure as set forth in the RSA;

WHEREAS, on or before March 5, 2025 (the date of actual filing, the "Petition Date"), following the execution and delivery of the RSA by the parties thereto, the Company (the "Debtor") shall commence a voluntary reorganization case (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court");

WHEREAS, pursuant to (and subject to the terms and conditions set forth in) the RSA and the Plan, the Company will conduct an equity rights offering, on the terms set forth in the Plan, the Rights Offering Procedures, and this Agreement (the "Rights Offering"), by distributing subscription rights ("Subscription Rights") to each Rights Offering Participant to purchase shares of Reorganized Common Equity (the "Rights Offering Securities") on the Plan Effective Date, which shall be offered as described in the Rights Offering Procedures to all Rights Offering Participants, at a price for each Rights Offering Security equal to the Purchase Price and an aggregate Purchase Price for all Rights Offering Securities of $16,500,000 (the "Rights Offering Amount");

WHEREAS, pursuant to (and subject to the terms and conditions set forth in) this Agreement, the RSA, and the Plan, each of the Direct Allocation Parties desires to accept from the Company and the Company desires to issue to each of the Direct Allocation Parties on the Plan Effective Date, shares of Reorganized Common Equity (such shares of Reorganized Common Equity, the "Direct Allocation Shares") at a price for each Direct Allocation Share of $7.55 (the "Direct Allocation Purchase Price") and an aggregate Direct Allocation Purchase Price for all Direct Allocation Shares of $13,500,000 (the "Direct Allocation Amount");

WHEREAS, pursuant to (and subject to the terms and conditions set forth in) this Agreement, the RSA and the Plan, on the Plan Effective Date, each Direct Allocation Party shall purchase or cause to be purchased, at the Direct Allocation Purchase Price, a number of Direct Allocation Shares equal to its Direct Allocation Commitment Percentage of the total number of Direct Allocation Shares issued by the Company on the Plan Effective Date (the "Aggregate Direct Allocation Shares");

WHEREAS, in order to facilitate the Rights Offering, pursuant to this Agreement, and subject to the terms, conditions, and limitations set forth herein, and in reliance on the representations and warranties set forth herein, each of the Backstop Parties, severally and not jointly, has agreed to (a) provide the Company with the right to require such Backstop Party to subscribe for and purchase, and upon exercise of such right by the Company, such Backstop Party shall be obligated to subscribe for and purchase (or cause to be subscribed for and purchased) all of the Rights Offering Securities with respect to the Subscription Rights that have been distributed and issued to such Backstop Party or its Affiliates in the Rights Offering, in accordance with the Rights Offering Procedures and the terms of this Agreement and (b) provide the Company with the right to require such Backstop Party to purchase, and upon exercise of such right by the Company, such Backstop Party will be obligated to purchase (or cause to be purchased) from the Company, on the Plan Effective Date, such Backstop Party's Backstop Commitment Percentage of the Rights Offering Securities that have not been validly subscribed for in the Rights Offering by the Subscription Form and Funding Deadline (collectively, including, without duplication, the Unallocated Securities, but excluding any Rights Offering Securities that are subject to the Rights Offering Commitments, the "Unsubscribed Securities"); and

WHEREAS, pursuant to the Plan, each Cash-Out Offering Participant will have the option to elect to receive a convenience cash payment (the "Cash-Out Offering") in lieu of both the Reorganized Common Equity and Subscription Rights to have been received on account of such Senior Notes Claims, by distributing rights ("Cash-Out Rights") to each Cash-Out Offering Participant to receive cash on the Plan Effective Date in exchange for the Reorganized Common Equity such Cash-Out Offering Participant would have otherwise received pursuant to its treatment under Section 3.3(c)(iii)(1)(A) of the Plan (the "Cash-Out Securities"), which shall be offered as described in the Common Equity Convenience Buyout Procedures to all Cash-Out Offering Participants at a price for each Cash-Out Security of $5.00 (the "Cash-Out Price") at an aggregate Cash-Out Price of no greater than $7,040,000 (the "Common Equity Convenience Buyout Cap" and, together with the Rights Offering Amount, the "Total Offering Amount"); provided, however, for the avoidance of doubt, that any Cash-Out Offering Participant that exercises its Subscription Rights may not exercise its Cash-Out Rights;

WHEREAS, in order to facilitate the Cash-Out Offering, pursuant to this Agreement, and subject to the terms, conditions, and limitations set forth herein, and in reliance on the representations and warranties set forth herein, (i) each of the Backstop Parties, severally and not jointly, has agreed (a) to fund such Backstop Party's Backstop Commitment Percentage of the aggregate Cash-Out Price to be paid for all Cash-Out Securities that are elected to be cashed-out by the Cash-Out Offering Participants pursuant to the Cash-Out Offering by the Cash-Out Deadline in accordance with the terms of this Agreement (collectively, the "Sold Cash-Out Securities") and (b) to not exercise its Cash-Out Rights and (ii) the Company has agreed to issue Reorganized Common Equity equal to the amount of Reorganized Common Equity that would

have otherwise been issued on account of the Sold Cash-Out Securities (the "Cash-Out Issued Equity") to the applicable Backstop Parties in accordance with this Agreement and the Plan.

NOW, THEREFORE, in consideration of the foregoing, and the representations, warranties and covenants set forth herein, and other good and valuable consideration the Company and the Commitment Parties hereby agree as follows:

1. **Rights Offering; Rights Offering Commitment and Backstop Commitments**.

1.1. **The Rights Offering and Rights Offering Commitment.**

(a) The Company shall conduct and consummate the Rights Offering on the terms, subject to the conditions, and in accordance with the Rights Offering Procedures and otherwise on the applicable terms and conditions set forth in this Agreement, the Plan, and the RSA.

(b) On the terms, and subject to the conditions (including the entry of the Confirmation Order by the Bankruptcy Court and the Confirmation Order becoming a Final Order) and limitations set forth in this Agreement, the RSA, and the Rights Offering Procedures, and in reliance on the representations and warranties set forth in this Agreement, each of the Backstop Parties hereby agrees, severally and not jointly, to subscribe for and purchase, or cause to be subscribed for and purchased, from the Company on the Plan Effective Date at the aggregate Purchase Price therefor, all of the Rights Offering Securities with respect to the Subscription Rights that have been distributed and issued to such Backstop Party (or its applicable Affiliates) in the Rights Offering, to the extent that such Backstop Party continues to hold Senior Notes and Subscription Rights immediately prior to the applicable subscription deadlines set forth in the Rights Offering Procedures, in accordance with the Rights Offering Procedures (such agreements of the Backstop Parties, the "Rights Offering Commitments"). The Rights Offering Commitments of the Backstop Parties set forth in this Section 1.1(b) are several, not joint, obligations of the Backstop Parties, such that no Backstop Party shall be liable or otherwise responsible for the Rights Offering Commitment of any other Backstop Party.

(c) The Backstop Parties (or their applicable Affiliates) shall be required to make payment, or cause payment to be made, in respect of the Rights Offering Securities purchased pursuant to the Rights Offering on or before the Deposit Deadline.

1.2. **Direct Allocation**.

(a) Pursuant to (and subject to the terms and conditions set forth in) this Agreement, the RSA and the Plan, and in reliance of the representations and warranties set forth in this Agreement, each of the Direct Allocation Parties hereby subscribes for and agrees to purchase and accept, or cause to be subscribed for, purchased and accepted, and the Company hereby agrees to issue and deliver to each of the Direct Allocation Parties, a number of Direct Allocation Shares equal to such Direct Allocation Party's Direct Allocation Commitment Percentage of the Aggregate Direct Allocation Shares in exchange for the Aggregate Direct Allocation Purchase Price set forth opposite such Direct Allocation Party's name on Schedule 2 attached hereto (such agreement of the Direct Allocation Parties, the "Direct Allocation Commitments"). The Direct Allocation Commitments of the Direct Allocation Parties set forth in

this Section 1.2(a) are several, not joint, obligations of the Direct Allocation Parties, such that no Direct Allocation Party shall be liable or otherwise responsible for the Direct Allocation Commitment of any other Direct Allocation Party.

(b) The Direct Allocation Parties (or their applicable Affiliates) shall be required to make payment or cause payment to be made in respect of the Direct Allocation Shares purchased or caused to be purchased pursuant to this Agreement on or before the Deposit Deadline.

1.3. **Cash-Out Offering**. The Company shall conduct and consummate the Cash-Out Offering on the terms, subject to the conditions, and in accordance with the Common Equity Convenience Buyout Procedures and otherwise on the applicable terms and conditions set forth in this Agreement, the Plan, and the RSA.

1.4. **Backstop Commitments**.

(a) Rights Offering Backstop Commitments. On the terms, and subject to the conditions (including the entry of the Confirmation Order by the Bankruptcy Court and the Confirmation Order each becoming a Final Order) and limitations set forth in this Agreement, the RSA, and the Rights Offering Procedures, and in reliance on the representations and warranties set forth in this Agreement, each of the Backstop Parties hereby agrees, severally and not jointly, to purchase, or cause to be purchased, from the Company, on the Plan Effective Date, at the aggregate Purchase Price therefor, its Backstop Commitment Percentage of all Unsubscribed Securities (such agreements of the Backstop Parties, the "RO Backstop Commitments"). The RO Backstop Commitments of the Backstop Parties are several, not joint, obligations of the Backstop Parties, such that no Backstop Party shall be liable or otherwise responsible for the RO Backstop Commitment of any other Backstop Party. The Unsubscribed Securities that each of the Backstop Parties is required to purchase, or cause to be purchased, pursuant to this Section 1.4(a) are referred to herein as such Backstop Party's "Backstop Commitment Securities". The right to require each Backstop Party, severally and not jointly, to (i) subscribe for and purchase, or cause to be subscribed for and purchased, Rights Offering Securities as set forth in Section 1.1(b) and (ii) purchase, or cause to be purchased, Unsubscribed Securities as set forth in this Section 1.4(a), are collectively referred to as the "RO Put Option". The RO Put Option shall automatically and irrevocably be deemed to have been exercised by the Company upon the occurrence of the Plan Effective Date, without the need for delivery of a written notice or the taking of any further action by the Company or any other Person.

(b) Cash-Out Backstop Commitments. On the terms, and subject to the conditions (including the entry of the Confirmation Order by the Bankruptcy Court and the Confirmation Order each becoming a Final Order) and limitations set forth in this Agreement, the RSA, and the Common Equity Convenience Buyout Procedures, and in reliance on the representations and warranties set forth in this Agreement, each of the Backstop Parties hereby agrees, severally and not jointly, to purchase, or cause to be purchased from the Company, on the Plan Effective Date, its Backstop Commitment Percentage of the Cash-Out Issued Equity by funding, or causing to be funded, to the Company, its Backstop Commitment Percentage of the aggregate Cash-Out Price (such agreements of the Backstop Parties, the "Cash-Out Backstop Commitments" and, together with the RO Backstop Commitments, the "Backstop Commitments"). The Cash-Out Backstop Commitments of the Backstop Parties are several, not

joint, obligations of the Backstop Parties, such that no Backstop Party shall be liable or otherwise responsible for the Cash-Out Backstop Commitment of any other Backstop Party. The funding that each of the Backstop Parties is required to provide to fund the Cash-Out Offering pursuant to this Section 1.4(b) is referred to herein as such Backstop Party's "Cash-Out Funding". The rights to require each Backstop Party, severally and not jointly, to provide, or cause to be provided, the Cash-Out Funding to the Company pursuant to this Section 1.4(b) in exchange for each Backstop Party's right to receive from the Company the Cash-Out Issued Equity are collectively referred to as the "Cash-Out Put Option" and, together with the RO Put Option, the "Put Option". The Cash-Out Put Option shall automatically and irrevocably be deemed to have been exercised by the Company upon the occurrence of the Plan Effective Date without the need for delivery of a written notice or the taking of any further action by the Company or any other Person.

1.5. **Funding; Defaulting Commitment Party Provisions**

(a) The Company hereby agrees to deliver to each Commitment Party, by e-mail, a certification by an executive officer of the Company (the "Backstop Certificate") of (i)(A) if there are Unsubscribed Securities or Sold Cash-Out Securities, the amount thereof and a true and accurate calculation of the aggregate Purchase Price and Cash-Out Price in its capacity as a Backstop Party, if any, respectively, therefor or (B) if there are no Unsubscribed Securities or Sold Cash-Out Securities, the fact that there are no Unsubscribed Securities or Sold Cash-Out Securities, respectively, (ii) the Aggregate Rights Offering Purchase Price (defined below) in its capacity as a Backstop Party, if any, (iii) the Aggregate Direct Allocation Purchase Price (defined below) in its capacity as a Direct Allocation Party, if any, (iv) the anticipated Plan Effective Date, and (v) the date that is five (5) Business Days prior to the anticipated Plan Effective Date (the "Deposit Deadline"). The Backstop Certificate shall be delivered by the Company to each of the Commitment Parties at least five (5) Business Days prior to the Deposit Deadline. Notwithstanding the foregoing, if at any time after delivering the Backstop Certificate but prior to the Deposit Deadline, the Company reasonably believes the anticipated Plan Effective Date will be later than the date set forth in the Backstop Certificate or in any subsequent notice, the Company shall deliver, by e-mail, a notice to each Commitment Party of such new anticipated Plan Effective Date, and the Deposit Deadline shall automatically be deemed to be the date that is five (5) Business Days prior to such new date.

(b) On or prior to the Deposit Deadline, each Commitment Party, as applicable, shall, severally and not jointly, deposit (or cause to be deposited) with the Subscription Agent, by wire transfer of immediately available funds, (i) in its capacity as a Backstop Party, an amount equal to the aggregate Purchase Price for such Backstop Party's Backstop Commitment Securities (such Backstop Party's "Aggregate Backstop Purchase Price"), (ii) in its capacity as a Direct Allocation Party, an amount equal to the aggregate Direct Allocation Purchase Price for such Direct Allocation Party's Direct Allocation Commitment (such Direct Allocation Party's "Aggregate Direct Allocation Purchase Price"), (iii) in its capacity as a Backstop Party, an amount equal to the aggregate Purchase Price in respect of the Rights Offering Securities that it has subscribed for or caused to be subscribed for in the Rights Offering (such Backstop Party's "Aggregate Rights Offering Purchase Price"), and (iv) in its capacity as a Backstop Party, an amount equal to such Backstop Party's Cash-Out Funding. If the Closing has not occurred on or prior to the date that is three (3) Business Days after the anticipated Plan Effective Date as set forth in the Backstop Certificate (or in any subsequent notice delivered pursuant to Section 1.5(a)

hereof), any funds deposited or caused to be deposited with the Subscription Agent by a Commitment Party shall be returned by the Subscription Agent to an account designated by such Commitment Party upon written request of such Commitment Party; provided, that the date of such return may be extended in the sole discretion of the Requisite Commitment Parties.

(c) In the event that a Commitment Party defaults (a "Funding Default") on its obligation to deposit or cause to be deposited any portion of its Aggregate Purchase Price with the Subscription Agent by the Deposit Deadline pursuant to Section 1.5(b) hereof (each such Commitment Party, a "Defaulting Commitment Party"), the Company shall promptly provide written notice (the "Funding Default Notice") to each Non-Defaulting Commitment Party specifying the amount of Rights Offering Securities, Direct Allocation Shares, Backstop Commitment Securities, and/or Cash-Out Funding subject to such Funding Default (collectively, the "Default Securities") and each applicable Non-Defaulting Commitment Party shall have the right, but not the obligation, to irrevocably notify the Company in writing of its election (within two (2) Business Days of receipt of the Funding Default Notice) to make arrangements to commit to purchase or cause to be purchased from the Company (or, with respect to any Cash-Out Funding subject to such Funding Default, to fund to the Company to purchase), at the aggregate Purchase Price or Cash-Out Price therefor, all or any portion of the Default Securities in such amounts as may be agreed upon by such electing Non-Defaulting Commitment Parties, or if no such agreement is reached, based on (i) each Non-Defaulting Commitment Party's Adjusted Backstop Commitment Percentage, with respect to any Backstop Commitment Securities, Rights Offering Securities, and Cash-Out Funding and (ii) each Non-Defaulting Commitment Party's Adjusted Direct Allocation Commitment Percentage, with respect to any Direct Allocation Shares.

(d) In the event that Non-Defaulting Commitment Parties have not provided elections to commit to purchase or cause to be purchased all applicable Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) in accordance with Section 1.5(c), the Company may elect to solicit and sell, during a period of ten (10) Business Days thereafter (unless this Agreement is terminated during such ten (10) Business Day period in accordance with its terms), any remaining unsubscribed Default Securities, at the same price and on substantially the same terms as were agreed by the Commitment Parties, to one or more third party purchasers (each, as "Substitute Purchaser") approved by the Requisite Commitment Parties, which approval shall not be unreasonably withheld; provided that, except as otherwise set forth in this Agreement or as otherwise agreed by the Requisite Commitment Parties, any such Substitute Purchaser shall not be deemed to become a Commitment Party under this Agreement or be entitled to any rights of a Commitment Party hereunder, other than the right to receive its relative portion of the Put Option Premium; provided further that (i) the Company shall use commercially reasonable efforts to promptly provide information reasonably requested by the Non-Defaulting Commitment Parties regarding the identity, background, and financial condition of each such Person who is proposed to become a Substitute Purchaser and (ii) any Substitute Purchaser that acquires Default Securities shall be required to become a party to the New Shareholders Agreement in connection with, and a condition to, its acquisition of Default Securities. For the avoidance of doubt, the Company's election to pursue a Substitute Purchaser, whether or not consummated, shall not relieve any Commitment Party of its obligation to fulfill its obligations under Section 1.5(b).

(e) As promptly as possible but in no event later than two (2) Business Days following the solicitation period for Substitute Purchasers set forth in Section 1.5(d), the Company shall notify the Non-Defaulting Commitment Parties that (x) Non-Defaulting Commitment Parties have elected to commit to purchase or cause to be purchased all (but not less than all) of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) or (y) Non-Defaulting Commitment Parties have elected to commit to purchase or cause to be purchased a portion (but less than all) of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) and one or more Substitute Purchasers have committed to purchase all remaining Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) not purchased or caused to be purchased by the Non-Defaulting Commitment Parties. No later than two (2) Business Days of receipt of such notice from the Company, each Non-Defaulting Commitment Party that has elected to commit to purchase or cause to be purchased Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) shall be obligated, severally and not jointly, to deposit or cause to be deposited with the Subscription Agent, by wire transfer of immediately available funds, an amount equal to the aggregate Purchase Price, Cash-Out Price, and/or aggregate Direct Allocation Purchase Price, as the case may be, for such Default Securities. If Non-Defaulting Commitment Parties do not elect to commit to purchase or cause to be purchased all of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) in accordance with Section 1.5(c) and one or more Substitute Purchasers do not commit to purchase all remaining Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) not purchased or caused to be purchased by the Non-Defaulting Commitment Parties in accordance with Section 1.5(d), then no Non-Defaulting Commitment Party shall be required to deposit or cause to be deposited with the Subscription Agent any portion of the aggregate Purchase Price, Cash-Out Price, and/or aggregate Direct Allocation Purchase Price for the Default Securities which such Non-Defaulting Commitment Party may have elected to commit to purchase or cause to be purchased (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) pursuant to Section 1.5(c) unless otherwise agreed in writing by the Requisite Commitment Parties (and then only on the terms agreed to in writing by the Requisite Commitment Parties). The Default Securities with respect to Backstop Commitment Securities that a Commitment Party elects to purchase or cause to be purchased (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) pursuant to Section 1.5(c), if any, together with such Commitment Party's Backstop Commitment Securities, shall be referred to herein as such Commitment Party's "Backstop Securities".

1.6. **No Fractional Shares**. Fractional shares of Reorganized Common Equity shall not be issued. Anything herein to the contrary notwithstanding, no Commitment Party shall be required or have the right to purchase or cause to be purchased or be issued any fractional shares of Reorganized Common Equity as part of its purchase of Rights Offering Securities, Direct Allocation Shares, Cash-Out Issued Equity, and/or Backstop Securities. If a Commitment Party would otherwise be required or have the right to purchase or cause to be purchased or be issued Rights Offering Securities, Direct Allocation Shares, Cash-Out Issued Equity, and/or Backstop Securities that includes a fraction of a share of Reorganized Common Equity, then such number of shares of Reorganized Common Equity shall be rounded upward or downward to the nearest whole share of Reorganized Common Equity and no Commitment Party shall receive any payment or other distribution in respect of any fraction of a share of Reorganized Common Equity that such Commitment Party does not receive as a result of such a rounding down; provided, however, that

the Company and the Requisite Commitment Parties may determine to round certain allocations up and make such further adjustments as necessary so that the total amount of shares of Reorganized Common Equity is fixed. For purposes of determining whether a Commitment Party would otherwise receive a fraction of a share of Reorganized Common Equity as described in this paragraph, all Rights Offering Securities, Direct Allocation Shares, Cash-Out Issued Equity, and/or Backstop Securities to be issued to such Commitment Party pursuant to this Agreement shall be aggregated.

1.7. **Put Option Premium**.

(a) The Company and the Commitment Parties hereby acknowledge that, in consideration for the Company's right and obligation to exercise the Put Option on the Plan Effective Date with respect to the Backstop Commitments and the Direct Allocation Commitments, the Company shall be required to pay (i) to the Backstop Parties (or their designees), as set forth on Schedule 1, an aggregate amount equal to 10.0% of the Total Offering Amount (collectively, the "Backstop Premium") and (ii) to the Direct Allocation Parties, as set forth on Schedule 2, an aggregate amount equal to 10.0% of the Direct Allocation Amount (collectively, the "Direct Allocation Premium") (together, with the Backstop Premium, the "Put Option Premium"), which shall be paid at the Closing in shares of Reorganized Common Equity calculated based on the Purchase Price. The Company shall be obligated to issue the Put Option Premium to each Commitment Party (or its designee) on the Plan Effective Date in accordance with instructions provided by each Commitment Party for such Commitment Party or its designee prior to the Plan Effective Date; provided, however, that if this Agreement is terminated, to the extent provided in Section 8(e), the Put Option Premium shall be required to be paid to the Commitment Parties (or their designees) in cash (instead of shares of Reorganized Common Equity) as set forth on Schedule 1 and Schedule 2. Notwithstanding the foregoing, (A) no Defaulting Commitment Party shall be entitled to receive any portion of the Put Option Premium, (B) subject to Section 1.5(c), any Non-Defaulting Commitment Party that purchases or causes to be purchased Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) of a Defaulting Commitment Party shall be entitled to receive an additional portion of the Put Option Premium equal to the product of (x) the amount of the Put Option Premium that would be payable to such Defaulting Commitment Party pursuant to this Agreement, if such Defaulting Commitment Party had not committed a Funding Default, multiplied by (y) a fraction, the numerator of which is the amount of Default Securities of such Defaulting Commitment Party which such Non-Defaulting Commitment Party purchases or causes to be purchased (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) and the denominator of which is the total amount of Default Securities constituting Default Securities of such Defaulting Commitment Party and (C) in the event a Substitute Purchaser purchases any Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) in accordance with the provisions of Section 1.5(d), such Substitute Purchaser shall be entitled to receive, as a premium, an amount equal to the product of (x) the amount of the Put Option Premium that would have been payable to the Defaulting Commitment Party if such Defaulting Commitment Party had not committed a Funding Default and (y) a fraction, the numerator of which is the amount of Default Securities of such Defaulting Commitment Party which such Substitute Purchaser purchases (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) and the denominator of which is the total amount of Default Securities constituting Default Securities of such Defaulting Commitment Party.

(b) The Company hereby further acknowledges and agrees that the Put Option Premium (i) shall be fully earned, but not payable, as of the Execution Date, (ii) shall not be refundable under any circumstance or creditable against any other amount paid or to be paid in connection with this Agreement or any of the Contemplated Transactions or otherwise, (iii) shall be issued or paid without setoff or recoupment and shall not be subject to defense or offset on account of any claim, defense, or counterclaim, (iv) shall be issued or paid free and clear of and without deduction for any and all present or future applicable Taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto unless otherwise required by applicable Law (with appropriate gross-up for withholding Taxes, other than withholding Taxes resulting from the failure of a Commitment Party to provide applicable tax forms such as an IRS Form W-9 or the appropriate IRS Form W-8), (v) is intended to be treated for U.S. federal, state, and local income Tax purposes as a premium (and, as applicable, an adjustment to tax basis or adjustment to the proceeds received) for an option to exercise the Put Option with respect to the Backstop Commitments and the Direct Allocation Commitments and the Company and the other Company Entities shall not take any position or action inconsistent with such treatment and/or characterization, except pursuant to a "determination" as defined in Section 1313 of the Code, (vi) is an integral part of the Contemplated Transactions and without this Section 1.7 the Commitment Parties would not have entered into the RSA or this Agreement, and (vii) shall constitute an allowed super-priority administrative claim against the Debtor's estate under sections 503(b) and 507(a)(1) of the Bankruptcy Code (but expressly subordinated to the Carve-Out (as such term may be defined in the Interim DIP Order or Final DIP Order)).

2. **Closing; Certain Expenses and Payments**.

2.1. **Closing**.

(a) The closing of the purchase, sale, and/or issuance of Backstop Securities, Direct Allocation Shares, and Cash-Out Issued Equity hereunder and the payment of the Cash-Out Funding for the Sold Cash-Out Securities (the "Closing") will occur on the Plan Effective Date. As soon as practicable after the Closing, the Company shall deliver, or cause to be delivered, to each Commitment Party (i) a statement from the transfer agent for the Reorganized Common Equity reflecting the book-entry position of the Reorganized Common Equity acquired by such Commitment Party, as applicable, (w) under this Agreement pursuant to its Direct Allocation Commitment, (x) under this Agreement pursuant to its Backstop Commitment, (y) pursuant to the Rights Offering, and (z) pursuant to the Plan and (ii) such certificates, counterparts to agreements, documents, or instruments required to be delivered by the Company to such Commitment Party pursuant to Section 7.1 hereof. The agreements, instruments, certificates, and other documents to be delivered on the Plan Effective Date by or on behalf of the Company will be delivered via email to counsel to the Commitment Parties in accordance with Section 12 hereof.

(b) All Direct Allocation Shares, Backstop Securities, Cash-Out Issued Equity, and Rights Offering Securities will be delivered free and clear of any and all Encumbrances with any and all issue, stamp, transfer, or similar Taxes or duties payable in connection with such delivery duly paid by the Company.

(c) Anything in this Agreement to the contrary notwithstanding, any Commitment Party, in its sole discretion, may designate that some or all of its Direct Allocation

Shares, Backstop Securities, Put Option Premium, Rights Offering Securities, or Cash-Out Issued Equity be issued in the name of, and delivered to, one or more of its Affiliates that (in any such case) is an Accredited Investor or Qualified Institutional Buyer and may cause such Affiliate to fund the Direct Allocation Purchase Price, Purchase Price, or Cash-Out Price, as applicable, in respect of any such Direct Allocation Shares, Backstop Securities, Rights Offering Securities, or Cash-Out Funding. Any such designation shall be made by a Commitment Party by delivering written notice thereof to the Company no less than two (2) Business Days prior to the Plan Effective Date, which notice shall (i) specify the name of each such Affiliate, (ii) specify the number of Direct Allocation Shares, Backstop Securities, Put Option Premium, Rights Offering Securities, or Cash-Out Issued Equity that should be issued or delivered to each such Affiliate or the Direct Allocation Commitment Percentage and/or Backstop Commitment Percentage that will be applicable to such Affiliate, and (iii) contain a certification from each such Affiliate as to the accuracy of the representations and warranties made by each Commitment Party in Section 4 hereof as applied to such Affiliate. No designation by a Commitment Party pursuant to this Section 2.1(c) shall relieve such Commitment Party from its obligations under this Agreement.

2.2. **Interest; Costs and Expenses**. To the extent the Company is required to pay the Put Option Premium in cash pursuant to Section 8(e) hereof, and such payment is not made on or before the date such amount is required to be paid in accordance with Section 8(e) hereof (the "Interest Commencement Date"), such amount shall accrue interest on such amount from the Interest Commencement Date to the day such amount is paid, computed at an annual rate equal to the rate of interest which is identified as the "Prime Rate" as published in the Money Rates Section of The Wall Street Journal on the Interest Commencement Date. In addition, the Company shall promptly pay all Commitment Expenses. Amounts required to be paid by the Company pursuant to this Section 2.2 (a) shall be paid without setoff or recoupment and shall not be subject to defense or offset on account of any claim, defense, or counterclaim, (b) shall be paid free and clear of and without deduction for any and all present or future applicable Taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto unless otherwise required by applicable Law and (c) with respect to the Commitment Expenses, shall constitute allowed administrative expenses against the Debtor's estate (but expressly subordinated to the Carve-Out (as such term may be defined in the Interim DIP Order or Final DIP Order)). The obligations of the Company under this Section 2.2 shall survive any termination or expiration of this Agreement.

3. **Representations and Warranties of the Company**. Except as set forth in the disclosure schedule (which shall include the "Schedules" referred to in this Section 3) delivered by the Company to the Commitment Parties on the Execution Date and attached to this Agreement (the "Company Disclosure Schedule") or as disclosed in the Company SEC Documents (other than the risk factors and forward-looking statement disclaimers, except for any factual historical statements contained therein), the Company, on behalf of itself and each of the other Company Entities, hereby makes representations and warranties to the Commitment Parties that are set forth in this Section 3. Each representation and warranty set forth in this Section 3 is made as of the Execution Date and as of the Plan Effective Date (except for representations and warranties made as of a specified date, which shall are made as of such date) (subject, in the case representations and warranties made as of the Plan Effective Date, to any additional disclosures made in any amendment or supplement to the Company Disclosure Schedule (a "Company Disclosure Supplement")) delivered to the Commitment Parties; provided that, for the avoidance of doubt, any such additional disclosures made after the Execution Date in a Company Disclosure

Supplement shall not limit or otherwise prejudice or affect any rights of the Commitment Parties or the Consenting Senior Noteholders under this Agreement, the RSA, or any other Definitive Documents with respect to any representation or warranty made as of the Execution Date or any other specified date prior to the Plan Effective Date, including any termination right under this Agreement or the RSA upon the occurrence of an event or circumstance permitting termination of this Agreement or the RSA.

3.1. **Organization of the Company Entities**. Each Company Entity is (i) a corporation, limited liability company, or other entity (as the case may be) duly incorporated, organized, or formed (as applicable), validly existing and, (ii) to the extent such concept is recognized, in good standing under the Laws of its jurisdiction of incorporation, organization, or formation (as applicable), except in each case (other than with respect to the Company and Crystal Sub, LLC) to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect), and (iii) and has full corporate, limited liability company, or other organization power and authority (as applicable) to conduct its business as it is now conducted. Each Company Entity is duly qualified or registered to do business as a foreign corporation, limited liability company, or other entity (as applicable) and is in good standing (to the extent such concept is applicable) under the Laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification or registration, except where the failure to be so qualified or registered would not, individually or in the aggregate, reasonably be expected to be adverse in any material respect to the Company Entities, taken as a whole.

3.2. **Organization and Capitalization**.

(a) Schedule 3.2(a) sets forth the name, jurisdiction of incorporation, organization, or formation (as applicable) of the Company and each of its Subsidiaries and a true, correct and complete list of the current holders of record of the Equity Interests of each of the Company and the Company's Subsidiaries. Except for the Company's Subsidiaries and interests in joint ventures set forth on Schedule 3.2(a), neither the Company nor any of its Subsidiaries owns, holds, or controls any direct or indirect material Equity Interests in any corporation, partnership, limited liability company, trust, or other Person or business. Neither the Company nor any of its Subsidiaries has any Contract to directly or indirectly acquire any direct or indirect Equity Interest in any Person or business.

(b) All of the outstanding Equity Interests of the Company and each Subsidiary of the Company are duly authorized and validly issued and are fully paid and nonassessable, and were not issued in breach or violation of, and are not subject to, any preemptive rights created by statute or the Organizational Documents of the Company or any of its Subsidiaries. The Company or one or more of its Subsidiaries, as applicable, has good and marketable title to all Equity Interests of its Subsidiaries, free and clear of all Encumbrances (other than (i) transfer restrictions imposed under applicable securities Laws and (ii) with respect to the Execution Date only, Encumbrances that will be removed by operation of the Confirmation Order or the Plan).

(c) Except for the Equity Interests set forth on Schedule 3.2(a), there are, and there will be on the Plan Effective Date, no outstanding Equity Interests of the Company's Subsidiaries. There are, and there will be on the Plan Effective Date (other than the New

Shareholders Agreement, if any), no (i) Contracts relating to the issuance, grant, sale, transfer, or registration (including agreements relating to rights of first refusal, "co-sale" rights, "drag-along" rights or registration rights) of any Equity Interests of the Company or any Subsidiary of the Company, or any other investor rights, including rights of participation (*i.e.*, pre-emptive rights), co-sale, voting, first refusal, board observation, visitation or information or operational covenants with respect to the Company or any of its Subsidiaries, or (ii) Contracts of the Company or any Subsidiary of the Company to repurchase, redeem or otherwise acquire any Equity Interests of the Company or any Subsidiary of the Company. Neither the Company nor any Subsidiary of the Company has granted any registration rights with respect to any of its Equity Interests.

(d) Except as set forth on Schedule 3.2(d) or disclosed in the Company SEC Documents, none of the Company or any of its Subsidiaries has any outstanding bonds, debentures, notes, or other indebtedness, the holders of which have the right to vote (or which are convertible into or exercisable for, or evidence the right to subscribe for or acquire, securities having the right to vote) with the holders of the Equity Interests of the Company or any of its Subsidiaries on any matter.

3.3. **Authority; No Conflict; Consents**.

(a) Subject to the entry by the Bankruptcy Court of the Equity Rights Offering Backstop Commitment Order and the Confirmation Order, the Company (i) has or will have at the time of execution, the requisite corporate, limited liability company, or other organizational power and authority (as applicable) (A) to enter into, execute, and deliver this Agreement and the other Definitive Documents to which it is (or will be) a party, and to enter into, execute, and file with the Bankruptcy Court the Plan and (B) to perform and consummate the Contemplated Transactions, and (ii) has taken, or will have taken at the time of execution, all necessary corporate, limited liability company, or other organizational action (as applicable) required for (x) the due authorization, execution, and delivery of this Agreement and the other Definitive Documents to which it is (or will be) a party, (y) the due authorization, execution, and filing with the Bankruptcy Court of the Plan, and (z) the performance and consummation of the Contemplated Transactions. Subject to entry by the Bankruptcy Court of the Equity Rights Offering Backstop Commitment Order, this Agreement has been (or, in the case of each Definitive Document to be entered into by the Company at or prior to the Closing, will be) duly executed and delivered by the Company. Subject to entry by the Bankruptcy Court of the Equity Rights Offering Backstop Commitment Order, this Agreement constitutes (or, in the case of each Definitive Document to be entered into by the Company after the Execution Date and at or prior to the Closing, will constitute) the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforcement may be limited by the Enforceability Exceptions.

(b) Subject to entry of the Confirmation Order and the expiration or waiver by the Bankruptcy Court of the fourteen (14)-day period set forth in Bankruptcy Rules 6004(h) and 3020(e), on the Plan Effective Date, the Plan constitutes the legal, valid, and binding obligation of each Company Entity that is a Debtor, enforceable against such Company Entity in accordance with its terms.

(c) At the time of the execution and delivery of the RSA, the Company (i) had the requisite corporate, limited liability company, or other organizational power and authority (as applicable) (A) to enter into, execute and deliver the RSA and (B) subject to the entry by the Bankruptcy Court of the Confirmation Order, to perform and consummate the Contemplated Transactions, and (ii) had taken all necessary corporate, limited liability company, or other organizational action (as applicable) required for (x) the due authorization, execution, and delivery of the RSA, and (y) subject to the entry by the Bankruptcy Court of the Confirmation Order, the performance and consummation of the Contemplated Transactions. The RSA has been duly executed and delivered by each Company Entity that is a party thereto.

(d) Except as set forth on Schedule 3.3(a), neither the execution and delivery by the Company of this Agreement or any of the other Definitive Documents, the execution or filing with the Bankruptcy Court by the Debtor of the Plan, nor the performance or consummation by any of the Company Entities of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time or both):

(i) contravene, conflict with, or result in a violation or breach of any provision of the Organizational Documents of any Company Entity;

(ii) contravene, conflict with, or result in a violation of any Law or Order to which any Company Entity or any of the properties, assets, rights, or interests owned, leased or used by any Company Entity are bound or may be subject, other than contraventions, conflicts or violations arising as a result of the commencement of the Chapter 11 Case and except as otherwise authorized by the Bankruptcy Court;

(iii) contravene, conflict with, or result in a violation or breach of any provision of, or give rise to any right of termination, acceleration, or cancellation under, any Material Contract, except for (i) any violation or breach of any such Material Contract that arises out of the rejection by the Debtor of such Material Contract in the Chapter 11 Case, which rejection was done with the prior written consent of the Requisite Commitment Parties or (ii) any right of termination, acceleration, or cancellation that is unenforceable pursuant to section 365 of the Bankruptcy Code; or

(iv) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets, properties, rights, or interests owned, leased, or used by any Company Entity, except to the extent that any such Encumbrance will be released or discharged pursuant to the Plan or put in place in connection with the Exit Facility,

except, in each case of clauses (ii) through (iv) above, where such occurrence, event or result would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.4. **Proceedings**. Except for as set forth on Schedule 3.4, there is no Proceeding pending, existing, outstanding, or, to the Knowledge of the Company, threatened to

which any Company Entity is a party or to which any property, asset, right, or interest owned, leased, or used by any Company Entity is bound or subject, except for (a) any claim of a creditor or party in interest in the Chapter 11 Case (excluding any Proceeding by a Governmental Body) and (b) any Proceeding that would not, individually or in the aggregate, reasonably be expected to be adverse in any material respect to the Company Entities, taken as a whole. To the Knowledge of the Company, since January 1, 2023, there have been no formal claims or allegations of sexual harassment, or other discrimination or retaliation, involving any current or former employees, officers, and directors that would, individually or in the aggregate, reasonably be expected to result in liability that would be material to the Company and its Subsidiaries, taken as a whole.

3.5. **Brokers or Finders**. Except for the fees payable to Houlihan Lokey Capital, Inc. (which such fees have been disclosed to the Commitment Parties), neither the Company Entities nor any of their respective Representatives has incurred or will incur any obligation or liability, contingent or otherwise, for brokerage, investment banking, or finders' fees or agents' commissions or other similar payments in connection with this Agreement, any of the other Definitive Documents, the Plan, or any of the Contemplated Transactions (other than, for the avoidance of doubt, any fees in connection with the DIP Facility and Exit Facility, in each case, in accordance with the RSA and any other payments to be made by the Company in accordance with the RSA).

3.6. **Exemption from Registration**. Assuming the accuracy of (a) the Commitment Parties' representations set forth in Section 4 hereof and (b) all of the representations, warranties, and certifications set forth in each of the subscription forms submitted pursuant to the Rights Offering Procedures and the other representations and certifications made by the Rights Offering Participants as required in the Rights Offering Procedures, in each case, as submitted by the respective applicable Commitment Parties or their Affiliates and each of the Rights Offering Participants that are purchasers of Reorganized Common Equity, and, in each case, as otherwise required to be made by Rights Offering Participants pursuant to the Rights Offering Procedures, each of the Specified Issuances will be exempt from the registration and prospectus delivery requirements of the Securities Act.

3.7. **Issuance**. As of the Plan Effective Date, subject to entry by the Bankruptcy Court of the Confirmation Order, each of the Specified Issuances will have been duly and validly authorized by the Company and, when the Reorganized Common Equity is issued to the Rights Offering Participants, the Backstop Parties, and the Direct Allocation Parties against payment therefor, such Reorganized Common Equity will be duly and validly issued, fully paid, and non-assessable, and free and clear of all Taxes, liens, Encumbrances (other than transfer restrictions imposed under applicable securities Laws), pre-emptive rights, rights of first refusal, subscription rights, and similar rights, in each case, other than as provided under the New Shareholders Agreement, if any.

3.8. **No Violation**. The Company is not in violation of its Organizational Documents, and no other Company Entity is in material violation of its Organizational Documents. No Company Entity is or has been at any time since January 1, 2023, in violation of any Law or Order, except for any such default or violation that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.9. **Licenses and Permits**. Each (i) Company Entity possesses or has obtained all Governmental Authorizations from, has made all declarations and filings with, and has given all notices to, the appropriate Governmental Bodies that are necessary or required for the ownership, lease or use of its properties, assets, rights or interests, or the conduct or operation of its businesses or operations, including, without limitation, all such licenses, certificates, authorizations and permits required by the FDA or any other state, federal, or foreign agencies or bodies engaged in the regulation of medical devices (collectively, the "Licenses and Permits"), except where the failure to possess, obtain, make or give any of the foregoing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) Company Entity has not received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Licenses and Permits, except where such threatened or potential proceeding, revocation or modification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.10. **Compliance with Anti-Corruption, International Trade, and Money Laundering**.

(a) To the Knowledge of the Company, during the past five (5) years, neither the Company Entities nor any of their respective directors, officers, employees, agents or any other Person acting for or on behalf of the Company Entities, has (i) used any funds for unlawful contributions, gifts, entertainment, or other unlawful expenses relating to political activity, (ii) paid, offered, or promised to pay, or authorized or ratified the payment, directly or indirectly, of any monies or anything of value to any national, provincial, municipal, or other Government Official (or family member or representative of such Government Official) or any other Person for the purpose of corruptly influencing any act or decision of such Government Official (or of the Governmental Body at which the Government Official has authority) or to obtain or retain business, or direct business to any person or to secure any other improper benefit or advantage, in each case in violation of any applicable Anti-Corruption Laws or (iii) made any other payments in violation of applicable Anti-Corruption Laws. To the Knowledge of the Company, neither the Company Entities nor any of their respective directors, officers, employees, agents or any other Person acting for or on behalf of the Company Entities has received any written or oral notice from any Governmental Body regarding any allegation, claim, violation, whistleblower or other complaint, voluntary disclosure, investigation, prosecution, settlement, enforcement action, or other legal action related to any violation by the Company Entities of applicable Anti-Corruption Laws or International Trade Laws.

(b) In accordance with Anti-Corruption Laws, the Company Entities: (i) maintain and have maintained books, records, and accounts which, in reasonable detail, accurately and fairly reflect travel, gift and entertainment expenses, purchases, contributions, and other business expenses in conformance with the Company Entities' management's general or specific authorization, and (ii) have implemented and maintain a system of internal accounting controls reasonably designed to ensure that all transactions are executed in accordance with the Company Entities' management's general or specific authorization and are accurately recorded. To the Knowledge of the Company, the Company Entities are and have been in material compliance with all applicable Anti-Corruption Laws.

(c) To the Knowledge of the Company, each of the Company Entities is in material compliance, and at all times during the past five (5) years has complied, in all material respects with applicable International Trade Laws. To the Knowledge of the Company, neither the Company Entities nor any of their respective directors, officers, or employees agents or any other Person acting for or on behalf of the Company Entities has received any written or verbal notice from any Governmental Body regarding any allegation, claim, violation, whistleblower or other complaint, voluntary disclosure, investigation, prosecution, settlement, enforcement action, or other legal action related to any violation by the Company Entities of applicable International Trade Laws which would be material to the business.

(d) To the Knowledge of the Company, each of the Company Entities is in material compliance, and at all times during the past five (5) years has complied, in all material respects with all applicable Laws relating to the prevention of money laundering of any Governmental Body applicable to it or its property or in respect of its operations, including, but not limited to, applicable provisions of the U.S. Bank Secrecy Act (31 U.S.C. 5311) and all applicable criminal anti-money laundering Laws and all applicable financial record-keeping, customer identification, know-your-customer and reporting requirements (the "AML Laws"). To the Knowledge of the Company, neither the Company Entities nor any of their respective directors, officers , or employees agents or any other Person acting for or on behalf of the Company Entities has received any written or verbal notice from any Governmental Body regarding any allegation, claim, violation, whistleblower or other complaint, voluntary disclosure, investigation, prosecution, settlement, enforcement action, or other legal action related to any violation by the Company Entities of applicable AML Laws.

3.11. **Material Contracts**. Other than as a result of the commencement of the Chapter 11 Case and other than any Material Contract that has been rejected in the Chapter 11 Case, which rejection was done with the prior written consent of the Requisite Commitment Parties, each Material Contract is in full force and effect and is valid, binding, and enforceable against the applicable Company Entity and, to the Knowledge of the Company, each other party thereto, in accordance with its terms, in each case except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer, and other similar Laws of general applicability relating to or affecting creditor's rights generally and by the application of general principles of equity (the "Enforceability Exceptions"). None of the Company Entities, the Company (other than as a result of the commencement of the Chapter 11 Case), or, to the Knowledge of the Company, any other party to any Material Contract is in breach of or default under any obligation thereunder (and there is no existing event which, with the giving of notice or lapse of time or both, would constitute a breach or default by any Company Entity) or has given notice of default to any other party thereunder, except for breaches and defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, no Company Entity has received notice from any Person that such Person intends to terminate, or not renew, any Material Contract. There are no claims pending, or to the Knowledge of the Company, threatened under any Material Contract. The Company has provided or made available to the Commitment Parties or their Representatives true, complete and correct copies of all Material Contracts.

3.12. **Financial Statements; Internal Controls**.

(a) The audited consolidated balance sheet of the Company and its Subsidiaries as of December 31, 2023, and the related audited consolidated statements of operations, stockholders' equity, and cash flows for the fiscal year ended December 31, 2023 and the consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2024, and the related consolidated statements of operations, stockholders' equity, and cash flows for the fiscal quarter ended September 30, 2024 (collectively, the "Financial Statements"), were prepared in accordance with GAAP, applied on a consistent basis for the periods involved (except as otherwise expressly noted therein), and fairly present, the financial position of the Company and its Subsidiaries as of the dates thereof and the results of their operations for the periods then ended (except as otherwise expressly noted therein). Except as set forth on Schedule 3.12(a), there are no liabilities or obligations of the Company or its Subsidiaries of the type required to be accrued on or reserved against in a consolidated balance sheet prepared in accordance with GAAP, other than (a) liabilities or obligations set forth on the face of the balance sheet as of September 30, 2024 included in the Financial Statements (such balance sheet, the "Most Recent Balance Sheet"), (b) liabilities or obligations which were incurred in the Ordinary Course of Business after the date of the Most Recent Balance Sheet (none of which are liabilities or obligations resulting from violations of Law or breaches of Contract), (c) liabilities or obligations incurred in connection with the transactions contemplated by the Definitive Documents, and (d) liabilities or obligations that, individually or in the aggregate, are not material to the Company Entities, taken as a whole. To the Knowledge of the Company, there have been no instances of fraud by any Company Entity that occurred during any period covered by the Financial Statements that would reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(b) As of the date hereof, the Company has established and maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act) that complies with the requirements of the Exchange Act and will continue to maintain a system of internal control over financial reporting, in each case which has been designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. From the date hereof through the Plan Effective Date, the Company has continued to maintain a system of internal control over financial reporting, including (i) making and keeping accurate books and records and (ii) maintaining internal accounting controls that provide reasonable assurance that (A) transactions are executed in accordance with management's authorization, (B) transactions are recorded as necessary to permit preparation of its financial statements and to maintain accountability for its assets, (C) access to its assets is permitted only in accordance with management's authorization, and (D) the reported accountability for its assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(c) To the Knowledge of the Company, the Company does not have any material weakness in their internal control over financial reporting, other than any such material weaknesses with respect to which a plan for remediation has been established and other than as set forth in Schedule 3.12(b) or disclosed in the Company SEC Documents.

(d) As of the date hereof, the Company maintains disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) that are designed to ensure that information required to be disclosed by the Company in the reports that they file and submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including that information required to be disclosed by the Company in the reports that it files and submits under the Exchange Act is accumulated and communicated to management of the Company Entities as appropriate to allow timely decisions regarding required disclosure, and such disclosure controls and procedures are effective.

3.13. **Company SEC Documents**. As of the date hereof, the Company has filed all reports, schedules, forms, and statements required to be filed by the Company with the SEC pursuant to the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act") since December 31, 2023 (the "Company SEC Documents"). As of their respective dates, and giving effect to any amendments or supplements thereto filed prior to the date of this Agreement, each of the Company SEC Documents that have been filed as of the date of this Agreement complied with the requirements of the Securities Act or the Securities Exchange Act and the applicable rules and regulations thereunder, applicable to such Company SEC Documents. No Company SEC Document that has been filed prior to the date of this Agreement, after giving effect to any amendments or supplements thereto and to any subsequently filed Company SEC Documents, in each case filed prior to the date of this Agreement, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

3.14. **Clinical Trials**. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all studies, tests, and clinical trials conducted by or on behalf of, or sponsored by, the Company Entities, or in which any of the Company Entities has participated, were and, if still pending, are being conducted in accordance with study protocols and all applicable statutes, rules and regulations promulgated by the FDA and other comparable regulatory agencies having jurisdiction over medical devices, and the Company Entities have not received any notices or other written correspondence from the FDA or any other foreign, state, or local Governmental Body exercising comparable authority or any Institutional Review Board or comparable authority requiring or threatening the termination or suspension of any studies, tests, or clinical trials conducted by or on behalf of, or sponsored by, the Company Entities or in which any of the Company Entities have participated, and, to the Knowledge of the Company, there are no reasonable grounds for the same. Except as disclosed in Schedule 3.14 or the Company SEC Documents (other than the risk factors and forward-looking statement disclaimers, except for any factual historical statements contained therein), there has not been any violation of law or regulation by any of the Company Entities in their respective product development efforts, submissions or reports to any regulatory authority that could reasonably be expected to require investigation, corrective action, or enforcement action.

3.15. **Compliance with Health Care Laws**. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company Entities and, to the Knowledge of the Company, its directors, employees, and agents (while acting in such capacity), are in compliance with all health care laws applicable to the Company, or any of its

products or activities, including, but not limited to, the Health Care Laws. None of the Company Entities have received any notification, correspondence, or any other written or oral communication, including notification of any pending or threatened claim, suit, proceeding, hearing, enforcement, investigation, arbitration, or other action from any Governmental Body, including, without limitation, the FDA, the United States Federal Trade Commission, the United States Department of Health and Human Services Office of Inspector General, the United States Department of Justice and state Attorneys General or similar agencies of non-compliance by, or liability of, any of the Company Entities under any Health Care Laws, except, with respect to any of the foregoing, such as would not, individually or in the aggregate, have a Material Adverse Effect. To the Knowledge of the Company, there are no facts or circumstances that would be expected to give rise to material liability of the Company Entities (taken as a whole) under any Health Care Laws.

3.16. **Post-Market Reporting Obligations**. The Company Entities are complying in all material respects with all applicable regulatory post-market reporting obligations, including, without limitation, the FDA's adverse event reporting requirements at 21 CFR 803, and, to the extent applicable, the respective counterparts thereof promulgated by any Governmental Body in countries outside the United States.

3.17. **No Shutdowns or Prohibitions**. The Company Entities have not had any product or manufacturing site (whether owned by the Company Entities or that of a third party manufacturer for the Company Entities' products) subject to a Governmental Body (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other Governmental Body notice of inspectional observations, "warning letters," "untitled letters," requests to make changes to the Company's products, processes, or operations, or similar correspondence or notice from the FDA or other Governmental Body alleging or asserting material noncompliance with any applicable Health Care Laws. To the Knowledge of the Company, neither the FDA nor any other Governmental Body is considering such action.

3.18. **Data Privacy and Security Laws**. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, to the Knowledge of the Company, the Company Entities are, and at all times prior hereto have been, in compliance with all applicable state, federal, and international data privacy, security, and consumer protection Laws regarding the collection, processing retention, use, and protection of Personal Data, including, without limitation, applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"), the California Consumer Privacy Act, as amended by the California Privacy Rights Act ("CCPA"), and the European Union General Data Protection Regulation ("GDPR") (EU 2016/679) (collectively, the "Privacy Laws"). To facilitate compliance with the Privacy Laws, the Company Entities have in place and take commercially reasonable steps to comply in all material respects with their policies and procedures relating to data privacy and security and the collection, processing, storage, use, disclosure, handling, and analysis of Personal Data. No Person (including any Governmental Body) has made any claim or commenced any Proceeding relating to any Company Entity's privacy or data security practices, including with respect to the access, disclosure or use of Personal Data maintained by or on behalf of any Company Entity, or, threatened in writing any such Proceeding or conducted any investigation or inquiry thereof. The respective businesses and operations of the Company Entities have not

experienced any loss, damage, or unauthorized or unlawful access, disclosure, use, or breach of security of any Personal Data in any Company Entity's possession, custody, or control, or otherwise held or processed on its behalf, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing, none of the Company Entities: (i) has received notice of any liability, including, but not limited to security or data privacy breaches or other unauthorized or unlawful access to, processing or use of, or destruction of Personal Data, 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 paying a third party for, in whole or in part, any investigation, remediation, or other corrective action implemented by a third party pursuant to any Privacy Law; or (iii) is a party to any order or decree that imposes any obligation or liability under any Privacy Law.

3.19. **No Safety Notices**.

(a) Except as disclosed in Schedule 3.19(a) or the Company SEC Documents (other than the risk factors and forward-looking statement disclaimers, except for any factual historical statements contained therein), there have been no recalls market withdrawals, safety alerts or other notice of action, in each case relating to an alleged lack of safety or regulatory compliance of the Company Entities' products ("Safety Notices").

(b) To the Knowledge of the Company, there are no facts that would be reasonably likely to result in (i) a Safety Notice with respect to the Company Entities' products or services, (ii) a change in labeling of any the Company Entities' respective products or services as a result of an alleged lack of safety, or (iii) a termination or suspension of marketing or testing of any the Company Entities' products or services.

3.20. **Pre-Market Approvals**. For each device that the Company Entities currently manufacture, cause to be manufactured and distributes, or cause to be distributed for sale, including any material modification thereof, (the "Company Devices") that requires a 510(k) premarket notification or a Pre-Market Approval ("PMA") by the FDA, the Company has obtained such 510(k) clearance or PMA approval by the FDA, respectively, unless an exemption applies. To the Knowledge of the Company, all Company Devices as currently distributed have been labeled or promoted in a manner consistent with the 510(k) clearance, PMA approval, or exemption, applicable to each Company Device, other than has not and reasonably would not have resulted in any material fine, penalty or material notice of noncompliance. All Company Devices currently being commercialized are listed with the FDA and have been manufactured in a facility registered with FDA. The Company Entities have obtained the necessary regulatory authorization for their manufacturing facilities, and such facilities currently are not subject to any outstanding adverse action taken by the FDA. All Company Devices manufactured by the Company Entities or, to the Knowledge of the Company, which the Company Entities cause to be manufactured by third parties, are manufactured in all material respects in accordance with applicable Quality Systems Regulations, 21 C.F.R. Part 820. To the Knowledge of the Company, the Company Entities have submitted all reports necessary to be submitted in accordance with the Medical Device Reporting regulations, 21 C.F.R. Part 803. The Company Entities have labeled and promoted the Company Devices in all material respects with the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) (the "FDC Act") and FDA's implementing

regulations. The Company Devices are not misbranded, adulterated, or otherwise in violation of the FDC Act or FDA's regulations, or rules governing the current business of the Company Entities.

3.21. **Other Regulatory Matters**.

(a) None of the Company Entities has received notice from any Governmental Body regarding allegations of, or Governmental Body investigations into, research misconduct, including falsification or fabrication of data or plagiarism, with respect to any research activities in which any Company Entity was involved, including as sponsor or as otherwise having provided support for the research.

(b) To the Knowledge of the Company, none of the Company Entities has (i) made any untrue or fraudulent statement to a Governmental Body, or (ii) failed to disclose a material fact required to be disclosed to said Governmental Body, or committed any act, made a statement, or failed to make a statement that, at the time such disclosure was made, would provide a basis for the Governmental Body to invoke its policy regarding "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991) or any similar policy set forth in applicable Law.

(c) Except as set forth on Schedule 3.21(c), none of the Company Entities (i) is subject of a pending or threatened investigation by a Governmental Body or (ii) has been convicted of or charged or threatened in writing with prosecution or is under an investigation, subject to, or received notice of any actual or possible enforcement action by any Governmental Body or assessed and civil monetary penalty for any violation of any Health Care Laws.

3.22. **Title to Real and Personal Property**

(a) Each Company Entity has, and, upon the consummation of the Contemplated Transactions, will have, good and valid fee simple title to or rights to purchase, or valid leasehold interests in, or easements or other limited property interests in, all its Real Property and has good and marketable title to its personal property and assets (other than Intellectual Property), in each case, except for defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failure to have such valid title, rights or leasehold interest would not reasonably be expected to have a Material Adverse Effect. All such properties and assets that are material to the Company and to which the Company has good and valid fee simple or other marketable title to, are free and clear of Encumbrances, other than Permitted Encumbrances and any Encumbrances to be incurred in connection with the Plan.

(b) Each Company Entity is in compliance with all obligations under all leases (as may be amended from time to time) to which it is a party that have not been rejected in the Chapter 11 Case, except where the failure to comply has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and all such leases are in full force and effect (except to the extent subject to applicable to bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, moratorium, and similar laws affecting creditors' rights generally and to general principles of equity), except leases in respect of which

the failure to be in full force and effect have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Company Entity enjoys peaceful and undisturbed possession under all such leases to which it is a party, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.23. **Tax Matters**.

(a) All material Tax Returns required to be filed by or on behalf of any Company Entity have been properly prepared and duly and timely filed with the appropriate Taxing Authorities in all jurisdictions in which such Tax Returns are required to be filed (after giving effect to any valid or mutually agreed extensions of time in which to make such filings between the relevant Taxing Authority and Company). All material Taxes payable by or on behalf of any Company Entity directly or otherwise have been fully and timely paid, and adequate reserves or accruals for Taxes have been provided in the Most Recent Audited Balance Sheet or, in the case of tax periods that begin following the date of the Most Recent Audited Balance Sheet, the accounting books and records of the Company Entities in respect of any period for which Tax Returns have not yet been filed or for which Taxes are not yet due and owing. No agreement, waiver, or other document or arrangement extending or having the effect of extending the period for assessment or collection of a material amount of Taxes (including any applicable statute of limitations) has been executed or filed with the IRS or any other Governmental Body by or on behalf of any Company Entity.

(b) Each Company Entity has complied in all material respects with applicable Laws relating to the payment and withholding of Taxes and has duly and timely withheld from employee salaries, wages, and other compensation and have paid over to the appropriate Taxing Authorities or other applicable Governmental Bodies all material amounts required to be so withheld and paid over for all periods under all applicable Laws.

(c) All material deficiencies asserted or assessments made as a result of any examinations by any Taxing Authority or any other Governmental Body of the Tax Returns of or covering or including any Company Entity have been fully paid, and there are no other material audits, investigations, or other Proceedings by any Taxing Authority in progress, nor has any Company Entity received notice from any Taxing Authority or other applicable Governmental Body that it intends to conduct or commence such an audit, investigation or other Proceeding. Within the past three (3) years, no written claim has been made by any Taxing Authority or any other Governmental Body in a jurisdiction where a Company Entity does not file Tax Returns that such Company Entity is or may be subject to taxation in that jurisdiction. Other than Permitted Encumbrances, there are no material Encumbrances for Taxes with respect to any Company Entity, or with respect to the assets or business of any Company Entity, nor is there any such Encumbrance that is pending or threatened in writing.

(d) The Company is not currently a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

(e) No Company Entity has any liability for the Taxes of another Person under Treasury Regulation Section 1.1502-6 or any similar provision of state, local, or foreign law (other than another Company Entity or their Affiliates), as a transferee or successor, or by Contract (other than Contracts entered into in the Ordinary Course of Business the primary purpose of which is not Taxes).

(f) No Company Entity has participated in any reportable transaction within the meaning of Treasury Regulations Section 1.6011-4(b) (or any similar provision of state, local, or non-U.S. Tax law); provided, however, that the representation in this Section 3.23(f) does not apply to any transactions identified as "transactions of interest" in the final Treasury Regulations Section 1.6011-18 or to any transactions that are substantially similar thereto.

(g) No Company Entity will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Plan Effective Date as a result of (i) any change in method of accounting for a taxable period ending on or prior to the Plan Effective Date, (ii) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-United States income Tax Law) executed on or prior to the Plan Effective Date, (iii) any installment sale or open transaction disposition made on or prior to the Plan Effective Date, (iv) any use of the cash method of accounting or an improper method of accounting for a taxable period ending on or prior to the Plan Effective Date, or (v) any prepaid amount received or deferred revenue accrued on or prior to the Plan Effective Date.

3.24. **Labor and Employment Compliance**.

(a) Except as set forth on Schedule 3.24, each Company Entity is in compliance with all applicable Laws or Orders respecting labor and employment matters, including labor relations, terms and conditions of employment, equal employment opportunity, discrimination, harassment, retaliation, family and medical leave and other leaves of absence, disability benefits, affirmative action, employee privacy and data protection, health and safety, wage and hours, worker classification as employees or independent contractors, exempt or non-exempt under the Fair Labor Standards Act of 1938, child labor, immigration, recordkeeping, Tax withholding, unemployment insurance, workers' compensation, and plant closures and layoffs, except where the failure to comply with such applicable Laws or Orders would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.24 or as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, there is no, and during the past three (3) years there has been no, Proceeding pending or, to the Knowledge of the Company, threatened against any Company Entity alleging a violation of any such applicable Law or Order pertaining to labor or employment matters.

(b) There are no collective bargaining agreements, labor agreements, or any other labor-related agreements or arrangements to which any of the Company Entities is a party or otherwise subject with respect to any employee in the United States. Except as set forth on Schedule 3.24, within the past three (3) years in the United States, no labor union, labor organization, or other organization or group has (i) represented or purported to represent any employee, (ii) made a written demand to any of the Company Entities or, to the Knowledge of the

Company, to any Governmental Bodies for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending, threatened in writing or, to the Knowledge of the Company, verbally threatened to be brought or filed with the National Labor Relations Board or any other labor relations Governmental Body. Within the past three (3) years, there has been no actual or, to the Knowledge of the Company, threatened, labor arbitrations, grievances, labor disputes, strikes, lockouts, walkouts, slowdowns, or work stoppages, or picketing by any employee of any of the Company Entities. None of the Company Entities has committed an unfair labor practice (as defined in the National Labor Relations Act or any similar Law in any jurisdiction) within the past three (3) years, in each case.

(c) The Company Entities have not, within the past three (3) years, incurred any liability or effectuated an event giving rise to a notice obligation under the federal Worker Adjustment Retraining Notification Act, or any analogous state or local or foreign Law, including a "plant closing" or "mass layoff" (as those terms are defined in the federal Worker Adjustment Retraining Notification Act, or any analogous state or local or foreign Law), affecting, in whole or in part, any site of employment, facility, or operating unit of any of the Company Entities.

3.25. **Investment Company Act**. None of the Company Entities is an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder or is subject to regulation or required to be registered thereunder.

3.26. **Disclosure Statement**. The Disclosure Statement as approved by the Bankruptcy Court will conform with Section 1125 of the Bankruptcy Code.

3.27. **Insurance**. The material insurance policies purchased by or maintained for the benefit of the Company Entities are in amounts providing reasonably adequate coverage against all risks customarily insured against by companies in similar lines of business as the Company Entities (the "Insurance Policies"). The Insurance Policies are in full force and effect except to the extent that any such Insurance Policy has been replaced after the date hereof with comparable substitute insurance coverage. All premiums payable under the Insurance Policies have been paid to the extent such premiums are due and payable, and the Company Entities have otherwise complied with the terms and conditions of all of the Insurance Policies. To the Knowledge of the Company, as of the date hereof, no material written notice of cancelation or modification, threatened termination of, premium increase with respect to, or material alteration of coverage under, any of the Insurance Policies has been received other than in connection with ordinary renewals, and there is no existing material default or event which, with the giving of notice or lapse of time or both, would constitute a material default by any insured thereunder. No material claims of any Company Entities have been denied under any of the Insurance Policies since January 1, 2023. No Company Entities has received any notice of cancellation or any other indication that any Insurance Policy is no longer in full force or effect or will not be renewed or that the issuer of any Insurance Policy is not willing or able to perform its obligations thereunder.

3.28. **Environmental Matters**. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as disclosed in the Company SEC Documents (other than the risk factors and forward-looking statement disclaimers,

except for any factual historical statements contained therein), to the Knowledge of the Company (a) the Company Entities are, and have been since January 1, 2023, in compliance with all applicable Environmental Laws, (b) since January 1, 2023, no Company Entity has received any written notice alleging that such Company Entity is in violation of or liable under any Environmental Law, (c) the Company Entities possess and are, and have been since January 1, 2023, in compliance with all Licenses and Permits required under Environmental Laws for the operation of their respective businesses or the occupancy of their real property ("Environmental Permits"), (d) there is no Proceeding under or pursuant to any Environmental Law or Environmental Permit that is pending or, to the Knowledge of the Company, threatened against any Company Entity, (e) no Company Entity is subject to any Order imposed by any Governmental Body pursuant to Environmental Laws under which there are uncompleted, outstanding or unresolved obligations on the part of any Company Entity, (f) no lien has been recorded or, to the Knowledge of the Company threatened under any Environmental Law with respect to the assets or properties of any Company Entity, and (g) no Company Entity has released any Hazardous Substances at the Real Property, or any other location, in a manner that is reasonably likely to result in any obligation to conduct remedial activities for, or Proceeding against, any Company Entity under Environmental Laws.

3.29. **Intellectual Property**.

(a) The Company Entities own or possess adequate rights to use all IP Rights owned, licensed, or used by any Company Entity as such IP Rights are used in the business of any Company Entity (collectively, "Company IP Rights"), except where the failure to own or possess such rights to (or have adequate licenses related to) any such IP Rights would not, individually or in the aggregate, reasonably be expected have a Material Adverse Effect.

(b) The conduct of the businesses and operations of each Company Entity does not infringe, misappropriate, or otherwise violate, and has not infringed, misappropriated, or otherwise violated any IP Rights of any third party, except in such instances as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as disclosed in the Company SEC Documents (other than the risk factors and forward-looking statement disclaimers, except for any factual historical statements contained therein), no Company Entity has received any notice of any material claim of infringement, misappropriation, or other violation of any IP Rights of any third party as a result of the operation of the respective businesses and operations of any of the Company Entities, and there is no Proceeding pending, existing, instituted, outstanding, or, to the Knowledge of the Company, threatened regarding any of the foregoing.

(d) To the Knowledge of the Company, no third party has infringed, misappropriated, or otherwise violated any Company IP Rights or is infringing, misappropriating, or otherwise violating any Company IP Rights, except in such instances as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) None of the Company IP Rights owned by any Company Entity have been adjudged invalid or unenforceable in whole or in part and each item of the Company IP Rights owned by any Company Entity is subsisting and, valid and enforceable. The Company IP Rights

owned by any Company Entity are free and clear of Encumbrances, other than Permitted Encumbrances.

(f) The Company Entities have taken commercially reasonable actions to maintain all registrations and applications for Company IP Rights owned by any Company Entity in full force and effect and have taken commercially reasonable actions to maintain and protect the confidentiality of their trade secrets.

(g) The Company Entities own or possess valid rights to use all computer systems (including hardware, software databases, firmware, and related equipment), communications systems, and networking systems used, owned, outsourced, leased, or licensed by the Company Entities (the "Company IT Systems") in the manner in which they are used in the operation of the Company Entities' businesses and operations. The Company IT Systems are adequate for, and operate and perform in accordance with their documentation and functional specifications and otherwise as reasonably required in connection with the immediate and anticipated future needs of the operation of the Company Entities' respective businesses and operations as of the date hereof, and there has not been any failure with respect to any of such Company IT Systems that has not been remedied or replaced, except to the extent that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company Entities have implemented and maintained commercially reasonable backup, security and disaster recovery technology consistent with industry practices for their Company IT Systems. To the Knowledge of the Company, no Person has gained unauthorized access to nor has there been any breach or violation involving any Company IT Systems, except in such instances as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.30. **Benefit Plans**.

(a) "Benefit Plans" means any of the following (whether written or unwritten): (i) any "employee welfare benefit plan," as defined in Section 3(1) of ERISA, including any medical plan, life insurance plan, short-term or long-term disability plan, dental plan, or sick leave plan, (ii) any "employee pension benefit plan," as defined in Section 3(2) of ERISA, including any excess benefit, top hat plan or any qualified or nonqualified deferred compensation or retirement plan or arrangement, or (iii) any other plan, policy, program, or Contract which provides compensation or benefits, including any severance Contract or plan, personnel policy, vacation time, holiday pay, tuition reimbursement program, service award, moving expense reimbursement programs, fringe benefit plan or program, bonus or incentive plan, garden leave, pension, savings, retirement, Code Section 125 "cafeteria" or "flexible" benefit, employee loan, relocation, repatriation, equity appreciation, stock option, restricted stock, phantom stock, profit sharing, stock bonus or deferred bonus or compensation plan, salary reduction, change-of-control or employment Contract (or consulting Contract with a former employee or otherwise), maintained, administered, or contributed to by any Company Entity, or with respect to which any Company Entity has, or could reasonably be expected to have (including as an ERISA Affiliate (as defined below)) any liability for, on behalf of, or with respect to any current or former officers, directors, employees, or individual consultants of any Company Entity or predecessor thereof, excluding, in each case, (A) any "multiemployer plan" (as defined in Section 3(37) of ERISA) or similar type of plan maintained by a labor organization, whether or not subject to ERISA and (B) any plan, program,

policy, or arrangement required by applicable Law or maintained or administered by a Governmental Body. "ERISA Affiliate" means, with respect to any Company Entity, any member of any group of organizations, whether or not incorporated, that would be treated as part of a controlled group as described in Section 414(b) or (c) of the Code or a single employer under Section 4001(b) of ERISA. Each Benefit Plan with respect to the Company and any of its Subsidiaries that is organized in the United States (i) has been established, funded, administered, and maintained in compliance with its terms and the requirements of any applicable Laws or Orders, including ERISA and the Code and (ii) that is intended to be "qualified" within the meaning of Section 401(a) of the Code has either received a favorable determination letter from the IRS or may rely on a favorable opinion letter issued by the IRS. The Company Entities have received no notice that a Benefit Plan is currently subject to any claims, investigations, or audits (and to the Knowledge of the Company none are contemplated or threatened) by any Governmental Body.

(b) (i) All liabilities or expenses of the Company Entities in respect of any Benefit Plan (including workers compensation) that have not been paid as of the date of the Financial Statements have been properly accrued on the Financial Statements in compliance with GAAP (or applicable accounting convention), to the extent required and in a manner consistent with Section 3.12(a), and (ii) all contributions (including all employer contributions and employee salary reduction contributions) or premium payments required to have been made under the terms of any Benefit Plan, or in accordance with applicable law, as of the date of the Financial Statements have been timely made or paid or reflected on the Financial Statements in accordance with GAAP (or applicable accounting convention), to the extent required and in a manner consistent with Section 3.12(a).

(c) None of the Benefit Plans is, and the Company Entities do not maintain, contribute to, have an obligation to contribute to, or have or could reasonably be expected to have any liability (including with respect to an ERISA Affiliate) with respect to (i) a multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) subject to Title IV of ERISA; (ii) a multiple employer plan (within the meaning of Section 413(c) of the Code); (iii) a "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA); (iv) a "voluntary employee beneficiary association" (within the meaning of Section 501(c)(9) of the Code); or (v) a plan subject to Title IV of ERISA or Section 412 or Section 4971 of the Code. There are no material reserves, plan assets, surpluses or prepaid premiums with respect to any Benefit Plan which is a "welfare plan" (as defined in Section 3(1) of ERISA) subject to ERISA.

(d) No Benefit Plan provides medical, health, or life insurance benefits to retirees or former employees, consultants, or individuals whose employment with any Company Entity has terminated or the spouses or dependents of any of the foregoing (except for continued health benefit coverage as required to be provided under Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA or applicable similar state Law).

(e) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment becoming due, or increase the amount of any compensation due, to any current or former officer, director, employee, or individual consultant of any Company Entity under any Benefit Plan; (ii) increase any benefits otherwise payable under any Benefit Plan; (iii) result in the acceleration of the time of payment or

vesting of any such compensation or benefits under any Benefit Plan; or (iv) result in the payment of any amount that would reasonably be expected to, individually or in combination with any other payment, constitute an "excess parachute payment," as defined in Section 280G(b)(1) of the Code. No current or former officer, director, employee, or individual consultant of any Company Entity has a right to receive a gross-up payment from any Company Entity with respect to any excise or additional income taxes that may be imposed upon such individual pursuant to Section 409A or Section 4999 of the Code.

(f) Neither the Company Entities nor, to the Knowledge of the Company, any trustee, fiduciary, or administrator of any Benefit Plan or trust created thereunder has engaged in a non-exempt prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) or breach of fiduciary duty (as described in ERISA) in connection with a Benefit Plan which would reasonably be expected to subject any of the Company Entities or any such Benefit Plan to a civil penalty or Tax under ERISA or the Code, including a civil penalty assessed pursuant to Section 409 or Section 502(i) of ERISA or a Tax imposed pursuant to Section 4975 or Section 4976 of the Code, except any of the foregoing that would not, individually or in the aggregate, reasonably be expected to result in material liability to the Company Entities.

(g) To the Knowledge of the Company, in the last five (5) years, no allegations of sexual or other unlawful harassment or discrimination have been made against any officer or employee of any Company Entity. During such period, there have been no Proceedings or settlements involving such matters or Persons.

(h) With respect to each Benefit Plan that is subject to the Laws of relevant jurisdictions other than the United States (each, a "Foreign Plan"): (i) each Foreign Plan is in compliance with the applicable provisions of Law and regulations regarding employee benefits, mandatory contributions and retirement plans of each jurisdiction in which each such Foreign Plan is maintained, to the extent those Laws are applicable to such Foreign Plan; (ii) each Foreign Plan has been administered at all times and in accordance with its terms; (iii) there are no pending investigations by any Governmental Body involving any Foreign Plan, and no pending claims (except for claims for benefits payable in the normal operation of the Foreign Plans), suits or proceedings against any Foreign Plan; (iv) the transactions contemplated by this Agreement, by themselves or in conjunction with any other transactions, will not create or otherwise result in any material liability, accelerated payment or any enhanced benefits with respect to any Foreign Plan; and (v) each Foreign Plan has been funded in accordance with the terms of such Foreign Plan and liabilities with respect to such Foreign Plans that have been incurred prior to the date of the Financial Statements have been reflected in the Financial Statements to the extent required and in a manner consistent with Section 3.12(a).

3.31. **Absence of Certain Changes**. Since January 1, 2023 to the date of this Agreement, there has not occurred a Material Adverse Effect.

4. **Representations and Warranties of the Commitment Parties**. Each Commitment Party, as applicable, severally and not jointly, hereby represents and warrants to the Company, as of the Execution Date and as of the Plan Effective Date (except for representations and warranties made as of a specified date, which shall are made as of such date), as set forth in this Section 4.

4.1. **Organization of Such Commitment Party**. Such Commitment Party is a legal entity duly incorporated, organized or formed (as applicable), validly existing and in good standing under the Laws of its jurisdiction of incorporation, organization or formation (as applicable), with full corporate, partnership, or limited liability company (as applicable) power and authority to conduct its business as it is now conducted.

4.2. **Authority; No Conflict**.

(a) Such Commitment Party (i) has the requisite corporate, partnership, limited liability company, or other organizational (as applicable) power and authority (A) to enter into, execute and deliver this Agreement and each other Definitive Document to which such Commitment Party is (or will be) a party and (B) to perform its obligations and consummate the transactions contemplated hereby and thereby, and (ii) has taken all necessary corporate, partnership, limited liability company, or other organizational (as applicable) action required for (x) the due authorization, execution and delivery by such Commitment Party of this Agreement and (y) the performance and consummation of the transactions contemplated hereby by such Commitment Party. This Agreement and each other Definitive Document to which such Commitment Party is (or will be) a party has been, or prior to its execution and delivery will be, duly and validly executed and delivered by such Commitment Party. This Agreement constitutes the legal, valid, and binding obligation of such Commitment Party, enforceable against such Commitment Party in accordance with its terms, except that such enforcement may be limited by the Enforceability Exceptions.

(b) Neither the execution and delivery by such Commitment Party of this Agreement, each other Definitive Document to which such Commitment Party is (or will be) a party, nor the performance or consummation by such Commitment Party of any of the transactions contemplated hereby and thereby will, directly or indirectly (with or without notice or lapse of time or both): (i) contravene, conflict with, or result in a violation, breach or default of any provision of the Organizational Documents of such Commitment Party or in any material respect with any Law or regulation applicable to it; or (ii) conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute a default under (with or without notice or lapse of time, or both), or result in the acceleration of, or the creation of any Encumbrance under, any Contract to which such Commitment Party is a party or by which such Commitment Party is bound or to which any of the properties or assets of such Commitment Party are subject; except in in the cases described in clause (ii), for any conflict, breach, violation, default, acceleration or Encumbrance which would not reasonably be expected, individually or in the aggregate, to prohibit, materially delay or materially and adversely impact such Commitment Party's performance of its obligations under this Agreement.

(c) Except (x) for Consents which have been obtained, notices which have been given and filings which have been made, and (y) where the failure to give any notice, obtain any Consent or make any filing would not reasonably be expected, individually or in the aggregate, to prohibit, materially delay, or materially and adversely impact such Commitment Party's performance or consummation of its obligations under this Agreement, such Commitment Party is not and will not be required to give any notice to, make any filing with, or obtain any Consent from, any Person in connection with the execution and delivery by such Commitment Party of this Agreement, each other Definitive Document to which such Commitment Party is (or will be) a

party, or the consummation or performance by such Commitment Party of any of the transactions contemplated hereby and thereby.

4.3. **Backstop Securities, Rights Offering Securities, Direct Allocation Share, and Cash-Out Issued Equity Not Registered**. Each Commitment Party understands that (a) none of the Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and Direct Allocation Shares have been registered under the Securities Act and (b) the Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and Direct Allocation Shares are being offered and sold pursuant to a specific exemption from registration based in part upon such Commitment Party's representations contained in this Agreement and cannot be sold by such Commitment Party unless subsequently registered under the Securities Act or an exemption from registration is available.

4.4. **Acquisition for Own Account**. Such Commitment Party is acquiring the Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and/or Direct Allocation Shares, as applicable, for its own account (or for the accounts for which it is acting as investment advisor or manager) for investment and not with a present view toward distribution, within the meaning of the Securities Act. Subject to the foregoing, by making the representations herein, such Commitment Party does not agree to hold its Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and/or Direct Allocation Shares, as applicable, for any minimum or other specific term and reserves the right to dispose of its Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and/or Direct Allocation Shares, as applicable, at any time in accordance with or pursuant to a registration statement or exemption from the registration requirements under the Securities Act and any applicable state securities Laws.

4.5. **Eligible Commitment Party**. Such Commitment Party is an Accredited Investor or Qualified Institutional Buyer and has such knowledge and experience in financial and business matters that such Commitment Party is capable of evaluating the merits and risks of its investment in the Backstop Securities, Rights Offering Securities, Cash-Out Issued Equity, and/or Direct Allocation Shares, as applicable. Anything herein to the contrary notwithstanding, except with respect to Section 3.6 or with respect to the first sentence of this this Section 4.5, nothing contained in any of the representations, warranties, or acknowledgements made by any Commitment Party in this Section 4.5 will operate to modify or limit in any respect the representations and warranties of the Company Entities or the making of misleading statements or the omission of material facts in connection with the transactions contemplated herein (other than any statements made in reliance on information concerning and furnished by the Commitment Parties). Such Commitment Party understands and is able to bear any economic risks associated with such investment. Except for the information set forth in the Disclosure Statement and the representations and warranties expressly set forth in this Agreement, the RSA, and any other Definitive Document, such Commitment Party has independently evaluated the merits and risks of its decision to enter into this Agreement and disclaims reliance on any representations or warranties, either express or implied, by or on behalf of any of the Company Entities.

4.6. **Voteable Claims**. Each Commitment Party has not entered into any Contract to Transfer, in whole or in part, any portion of its right, title or interest in such Company Claims/Interests where such Transfer would prohibit such Commitment Party from complying with the terms of this Agreement or the RSA.

4.7. **No Broker's Fees**. Such Commitment Party is not a party to any Contract with any Person (other than this Agreement and any Contract giving rise to the Commitment Expenses hereunder) that would give rise to a valid claim against any of the Company Entities for a brokerage commission, finder's fee or like payment in connection with the Rights Offering, the Cash-Out Offering or the sale of the Unsubscribed Securities.

4.8. **Arm's Length**. Such Commitment Party acknowledges and agrees that (a) the Company Entities are acting solely in the capacities of arm's-length contractual counterparties to such Commitment Party with respect to the transactions contemplated hereby (including in connection with determining the terms of the Rights Offering) and not as a financial advisor or a fiduciary to, or an agent of, such Commitment Party and (b) none of the Company Entities are advising such Commitment Party as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction.

4.9. **Sufficiency of Funds**. Each Commitment Party has the financial capacity to perform all of its obligations under this Agreement, including, on the Business Day on which the Deposit Deadline occurs, available funds sufficient to pay, as applicable, such Commitment Party's Aggregate Purchase Price.

5. **Covenants of the Company**. The Company hereby agrees with the Commitment Parties as set forth in this Section 5.

5.1. **Approval of this Agreement**. The Equity Rights Offering Backstop Commitment Order or the Confirmation Order shall (a) authorize and approve (i) this Agreement and the execution, delivery and performance by the Debtor of this Agreement, (ii) the payment of the expenses and other amounts required to be paid by the Debtor hereunder (including the Put Option Premium and the Commitment Expenses), which shall constitute allowed super-priority administrative claims against the Debtor's estate under sections 503(b) and 507(a)(1) of the Bankruptcy Code, and (iii) the indemnification and contribution provisions set forth herein, (b) release and exculpate the Commitment Parties and their respective Affiliates and Representatives from any liability for participation in the transactions contemplated hereby or any of the other Contemplated Transactions in accordance with the RSA and the Plan, (c) authorize and approve all documents, instruments, agreements, and other materials entered into, delivered, distributed or otherwise used in connection with the Rights Offering and the Cash-Out Offering (including the Rights Offering Procedures and Common Equity Convenience Buyout Procedures), and (d) otherwise be in form and substance reasonably satisfactory to the Requisite Commitment Parties; provided that the signature pages, exhibits, and schedules to any copy of this Agreement that is filed with the Bankruptcy Court shall be subject to redaction as the Requisite Commitment Parties determine, including redacting (w) the names of the Commitment Parties, (x) the Backstop Commitment Percentage or Direct Allocation Commitment Percentage, (y) any component of the Put Option Premium, and (z) any component of the Aggregate Purchase Price with respect to each Commitment Party.

5.2. **Conditions Precedent**. The Company shall, and shall cause the other Company Entities to, satisfy or cause to be satisfied all the conditions precedent set forth in Section 7.1 hereof and the Plan (including procuring and obtaining all Consents, authorizations and waivers of, making all filings with, and giving all notices to, Persons (including Governmental

Bodies) which may be necessary or required on its part in order to consummate or effect the transactions contemplated herein); provided, however, that nothing contained in this Section 5.2 shall obligate the Company to waive any right or condition under this Agreement, the RSA, or any of the other Definitive Documents.

5.3. **Notification**. The Company shall: (a) on request by any of the Commitment Parties, (i) cause the Rights Offering Agent to notify each of the Commitment Parties in writing of the aggregate amount of Rights Offering Securities that the Rights Offering Participants have subscribed for pursuant to the Rights Offering as of the close of business on the Business Day preceding such request or the most recent practicable time before such request, as the case may be and (ii) cause the Cash-Out Agent to notify each of the Commitment Parties in writing of the aggregate amount of Sold Cash-Out Securities that the Cash-Out Offering Participants have elected to sell pursuant to the Cash-Out Offering as of the close of business on the Business Day preceding such request or the most recent practicable time before such request, as the case may be; and (b) following the Subscription Form and Funding Deadline, (i) cause the Rights Offering Agent and Cash-Out Agent, as applicable, to notify each of the Commitment Parties in writing, within seven (7) Business Days after the Subscription Form and Funding Deadline, of the aggregate amount of Unsubscribed Securities and Sold Cash-Out Securities and (ii) timely comply with their obligations under Section 1.5(a) hereof.

5.4. **Use of Proceeds**. The Company shall use the net cash proceeds from the sale of the Direct Allocation Shares, the Rights Offering Securities from the Rights Offering, and the sale of the Backstop Securities pursuant to this Agreement for the purposes identified in the Disclosure Statement and the Plan. For the avoidance of doubt, there shall be no net cash proceeds in connection with the Cash-Out Offering (including the purchase of the Sold Cash-Out Securities and issuance of the Cash-Out Issued Equity).

5.5. **HSR Act and Foreign Regulatory Filings**. The Company Entities and the applicable Commitment Parties, shall, as soon as practicable after the Execution Date, prepare and file all necessary documentation and effect all applications that are necessary under the HSR Act and with respect to any applicable foreign competition, antitrust, merger control, or foreign direct investment Laws, so that all applicable waiting periods shall have expired or been terminated thereunder and all required consents, authorizations, or approvals under the aforementioned laws have been obtained with respect to the purchase of the Direct Allocation Shares, the purchase of the Sold Cash-Out Securities, the issuance of the Cash-Out Issued Equity, the purchase of the Backstop Securities hereunder, the issuance and purchase of Rights Offering Securities in connection with the Rights Offering, or any of the other Contemplated Transactions in time for such transactions to be consummated within the timeframes contemplated hereunder and under the RSA, and not take any action, or fail to take any action, that is intended or reasonably likely to materially impede or delay the ability of the parties to obtain any necessary approvals required for the Contemplated Transactions. The Company Entities shall bear all costs and expenses of the Company Entities in connection with the preparation or the making of any filing under the HSR Act or applicable foreign competition, antitrust, merger control, or foreign direct investment Laws, including any filing fees thereunder, and the Company shall reimburse the Commitment Parties for their fees and expenses (including attorneys' fees and other legal fees and expenses) incurred in connection with the preparation of its portion of any such filings in accordance with the RSA.

5.6. **Milestones**. The Company shall, and shall cause the other Company Entities to, cause each of the Milestones set forth in the RSA to be satisfied (giving effect to any amendment, modification, supplement, or waiver of or to any of the Milestones that are made or provided in accordance with the terms of the RSA).

5.7. **Conduct of Business**.

(a) Except (x) as set forth in or contemplated by this Agreement or any other Definitive Document, (y), or with the prior written consent of the Requisite Commitment Parties, or (z) as set forth in Schedule 5.7, during the period from the date of this Agreement to the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with its terms, the Company shall, and shall cause the Company Entities to, operate in the Ordinary Course of Business.

(b) The following shall be deemed to occur outside of the Ordinary Course of Business of the Company Entities and shall require the prior written consent of the Requisite Commitment Parties:

(i) entry into, or any material amendment, modification, termination, waiver, supplement, restatement, or other change to, any Material Contract (other than (A) any Material Contracts that are otherwise addressed by clause (iv) below, (B) any such amendment modification, waiver, supplement, restatement or other change that is no less favorable to the applicable Company Entities than the Contract prior thereto, or (C) any extension of a Material Contract on substantially similar terms in the ordinary course of business);

(ii) entry into, or any material amendment, modification, waiver, supplement, restatement or other change to, any employment agreement or arrangement with its officers or members of senior management to which any of the Company Entities is a party (other than (A) any such amendment, modification, waiver, supplement, restatement, or other change that is no less favorable to the Company Entities than the employment agreement as in effect prior thereto and (B) any extension of such an employment agreement or arrangement on substantially similar terms in the Ordinary Course of Business);

(iii) except as contemplated by the MIP Term Sheet, any (A) material increase in the benefits of or the compensation (whether in the form of salary, hourly rate, bonus, target bonus, equity award, severance, or otherwise) payable to any current or former employee, director, or individual independent contractor, or granting of any bonus, benefit payment (contingent or otherwise) or other direct or indirect compensation to any such individual, or (B) adoption or amendment of any agreement that has the effect of the foregoing;

(iv) the adoption, termination, or material amendment of any Benefit Plan or other management or employee incentive, bonus, benefit, termination pay, deferred compensation, retention, equity-based or equity plan, program, policy, agreement, or arrangement by any of the Company Entities;

(v) entry into, or any amendment, modification, waiver, supplement, restatement or other change to, any Contract between any Company Entity, on the one hand, and any director, officer, or greater than ten percent (10%) shareholder of the Company (other than any extension of a Contract on substantially similar terms in the ordinary course of business);

(vi) (A) make or change any material election in respect of Taxes or accounting policies of any of the Company Entities; (B) adopt or change any material method of accounting for Tax purposes; (C) file any amended Tax Return with respect to income or other material Taxes; (D) enter into any closing agreement with respect to income or other material Taxes; (E) settle or compromise any Tax claim, action, or assessment in respect of income or other material Taxes; (F) surrender any right to claim a refund, offset or other reduction of income or other material Taxes; (G) consent to any extension or waiver of the limitation period applicable to any income or other material Tax claim or assessment; or (H) enter into any Contract in respect of income or other material Taxes with any Governmental Body; and

(vii) commencement, release, assignment, compromise, discharge, waiver, settlement, agreement to settle, or satisfaction of any material Proceeding.

(c) Except as otherwise provided in this Agreement, nothing in this Agreement shall give the Commitment Parties, directly or indirectly, any right to control or direct the operations of any of the Company Entities.

5.8. **Private Company**.

(a) The Company shall use its commercially reasonable efforts to (i) emerge from the Chapter 11 Case on the Plan Effective Date as a private company and the Reorganized Common Equity shall not be listed on a public stock exchange, (ii) not be a public reporting company pursuant to the Exchange Act and the rules and regulations promulgated thereunder, nor shall it be voluntarily subjected to any reporting requirements promulgated by the SEC, and (iii) not be required to list the Reorganized Common Equity on a U.S. or any foreign stock exchange.

(b) To the extent the following actions have not been completed on or prior to the Plan Effective Date, the Company shall (i) take all actions reasonably necessary or desirable to delist the Existing Common Interests from the Nasdaq Global Select Market and to deregister under the Exchange Act as promptly as practicable in compliance with SEC rules, (ii) file post-effective amendments to terminate all of the Company's effective registration statements under the Securities Act and deregister any and all unsold securities thereunder, (iii) file a Form 15 to terminate the Company's registration under the Exchange Act and to suspend the Company's reporting obligations under the Exchange Act with respect to the Existing Common Interests, and (iv) take all actions reasonably necessary or desirable to ensure (A) that the Reorganized Common Equity shall not be listed on a public securities exchange and that the Company shall not be required to list the Reorganized Common Equity on a recognized securities exchange, except, in each case, as otherwise may be required pursuant to the New Organizational Documents, as

applicable, and (B) that the Company shall not be voluntarily subjected to any reporting requirements promulgated by the SEC.

5.9. **Opportunity to Cure**. Subject to and without limiting Section 1.5(c) hereof, the Company shall permit each Commitment Party to cure, and shall provide the opportunity to cure, within such time as determined by the Company in good faith to be appropriate, any failure to submit Subscription Forms in accordance with the Rights Offering Procedures, or any defect or irregularity in Subscription Forms or otherwise in connection with its exercise of Subscription Rights under the Rights Offering Procedures.

5.10. **Company RSA Covenants**. Each of the covenants and agreements set forth in Section 6 of the RSA (as in effect on the Execution Date) (collectively, the "Company RSA Covenants"), are hereby incorporated herein by reference with full force and effect as if fully set forth herein by applying the provisions thereof *mutatis mutandis* (such that all changes and modifications to the defined terms and other terminology used in the Company RSA Covenants shall be made so that the Company RSA Covenants can be applied in a logical manner in this Agreement), and the Company shall, and shall cause the Company Entities to, perform, abide by and observe, for the benefit of the Commitment Parties, all of the Company RSA Covenants as incorporated herein and modified hereby. The Company Entities shall not assert, or support any assertion by any third party, that the Company RSA Covenants, as incorporated herein and modified hereby, are not enforceable by the Commitment Parties by reason of the fact that the Company RSA Covenants are included in a Contract that was entered into by the Company Entities prior to the Petition Date or otherwise, or that the Requisite Commitment Parties shall be required to obtain relief from the automatic stay from the Bankruptcy Court as a condition to the right of the Requisite Commitment Parties to terminate this Agreement pursuant to Section 8(b) on account of a breach or violation of any of the Company RSA Covenants that has not been otherwise cured or waived in accordance with the RSA.

6. **Covenants of the Commitment Parties**.

6.1. **Conditions Precedent**. Each Commitment Party shall use its commercially reasonable efforts to satisfy or cause to be satisfied on or prior to the Plan Effective Date all of the conditions precedent applicable to such Commitment Party set forth in Section 7.2 hereof; provided, however, that nothing contained in this Section 6.1 shall obligate the Commitment Parties to waive any right or condition under this Agreement, the RSA, or any of the other Definitive Documents.

6.2. **Commitment Party RSA Covenants**. Each of the covenants and agreements set forth in Section 4 of the RSA (as in effect on the Execution Date) (collectively, the "Commitment Party RSA Covenants"), are hereby incorporated herein by reference with full force and effect as if fully set forth herein by applying the provisions thereof *mutatis mutandis* (such that all changes and modifications to the defined terms and other terminology used in the Commitment Party RSA Covenants shall be made so that the Commitment Party RSA Covenants can be applied in a logical manner in this Agreement), and the Commitment Parties shall perform, abide by and observe, for the benefit of the Company, all of the Commitment Party RSA Covenants as incorporated herein and modified hereby.

7. **Conditions to Closing**.

7.1. **Conditions Precedent to Obligations of the Commitment Parties**. The obligations of the Commitment Parties, as applicable, to purchase or cause to be purchased the Direct Allocation Shares pursuant to their respective Direct Allocation Commitments, subscribe for and purchase or cause to be subscribed for and purchased Rights Offering Securities and Backstop Securities pursuant to their respective Rights Offering Commitments and Backstop Commitments, and to provide the Cash-Out Funding for the Company to purchase Sold Cash-Out Securities, are subject to the satisfaction (or waiver in writing by the Requisite Commitment Parties in their sole discretion) of each of the following conditions prior to or on the Plan Effective Date:

(a) RSA. None of the following shall have occurred: (i) the RSA shall have been terminated in accordance with the provisions thereof by Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes; (ii) the RSA shall have been terminated in accordance with the provisions thereof by the Company as to Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes; (iii) the RSA shall have been invalidated or deemed unenforceable by an order of the Bankruptcy Court or any other Governmental Body; and (iv) a default shall have occurred or termination right shall have been triggered under the RSA and that would permit Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes on such date to terminate the RSA in accordance with its terms, except as has been waived or cured.

(b) Plan and Plan Supplement. (i) the Plan, as confirmed by the Bankruptcy Court, shall be consistent with the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties and (ii) the Plan Supplement (including all schedules, documents, and forms of documents contained therein or constituting a part thereof) shall be consistent with the terms of the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties.

(c) Disclosure Statement Order. (i) the Bankruptcy Court shall have entered the Disclosure Statement Order, (ii) the Disclosure Statement Order shall be consistent with the terms of this Agreement and the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties, and (iii) the Disclosure Statement Order shall be a Final Order (it being understood that the Confirmation Order may also be the Disclosure Statement Order for the purposes of this Section 7.1(c)).

(d) Equity Rights Offering Backstop Commitment Order. (i) the Bankruptcy Court shall have entered the Equity Rights Offering Backstop Commitment Order, (ii) the Equity Rights Offering Backstop Commitment Order shall be consistent with the terms of this Agreement and the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties, and (iii) the Equity Rights Offering Backstop Commitment Order shall be a Final Order.

(e) Confirmation Order. (i) the Bankruptcy Court shall have entered the Confirmation Order, (ii) the Confirmation Order shall be consistent with the terms of this Agreement and the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties, and (iii) the Confirmation Order shall be a Final Order. Without

limiting the generality of the foregoing, the Confirmation Order shall contain the following specific findings of fact, conclusions of Law and Orders: (A) each of the Specified Issuances described in clauses (a)–(c) of the definition of "Specified Issuances" are exempt from the registration and prospectus delivery requirements of Section 5 of the Securities Act pursuant to section 1145(a) of the Bankruptcy Code, except that any such Specified Issuances issued to an entity that is an "underwriter" with respect to such securities as that term is defined in Section 1145(b) of the Bankruptcy Codes shall be issued in reliance upon Section 4(a)(2) of the Securities Act; (B) each of the Specified Issuances described in clauses (d)–(g) of the definition of "Specified Issuances" are exempt from the registration and prospectus delivery requirements of Section 5 of the Securities Act pursuant to Section 4(a)(2) of the Securities Act; (C) the solicitation of acceptance or rejection of the Plan by the Commitment Parties and/or any of their respective Related Persons (if any such solicitation was made) was done in good faith and in compliance with the applicable provisions of the Bankruptcy Code and, as such, the Commitment Parties and any of their respective Related Persons are entitled to the benefits and protections of section 1125(e) of the Bankruptcy Code; and (D) the participation by the Commitment Parties and/or any of their respective Related Persons in the offer, issuance, sale, or purchase of any security offered, issued, sold, or purchased under the Plan (if any such participation was made) was done in good faith and in compliance with the applicable provisions of the Bankruptcy Code and, as such, the Commitment Parties and any of their respective Related Persons are entitled to the benefits and protections of section 1125(e) of the Bankruptcy Code.

(f) Conditions to Effectiveness of Plan. The conditions to the Plan Effective Date set forth in the Plan shall have been satisfied (or waived in accordance with the Plan) in accordance with the Plan, and the Plan Effective Date shall have occurred or shall occur substantially simultaneously with the Closing.

(g) Direct Allocation; Rights Offering and Backstop. (i) The issuance of the Direct Allocation Shares shall have been (or concurrently with the Closing will be) consummated pursuant to this Agreement, (ii) the Rights Offering shall have been conducted and consummated in accordance with the RSA and this Agreement, and (iii) all Rights Offering Securities and Backstop Securities shall have been (or concurrently with the Closing will be) sold in connection with the Rights Offering and/or pursuant to this Agreement.

(h) Cash-Out Offering. (i) The Sold Cash-Out Securities shall have been (or concurrently with the Closing will be) purchased by the Company (ii) the Cash-Out Issued Equity shall have been (or concurrently with the Closing will be) issued to the applicable Backstop Parties in accordance with this Agreement and (iii) the Cash-Out Offering shall have been conducted and consummated in accordance with the RSA and this Agreement.

(i) New Shareholders Agreement. (i) The Company and all Persons that receive shares of Reorganized Common Equity pursuant to the Plan (including pursuant to the Rights Offering or this Agreement) shall have been deemed, pursuant to the Plan, Confirmation Order, or otherwise, to be party to the New Shareholders Agreement, and (ii) the New Shareholders Agreement shall be (A) consistent with the terms of the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties, and (B) in full force and effect.

(j) Other Definitive Documents. All Definitive Documents (other than those Definitive Documents described in a separate clause of this Section 7.1) shall (i) have been executed, delivered, and/or filed by the parties thereto, (ii) be consistent with the terms of this Agreement and the RSA and otherwise in form and substance reasonably acceptable to the Requisite Commitment Parties, and (iii) be, concurrently with the Closing, in full force and effect.

(k) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction, judgment or other Order preventing the consummation of any of the transactions contemplated by this Agreement or any of the other Contemplated Transactions shall have been entered, issued, rendered or made, nor shall any Proceeding by a Governmental Body seeking any of the foregoing be commenced, pending or threatened in writing that could reasonably be expected to prevent the consummation of any of the transactions contemplated by this Agreement or any of the other Contemplated Transactions; nor shall there be any Law promulgated, enacted, entered, enforced, or deemed applicable to any of the Commitment Parties, the Company, or any of the other Company Entities which makes the consummation of any of the transactions contemplated by this Agreement or any of the other Contemplated Transactions (including each of the Specified Issuances) illegal or void.

(l) Notices and Consents. All Governmental Body and material third party notifications, filings, waivers, authorizations, and other Consents, including Bankruptcy Court approval, necessary or required for the consummation of any of the transactions contemplated by this Agreement or any of the other Contemplated Transactions or the effectiveness of the Plan shall have been obtained and be in full force and effect.

(m) Representations and Warranties of the Company. Each of the (i) representations and warranties of the Company in this Agreement (other than the Fundamental Representations) shall be true and correct as set forth in Section 3 hereof, except to the extent that any such inaccuracy would not reasonably be expected to prohibit, materially delay, or materially and adversely impact the Company's performance or consummation of its obligations under this Agreement or the Restructuring Transactions or otherwise have a Material Adverse Effect, and (ii) the Fundamental Representations shall be true and correct in all respects as set forth in Section 3, in each case of clauses (i) and (ii), at and as of the Execution Date and at and as of the Plan Effective Date as if made at and as of the Plan Effective Date (except for representations and warranties made as of a specified date, which shall be true and correct as set forth in Section 3 (as contemplated by clause (i) or (ii), as applicable) only as of the specified date).

(n) Covenants. The Company and each of the other Company Entities shall have complied with all covenants as set forth herein (including the Company RSA Covenants incorporated herein by reference) that are applicable to the Company Entities, except to the extent that any non-compliance with such covenants would not reasonably be expected to prohibit, materially delay, or materially and adversely impact the Company's or any other Company Entity's performance or consummation of its obligations under this Agreement or the Restructuring Transactions or otherwise have a Material Adverse Effect on the Company Entities, taken as a whole.

(o) Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect.

(p) Commitment Expenses. The Company shall have paid all Commitment Expenses that remain unpaid as of the Plan Effective Date in accordance with the terms of this Agreement and the RSA.

(q) Put Option Premium. The Company shall have paid, or shall pay contemporaneously with the Closing, the Put Option Premium in accordance with Sections 1.7(a) and 1.7(b).

(r) Backstop Certificate. The Commitment Parties shall have received a Backstop Certificate in accordance with Section 1.5(a).

(s) No Registration; Compliance with Securities Laws. No Proceeding shall be threatened in writing by a Governmental Body or pending or before any Governmental Body or other Person that alleges that any of the Specified Issuances is not exempt from the registration and prospectus delivery requirements of Section 5 of the Securities Act.

(t) Company Officer's Certificate. The Commitment Parties shall have received on and as of the Plan Effective Date a certificate of an executive officer of the Company confirming that the conditions set forth in Sections 7.1(m), 7.1(n), and 7.1(o) hereof have been satisfied.

(u) Valid Issuance. The Direct Allocation Shares, Rights Offering Securities, Cash-Out Issued Equity, and Backstop Securities shall be, upon issuance, validly issued, fully paid, non-assessable and free and clear of all Taxes, Encumbrances, pre-emptive rights, rights of first refusal, subscription rights, and similar rights, except for any restrictions on transfer as may be imposed by applicable securities Laws or, in the case of the Reorganized Common Equity, the terms of the New Shareholders Agreement, if any.

(v) Liquidity. The cash and cash equivalents and available commitments of the Company (excluding any amounts available under the Exit Facility) shall not be less than $10.0 million as of the Closing and, for the avoidance of doubt, after giving effect to the use of net cash proceeds (including the payment of all fees, expenses and any other such payments in connection with the Restructuring Transactions) from the Restructuring Transactions as authorized by the Plan.

7.2. **Conditions Precedent to Obligations of the Company**. The obligations of the Company to sell the Direct Allocation Shares, Rights Offering Securities, and Backstop Securities, as applicable, to each of the applicable Commitment Parties, and to purchase the Sold Cash-Out Securities from the applicable Cash-Out Offering Participants and issue the Cash-Out Issued Equity to the applicable Backstop Parties pursuant to this Agreement are subject to the following conditions precedent, each of which may be waived in writing by the Company in its sole discretion:

(a) RSA. None of the following shall have occurred: (i) the RSA shall have been terminated in accordance with the provisions thereof by Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes; (ii) the RSA shall have been terminated in accordance with the provisions thereof by the Company as to Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes; (iii) the RSA

shall have been invalidated or deemed unenforceable by an order of the Bankruptcy Court or any other Governmental Body; and (iv) a default shall have occurred or termination right shall have been triggered under the RSA that would permit the Company to terminate the RSA in accordance with its terms with respect to Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes on such date, except as has been waived or cured.

(b) Equity Rights Offering Backstop Commitment Order. The Bankruptcy Court shall have entered the Equity Rights Offering Backstop Commitment Order.

(c) Confirmation Order. The Bankruptcy Court shall have entered the Confirmation Order and the Confirmation Order shall be a Final Order.

(d) Conditions to Effectiveness of Plan. The conditions to the Plan Effective Date set forth in the Plan shall have been satisfied or waived in accordance with the Plan, and the Plan Effective Date shall have occurred or shall occur simultaneously with the Closing.

(e) Rights Offering. The Rights Offering shall have been consummated.

(f) Cash-Out Offering. The Cash-Out Offering shall have been consummated.

(g) No Injunctions or Restraints; Illegality. No Law shall have been promulgated, enacted, entered, enforced, or deemed applicable to the Commitment Parties, the Company or any other Company Entity which makes the consummation of any of the transactions contemplated by this Agreement or any of the other Contemplated Transactions (including each of the Specified Issuances) illegal or void.

(h) Representations and Warranties and Covenants of the Commitment Parties. Each of the (i) representations and warranties of each Commitment Party in this Agreement shall be true and correct as set forth in Section 4 hereof, except to the extent that any inaccuracy with respect to such representations and warranties would not reasonably be expected to prohibit, materially delay or materially and adversely impact the Commitment Parties' performance or consummation of their obligations under this Agreement or the applicable Restructuring Transactions (taken as a whole) and (ii) each Commitment Party shall have complied with all covenants in this Agreement applicable to it, except to the extent that any non-compliance would not reasonably be expected to prohibit, materially delay, or materially and adversely impact the Commitment Parties' performance or consummation of its obligations under this Agreement (taken as a whole).

8. **Termination**.

(a) Unless earlier terminated in accordance with the terms of this Agreement, this Agreement (including the Direct Allocation Commitments, the Rights Offering Commitments, and the Backstop Commitments contemplated hereby) shall terminate automatically and immediately, without a need for any further action on the part of (or notice provided to) any Person, upon the earlier to occur of:

(i) the Bankruptcy Court enters an Order converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, appointing a trustee or custodian for the Debtor or dismissing the Chapter 11 Case; and

(ii) the date of any termination of the RSA with respect to all parties thereto (except if the RSA terminates as a result of the occurrence of the Plan Effective Date in accordance with Section 11.05 the RSA).

(b) This Agreement (including the Direct Allocation Commitments, the Rights Offering Commitments, and the Backstop Commitments contemplated hereby) may be terminated and the transactions contemplated hereby may be abandoned at any time by the Commitment Parties effective immediately upon the giving by the Requisite Commitment Parties of written notice of termination to the Company:

(i) if (A) the Company or any of the other Company Entities shall have breached any of their respective representations or warranties or failed to perform any covenants or other obligations contained in this Agreement (including covenants incorporated into this Agreement by reference), or any representation or warranty of the Company in this Agreement shall have been untrue when made and (B) any such breach, failure to perform, or occurrence referred to in clause (A) above (x) would result in a failure of a condition set forth in Section 7.1 and (y) is not curable by the Milestone for the Plan Effective Date in the RSA (as may be extended or waived in accordance with the RSA) or is not cured or performed within ten (10) Business Days after receipt of a reasonably detailed written notice of such breach, failure, or occurrence is given to the Company by the Requisite Commitment Parties; provided, however, that the Requisite Commitment Parties shall not have the right to terminate this Agreement pursuant to this Section 8(b)(i) if they failed to perform any material covenant or other material obligations under this Agreement that caused the failure of any condition set forth in Section 7.1 from being satisfied;

(ii) if any of the conditions set forth in Section 7.1 hereof become incapable of fulfillment by the Milestone for the Plan Effective Date in the RSA (as may be extended or waived in accordance with the RSA);

(iii) if the RSA has been terminated by Consenting Senior Noteholders holding more than one-third of outstanding principal of Senior Notes;

(iv) if the Company or any of the other Company Entities (including by or through any of their Representatives) (A) enters into, or publicly announces its intention to enter to, a definitive agreement with respect to any Alternative Restructuring Proposal (as defined in the RSA), (B) files any pleading or document (including with the Bankruptcy Court) agreeing to, evidencing its intention to support, or otherwise supporting, any Alternative Restructuring Proposal, or (C) consummates any Alternative Restructuring Proposal;

(v) if a Funding Default shall occur and Non-Defaulting Commitment Parties and/or Substitute Purchasers do not elect to commit to purchase or cause to be purchased all of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) in accordance with Section 1.5(c) and Section 1.5(d);

(vi) if any Law or Order has been enacted or entered by any Governmental Body that operates to prevent, restrict, or impair the implementation of the Rights Offering, the Cash-Out Offering, the issuance of the Direct Allocation Shares pursuant to this Agreement, or any of the Contemplated Transactions;

(vii) if the Closing shall not occur on or prior to the Milestone for the Plan Effective Date in the RSA (as may be extended or waived in accordance with the RSA);

(viii) if there has occurred, since the date of this Agreement, a Material Adverse Effect;

(ix) if any Company Entity, without the consent of the Requisite Commitment Parties (A) commences a voluntary case under the Bankruptcy Code other than the Chapter 11 Case; (B) consents to the appointment of, or taking possession by, a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or similar official) of any Company Entity or the property or assets of any Company Entity; (C) seeks any arrangement, adjustment, protection, or relief of its debts other than the Chapter 11 Case; or (D) makes any general assignment for the benefit of its creditors; or

(x) if (A) an involuntary case against any Company Entity is commenced under the Bankruptcy Code that is not dismissed or withdrawn within seven (7) Business Days or (B) a court of competent jurisdiction enters a ruling, judgment, or Order and such order is not reversed after seven (7) Business Days from entry that appoints, or that authorizes or permits the taking of possession by, a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of any Company Entity, any Equity Interests held by any Company Entity, or a material portion of the property or assets of any Company Entity.

(c) This Agreement (including the Direct Allocation Commitments, the Rights Offering Commitments, and the Backstop Commitments hereunder) may be terminated at any time by the Company effective immediately upon the Company's giving of written notice of termination to the Commitment Parties if:

(i) (A) any of the Commitment Parties shall have breached or failed to perform any of their respective representations, warranties, covenants, or other obligations contained in this Agreement, or any representation or warranty of any of the Commitment Parties in this Agreement shall have been untrue when made, and (B) any such breach, failure to perform or occurrence referred to in clause (A) above (x) would result in a failure of a condition set forth in Section 7.2 and (y) is

not curable, or is not cured or performed within ten (10) Business Days after the Company provides the Requisite Commitment Parties with a reasonably detailed written notice of such breach, failure, or occurrence; provided, however, that if a Funding Default or any other breach, failure to perform, or occurrence referred to in clause (A) above shall occur, the Company shall not be permitted to terminate this Agreement and the transactions contemplated hereby pursuant to this Section 8(c) unless, in the case of a Funding Default, Non-Defaulting Commitment Parties do not elect to commit to purchase or cause to be purchased all of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) in accordance with Section 1.5(c) and one or more Substitute Purchasers do not agree to purchase all of the Default Securities (or, with respect to any Cash-Out Funding, to fund to the Company to purchase) that Non-Defaulting Commitment Parties have not elected to commit to purchase or cause to be purchased; or

(ii) if any Law or Order has been enacted or entered by any Governmental Body that operates to prevent, restrict, or impair the implementation of the Rights Offering, the Cash-Out Offering, the issuance of the Direct Allocation Shares pursuant to this Agreement, or any of the Contemplated Transactions.

(d) This Agreement (including the Direct Allocation Commitments, the Rights Offering Commitment, and the Backstop Commitments contemplated hereby) may be terminated at any time by written consent of the Company and the Requisite Commitment Parties.

(e) Within five (5) Business Days following the termination of this Agreement, the Company shall pay the Put Option Premium, in cash, to the Commitment Parties as set forth on Schedule 1 and Schedule 2 hereto, by wire transfer of immediately available funds to an account designated by each Commitment Party; provided, however, that the Put Option Premium shall not be payable in the event of (i) a termination of this Agreement by the Company pursuant to Section 8(c)(i), (ii) a termination of this Agreement pursuant to Section 8(a)(ii) as a result of a termination of the RSA by the Company pursuant to Section 11.02(a) of the RSA, (iii) a termination of this Agreement pursuant to Section 8(a)(ii) as a result of a termination of the RSA by the Consenting Senior Noteholders pursuant to Section 11.01(g) of the RSA or a termination of this Agreement by the Commitment Parties pursuant to Section 8(b)(vii), in either case, if the failure to meet such Milestone is a result of the material breach by the Commitment Parties of their respective obligations under this Agreement or the RSA; or (iv) any termination of this Agreement by the Company that is the direct result of the material breach of or material failure of the Commitment Parties to perform any representation, warranty, covenant, or other obligations under this Agreement.

(f) In the event of a termination of this Agreement in accordance with this Section 8 at a time after all or any portion of the Aggregate Purchase Price has been deposited or caused to be deposited with the Subscription Agent by or on behalf of any of the Commitment Parties or all or any portion of the aggregate Cash-Out Price or Purchase Price for Default Securities that any of the Commitment Parties elects to commit to purchase or cause to be purchased (or, with respect to any Cash-Out Funding, to fund to the Company to purchase), the Commitment Parties that have deposited or caused to be deposited such Aggregate Purchase Price

(or portion thereof) or such aggregate Cash-Out Price or Purchase Price (or portion thereof) shall be entitled to the return of such amount. In such a case, the applicable Commitment Parties and the Company hereby agree to execute and deliver to the Subscription Agent, promptly after the effective date of any such termination (but in any event no later than two (2) Business Days after any such effective date), a letter instructing the Subscription Agent to pay to each applicable Commitment Party, by wire transfer of immediately available funds to an account designated by such Commitment Party, the amount of Aggregate Direct Allocation Purchase Price, Aggregate Purchase Price, aggregate Cash-Out Price, and/or aggregate Purchase Price for Default Securities that such Commitment Party is entitled to receive pursuant to this Section 8(f).

(g) In the event of a termination of this Agreement in accordance with this Section 8, the provisions of this Agreement shall immediately become void and of no further force or effect (other than Sections 2.2, 8, 9, 11, 12, and 13 hereof (and any defined terms used in any such Sections (but solely to the extent used in any such Sections))).

9. **Indemnification**.

(a) Whether or not the transactions contemplated by this Agreement or any of the other Contemplated Transactions are consummated, the Company and its Subsidiaries (the "Indemnifying Parties" and each, an "Indemnifying Party") shall jointly and severally indemnify and hold harmless (i) each of the Commitment Parties, (ii) each of the Affiliates, stockholders, equity holders, members, partners, general partners, managers of each of the Commitment Parties, and (iii) with respect to each of the Persons in the foregoing clauses (i) and (ii), each of their respective Representatives and controlling persons (each, in such capacity, an "Indemnified Party") from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable and documented out-of-pocket attorneys' fees), interest, penalties, judgments, and settlements, whether or not related to a third party claim, imposed on, sustained, incurred or suffered by, or asserted against, any Indemnified Party as a result of, arising out of, or related to, a claim asserted by a third-party arising out of or relating to this Agreement, the Direct Allocation Commitments, the Direct Allocation Shares, the Cash-Out Funding, the Rights Offering Commitments, the Backstop Commitments, the payment of the Put Option Premium, the use of the proceeds of the Rights Offering, the Backstop Securities, the Cash-Out Funding, the purchase by the Company of the Sold Cash-Out Securities and subsequent issuance to the applicable Backstop Parties of the Cash-Out Issued Equity, the sale of the Direct Allocation Shares and the Rights Offering Securities, the Rights Offering, the Plan (or the solicitation thereof), the Restructuring Transactions, the Chapter 11 Case, or the transactions contemplated hereby or thereby or any of the other Contemplated Transactions, or any claim, litigation, investigation or other Proceeding relating to or arising out of any of the foregoing, regardless of whether any such Indemnified Party is a party thereto, whether or not such proceedings are brought by the Company Entities, their respective equity holders, Affiliates, creditors, or any other Person, and to pay and/or reimburse each such Indemnified Party for the reasonable and documented (with such documentation subject to redaction to preserve attorney client and work product privileges) legal or other third-party out-of-pocket costs and expenses as they are incurred in connection with investigating, monitoring, responding to, preparing to defend, or defending any of the foregoing (collectively, "Losses"); provided that the foregoing indemnification will not, as to any Indemnified Party, apply to Losses (i) to the extent arising from a breach by a Commitment Party of this Agreement, (ii) as to a Defaulting Commitment Party or any Indemnified Party related

thereto, or (iii) to the extent they are determined by a final, non-appealable decision by a court of competent jurisdiction (including the Bankruptcy Court) to have resulted from any act by such Indemnified Party that constitutes fraud, bad faith, gross negligence or willful misconduct. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold it harmless, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such Loss in such proportion as is appropriate to reflect not only the relative benefits received by the Indemnifying Parties, on the one hand, and such Indemnified Party, on the other hand, but also the relative fault of the Indemnifying Parties, on the one hand, and such Indemnified Party, on the other hand, as well as any relevant equitable considerations. It is hereby agreed that the relative benefits to the Indemnifying Parties, on the one hand, and all Indemnified Parties, on the other hand, shall be deemed to be in the same proportion as (i) the total value received or proposed to be received by the Indemnifying Parties pursuant to the sale of the maximum number of Backstop Securities to the Backstop Parties pursuant to this Agreement bears to (ii) the Put Option Premium. The Indemnifying Parties also agree that no Indemnified Party shall have any liability based on their comparative or contributory negligence to the Indemnifying Parties, any Person asserting claims on behalf of or in the right of any of the Indemnifying Parties, or any other Person in connection with an Action. The terms set forth in this Section 9 shall survive termination of this Agreement and shall remain in full force and effect regardless of whether the transactions contemplated by this Agreement or any of the other Contemplated Transactions are consummated. The indemnity obligations of the Indemnifying Parties under this Section 9 are in addition to, and do not limit, the Company's obligations under Section 2.2 and Section 8 and are in all respects subject to the limitations set forth in the second and third sentences set forth in Section 13.7 hereof.

(b) Promptly after receipt by an Indemnified Party of notice of the commencement of any Proceeding with respect to which such Indemnified Party may be entitled to indemnification hereunder ("Actions"), such Indemnified Party will, if a claim is to be made hereunder against any Indemnifying Party in respect thereof, notify the Company in writing of the commencement thereof; provided that (i) the omission to so notify the Company will not relieve any Indemnifying Party from any liability it may have hereunder except to the extent (and solely to the extent) such Indemnifying Party has been actually and materially prejudiced by such failure, and (ii) the omission to so notify the Company will not relieve the Indemnifying Party from any liability that it may have to an Indemnified Party otherwise than on account of this Section 9. In case any such Actions are brought against any Indemnified Party and such Indemnified Party notifies the Company of the commencement thereof, if the Indemnifying Party commits in writing to fully indemnify and hold harmless the Indemnified Party with respect to such Actions, without regard to whether the Plan Effective Date occurs, the Indemnifying Party will be entitled to participate in such Actions, and, to the extent that the Indemnifying Party elects by written notice delivered to such Indemnified Party, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, provided that if the defendants in any such Actions include both such Indemnified Party and one or more Indemnifying Parties and such Indemnified Party shall have reasonably concluded based on the advice of outside legal counsel that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such Actions on behalf of such Indemnified Party. Following the date of receipt by an Indemnified Party of such indemnification commitment from the Indemnifying Party and notice from the Indemnifying Party of its election

to assume the defense of such Actions and approval by such Indemnified Party of counsel, the Indemnifying Party(ies) shall not be liable to such Indemnified Party for expenses incurred by such Indemnified Party in connection with the defense thereof after such date (other than reasonable costs of investigation and monitoring) unless (w) such Indemnified Party shall have employed separate counsel in connection with the assertion of legal defenses in accordance with the proviso to the immediately preceding sentence, (x) the Indemnifying Party shall not have employed counsel reasonably satisfactory to such Indemnified Party to represent such Indemnified Party at the Indemnifying Party's expense within a reasonable time (such reasonable time shall not be less than 15 days) after notice of commencement of the Actions, (y) after the Indemnifying Party assumes the defense of such Actions, such Indemnified Party reasonably determines that the Indemnifying Party is failing to diligently defend against such Actions in good faith and provides written notice of such determination and the basis for such determination, and such failure is not reasonably cured within ten (10) Business Days of receipt of such notice, or (z) the Company shall have authorized in writing the employment of counsel for such Indemnified Party.

(c) The Indemnifying Party shall not, without the prior written consent of an Indemnified Party, effect any settlement, compromise or other resolution of any pending or threatened Actions in respect of which indemnity has been sought hereunder by such Indemnified Party unless such settlement, compromise or other resolution (i) includes an unconditional release of such Indemnified Party in form and substance reasonably satisfactory to such Indemnified Party from all liability on the claims that are the subject matter of such Actions and (ii) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party. The Indemnifying Party(ies) shall not be liable for any settlement of any Action effected by any Indemnified Party without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed). If any settlement of any Action is consummated with the written consent of the Indemnifying Party or if there is a final judgment for the plaintiff in any such Actions, the Indemnifying Party agrees to indemnify and hold harmless each Indemnified Party from and against any and all Losses by reason of such settlement or judgment to the extent such Losses are otherwise subject to indemnification by any of the Indemnifying Parties hereunder in accordance with, and subject to the limitations of, this Section 9.

10. **Survival**. The representations, warranties, covenants, and agreements made in this Agreement shall not survive the Closing except to the extent that covenants and agreements made in this Agreement by their terms are to be satisfied or complied with after the Closing, which covenants and agreements (but only to such extent) shall survive until fully satisfied or complied with in accordance with their terms.

11. **Amendments and Waivers**. Any term of this Agreement or the Rights Offering Procedures or Common Equity Convenience Buyout Procedures may be amended or modified and the compliance with any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only if such amendment, modification or waiver is signed, in the case of an amendment or modification to this Agreement, by the Requisite Commitment Parties and the Company, in the case of an amendment to the Rights Offering Procedures or Common Equity Convenience Buyout Procedures, with the prior written consent of the Requisite Commitment Parties and the Company, or in the case of a waiver, by the Requisite Commitment Parties (if compliance by the Company or other Company Entities is being waived)

or by the Requisite Commitment Parties and the Company (if compliance by any of the Commitment Parties is being waived); provided, however, that:

(a) Schedule 1 and Schedule 2 hereto may be updated in accordance with the terms of Section 13.1 hereof;

(b) any amendment or modification to this Agreement or the Rights Offering Procedures or Common Equity Convenience Buyout Procedures that would, directly or indirectly, change or have the effect of changing the Direct Allocation Shares, Direct Allocation Purchase Price, Aggregate Direct Allocation Purchase Price, Cash-Out Funding, or the Direct Allocation Commitment Percentage of any Commitment Party, in each case, shall require the prior written consent of such Commitment Party;

(c) any amendment or modification to this Agreement, the Rights Offering Procedures, or the Common Equity Convenience Buyout Procedures that would, directly or indirectly, (i) change or have the effect of changing the Backstop Commitment Percentage of any Commitment Party, Purchase Price, or Cash-Out Price, (ii) decrease the Put Option Premium or adversely modify the payment thereof, or (iii) increase the Backstop Commitment of any Commitment Party, in each case, shall require the prior written consent of such Commitment Party;

(d) any amendment or modification to the definition of "Aggregate Purchase Price" or the allocation of the Put Option Premium among the Commitment Parties shall (in any such case) require the prior written consent of each Commitment Party adversely affected thereby;

(e) any amendment, modification, or waiver to this Agreement, the Rights Offering Procedures, or the Common Equity Convenience Buyout Procedures that would adversely affect any of the rights or obligations (as applicable) of any Commitment Party set forth in this Agreement, the Rights Offering Procedures, or the Common Equity Convenience Buyout Procedures in a manner that is different or disproportionate in any material respect from the effect on the comparable rights or obligations (as applicable) of the Requisite Commitment Parties set forth in this Agreement, the Rights Offering Procedures, or the Common Equity Convenience Buyout Procedures (other than in proportion to the amount of the Direct Allocation Commitments and Backstop Commitments held by each of the Commitment Parties) shall also require the written consent of such affected Commitment Party;

(f) any changes to the definitions of "Put Option Premium", "Backstop Premium", "Direct Allocation Premium", "Rights Offering Amount", "Direct Allocation Amount", "Total Offering Amount", "Requisite Commitment Parties", "Rights Offering Participants", "Aggregate Direct Allocation Shares", "Common Equity Convenience Buyout Cap", or "Cash-Out Offering Participants" shall require the consent of each Commitment Party; and

(g) any modification or amendment to this Section 11 shall require the consent of all parties hereto,

in each case, except to the extent that any such amendment is made for the purposes of (i) correcting an error or omission of a technical nature or (ii) curing any ambiguity, omission, defect, or inconsistency. No delay on the part of any party in exercising any right, power, or

privilege pursuant to this Agreement will operate as a waiver thereof, nor will any waiver on the part of any party of any right, power, or privilege pursuant to this Agreement, or any single or partial exercise of any right, power, or privilege pursuant to this Agreement, preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement. The rights and remedies provided pursuant to this Agreement are cumulative and are not exclusive of any rights or remedies which any party otherwise may have at Law or in equity.

12. **Notices, etc.** Except as otherwise expressly provided in this Agreement, all notices, requests, demands, document deliveries, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given, provided, made, or received (a) when sent by electronic mail ("e-mail"), (b) when delivered personally, (c) one (1) Business Day after deposit with an overnight courier service, or (d) three (3) Business Days after mailed by certified or registered mail, return receipt requested, with postage prepaid, in any such case to the parties at the following addresses or e-mail addresses (or at such other address or e-mail address for a party as shall be specified by like notice):

if to a Commitment Party, at:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attention: Jacob A. Adlerstein
Sean A. Mitchell
Joshua A. Esses
Email: jadlerstein@paulweiss.com
smitchell@paulweiss.com
jesses@paulweiss.com

if to the Company, at:

Cutera, Inc.
3240 Bayshore Blvd.
Brisbane, CA 94005
Attention: Stephana E. Patton
Email: SPatton@cutera.com

with copies to:

Ropes & Gray, LLP
1211 Avenue of Americas
New York, NY 10036-8704
Attention: Ryan Preston Dahl
Natasha S. Hwangpo
Sam Badawi
Email: Ryan.Dahl@ropesgray.com
Natasha.Hwangpo@ropesgray.com
Sam.Badawi@ropesgray.com

provided, however, that no notice, request, demand, document, or other communication delivered pursuant to clause (b), clause (c), or clause (d) above shall be deemed to have been duly given, provided, made, or received unless and until the sending party notifies the receiving party by e-mail of such delivery (including a reasonable description thereof).

13. **Miscellaneous**.

13.1. **Assignments**. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any of the parties (whether by operation of Law or otherwise) without the prior written consent of the Company and the Requisite Commitment Parties. Notwithstanding the immediately preceding sentence, any Commitment Party's rights, obligations, or interests hereunder, including its Direct Allocation Commitment, may be freely assigned or transferred, in whole or in part, by such Commitment Party to (a) any other Commitment Party, (b) any Affiliate of a Commitment Party, or (c) any other Person not referred to in clause (a) or clause (b) above so long as such Person is approved in writing by the Requisite Commitment Parties and the Company, such approval not to be unreasonably withheld, conditioned, or delayed, prior to such assignment, delegation, or transfer and shall be deemed granted if not denied by the Company or the Requisite Commitment Parties within four (4) Business Days after the assigning Commitment Party provides written notice to the other Commitment Parties and the Company (for purposes of this clause (c), the Commitment Party proposing to make such assignment or transfer, and all of its Affiliates, shall be deemed to be Defaulting Commitment Parties for purposes of determining whether the definition of "Requisite Commitment Parties" has been satisfied). Any such assignee (x) shall assume the obligations of the assigning Commitment Party hereunder and, if such assignee is not

already a Commitment Party, agrees in writing, pursuant to a Joinder Agreement, prior to such assignment to be bound by the terms hereof in the same manner as the assigning Commitment Party (which writing shall contain a certification from the assignee as to the accuracy of the representations and warranties made by each Commitment Party in Section 4 hereof as applied to such assignee), and (y) of a Direct Allocation Commitment, a Rights Offering Commitment, or a Backstop Commitment must be an Accredited Investor or Qualified Institutional Buyer. Following any assignment described in the immediately preceding sentence, Schedule 1 and/or Schedule 2 hereto shall be updated by the Commitment Parties accordingly (in consultation with the Company) (it being understood and agreed that (1) updates to Schedule 1 hereto shall not result in an overall change to the aggregate Backstop Commitment Percentages for all Backstop Parties and (2) updates to Schedule 2 hereto shall not result in an overall change to the aggregate Direct Allocation Commitment Percentage or Aggregate Direct Allocation Purchase Price for all Direct Allocation Parties). Any update to Schedule 1 and/or Schedule 2 hereto described in the immediately preceding sentence shall not be deemed an amendment to this Agreement. Notwithstanding the foregoing or any other provisions herein, unless otherwise agreed in any instance by the Company and the Requisite Commitment Parties (for purposes of this sentence, the Commitment Party making such assignment, and all of its Affiliates, shall be deemed to be Defaulting Commitment Parties for purposes of determining whether the definition of "Requisite Commitment Parties" has been satisfied), no assignment of obligations by a Commitment Party to an Affiliate of such Commitment Party will relieve the assigning Commitment Party of its obligations hereunder if any such Affiliate assignee fails to perform such obligations. Notwithstanding the foregoing, the Commitment Parties shall be permitted to make designations in accordance with Section 2.1(c).

13.2. **Severability**. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, shall be held invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and this Agreement shall continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon any such determination of invalidity, the parties hereto 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 reasonably acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

13.3. **Entire Agreement**. Except as expressly set forth herein, this Agreement and the RSA constitute the entire understanding among the parties hereto with respect to the subject matter hereof and replace and supersede all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof.

13.4. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which will be an original, and all of which, when taken together, will constitute one agreement. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. Delivery of an executed counterpart of this Agreement by facsimile or portable

document format (PDF) will be effective as delivery of a manually executed counterpart of this Agreement.

13.5. **Governing Law**. **THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.**

13.6. **Submission to Jurisdiction**. Each party to this Agreement hereby (a) consents to submit itself to the personal jurisdiction of the Bankruptcy Court, the federal court of the Southern District of New York or any state court located in New York County, State of New York in the event any dispute arises out of or relates to this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, including a motion to dismiss on the grounds of forum non conveniens, and (c) agrees that it will not bring any Proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Bankruptcy Court, the federal court of the Southern District of New York or any state court located in New York County, State of New York; provided, however, that, to the extent applicable, during the pendency of the Chapter 11 Case, all such Proceedings shall be brought in the Bankruptcy Court; provided further that if the Bankruptcy Court lacks jurisdiction, the parties consent and agree that such Proceedings shall be brought in another court referenced in clause (a) of this Section 13.6.

13.7. **Waiver of Trial by Jury; Waiver of Certain Damages**. EACH PARTY HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY PROCEEDING ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by Law, the Company and each Commitment Party hereby waives, on its own behalf and, with respect to the Company, on behalf of each other Company Entities, any right which it may have to claim or recover in any Proceeding referred to in the immediately preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Each of the Company and each Commitment Party (a) certifies, as to itself, that none of the other Commitment Parties nor any Representative of any of the Commitment Parties, nor the Company has represented, expressly or otherwise, that the other Commitment Parties or the Company would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that, in entering into this Agreement, the Company and the other Commitment Parties are relying upon, among other things, the waivers and certifications contained in this Section 13.7.

13.8. **Further Assurances**. From time to time after the Execution Date, the parties hereto will execute, acknowledge, and deliver to the other parties hereto such other documents, instruments and certificates, and will take such other actions, as any other party hereto may reasonably request in order to consummate the transactions contemplated by this Agreement.

13.9. **Specific Performance**. The Company and the Commitment Parties acknowledge and agree that (a) irreparable damage would occur in the event that any of the

provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, and (b) remedies at Law would not be adequate to compensate the non-breaching party. Accordingly, the Company and the Commitment Parties agree that each of them shall have the right, in addition to any other rights and remedies existing in its favor, to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce its rights and obligations hereunder not only by an Proceeding or Proceedings for damages but also by an Proceeding or Proceedings for specific performance, injunctive and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Agreement. The Company and each of the Commitment Parties hereby waives any defense that a remedy at Law is adequate and any requirement to post bond or other security in connection with Proceedings instituted for injunctive relief, specific performance, or other equitable remedies.

13.10. **Headings**. The headings in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

13.11. **Interpretation; Rules of Construction**. When a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or Exhibit or Schedule to, this Agreement unless otherwise indicated. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; and (d) the words "include", "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation". The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any regulation, holding, rule of construction or Law providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

13.12. **Several, Not Joint, Obligations**. The representations, warranties, covenants and other obligations of the Commitment Parties under this Agreement are, in all respects, several and not joint or joint and several, such that no Commitment Party shall be liable or otherwise responsible for any representations, warranties, covenants, or other obligations of any other Commitment Party, or any breach or violation thereof.

13.13. **Disclosure**. Unless otherwise required by applicable Law, the Company will not, and will ensure that the other Company Entities do not, disclose to any Person (including by filing a copy of this Agreement with the Bankruptcy Court) any of the information set forth on each of the Commitment Parties' signature pages, Schedule 1 hereto, or Schedule 2 hereto, except for (a) disclosures made with the prior written consent of each Commitment Party whose information will be disclosed, (b) disclosures to the Company's Representatives in connection with the transactions contemplated hereby and subject to their agreement to be bound by the confidentiality provisions hereof, and (c) disclosures to parties to this Agreement solely for purposes of calculating the Adjusted Backstop Commitment Percentage of a Non-Defaulting Commitment Party and/or the Adjusted Direct Allocation Commitment Percentage of a Non-Defaulting Commitment Party.

13.14. **No Recourse Party**. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that certain of the Commitment Parties may be partnerships or limited liability companies, the Company and the Commitment Parties covenant, agree, and acknowledge that no recourse under this Agreement shall be had against any former, current or future directors, officers, agents, Affiliates, general or limited partners, members, managers, employees, stockholders, or equity holders of any Commitment Party, or any former, current or future directors, officers, agents, Affiliates, employees, general or limited partners, members, managers, employees, stockholders, equity holders, or controlling persons of any of the foregoing, as such (any such Person, a "No Recourse Party"), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable Law, it being expressly agreed and acknowledged that no liability whatsoever shall attach to, be imposed on or otherwise be incurred by any No Recourse Party for any obligation of any Commitment Party under this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

13.15. **Settlement Discussions**. Nothing herein shall be deemed an admission of any kind. Pursuant to Federal Rule of Evidence 408 and any applicable state rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any Proceeding other than a Proceeding to enforce the terms of this Agreement.

13.16. **No Third Party Beneficiaries**. This Agreement is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto and other than (a) the Indemnified Parties with respect to Section 9 hereof and (b) each No Recourse Party with respect to Section 13.14 hereof.

13.17. **Arm's Length**. The Company acknowledges and agrees that the Commitment Parties are acting solely in the capacity of arm's length contractual counterparties to the Company with respect to the transactions contemplated hereby and the other Contemplated Transactions (including in connection with determining the terms of the Rights Offering and Cash-Out Offering) and not as financial advisors or fiduciaries to, or agents of, the Company, the other Company Entities, or any other Person. Additionally, the Commitment Parties are not advising the Company, the other Company Entities, or any other Person as to any legal, Tax, investment, accounting, or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby and the other Contemplated Transactions, and the Commitment Parties shall have no responsibility or liability to the Company or any other Company Entity with respect thereto. Any review by the Commitment Parties of the business, financial condition or affairs of the Company or the other Company Entities, the Contemplated Transactions or other matters relating to the Contemplated Transactions will be performed solely for the benefit of the Commitment Parties and shall not be on behalf of the Company or the other Company Entities.

14. **Definitions**.

14.1. **Definitions in the RSA**. Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to such terms in the RSA (as in effect on the Execution Date).

14.2. **Certain Defined Terms**. As used in this Agreement the following terms have the following respective meanings:

"Accredited Investor" shall have the meaning given to it in Rule 501(a) of the Securities Act.

"Adjusted Backstop Commitment Percentage" means, with respect to any Non-Defaulting Commitment Party, a fraction, expressed as a percentage, the numerator of which is the Backstop Commitment Percentage of such Non-Defaulting Commitment Party and the denominator of which is the sum of the Backstop Commitment Percentages of all Non-Defaulting Commitment Parties.

"Adjusted Direct Allocation Commitment Percentage" means, with respect to any Non-Defaulting Commitment Party, a fraction, expressed as a percentage, the numerator of which is the Direct Allocation Commitment Percentage of such Non-Defaulting Commitment Party and the denominator of which is the sum of the Direct Allocation Commitment Percentages of all Non-Defaulting Commitment Parties.

"Affiliate" means, with respect to any Person, any other Person controlled by, controlling or under common control with such Person. As used in this definition, "control" (including, with its correlative meanings, "controlling," "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of securities, by Contract or otherwise). A Related Fund of any Person shall be deemed to be the Affiliate of such Person.

"Aggregate Purchase Price" means, with respect to each Commitment Party, to the extent applicable, such Commitment Party's Aggregate Backstop Purchase Price, Aggregate Direct Allocation Purchase Price, Aggregate Rights Offering Purchase Price, and Cash-Out Funding.

"Allowed" shall have the meaning given to it in the Plan.

"Anti-Corruption Laws" means any applicable Law relating to anti-bribery or anti-corruption (governmental or commercial), including, the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act 2010, and any other applicable Law that prohibits the corrupt payment, offer, promise or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any Person, including any Governmental Body.

"Backstop Commitment Percentage" means, with respect to any Backstop Party, the percentage set forth opposite the name of such Backstop Party under the heading "Backstop Commitment Percentage" on Schedule 1 hereto, as such percentage may be modified from time to time in accordance with the terms hereof; and "Backstop Commitment Percentages" means the Backstop Commitment Percentages of all of the Backstop Parties collectively.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Chapter 11 Case and/or the transactions contemplated by this Agreement, and any Local Rules of the Bankruptcy Court.

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

"Cash-Out Agent" means Kurtzman Carson Consultant, LLC d/b/a Verita Global.

"Cash-Out Deadline" means the date that is thirty-five (35) days after the Petition Date, or otherwise has the meaning given to such term in the Common Equity Convenience Buyout Procedures.

"Cash-Out Offering Participants" means each holder of Allowed Senior Notes Claims that is not a Commitment Party.

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

"Commitment Expenses" means (i) the reasonable means the reasonable and documented prepetition and postpetition fees, costs and out-of-pocket expenses incurred or accrued by the Commitment Parties, including, without limitation, those of: (a) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Commitment Parties; (b) Porter Hedges LLP, as co-counsel to the Commitment Parties; and (c) Centerview Partners LLC, as financial advisor and investment banker to the Commitment Parties, and (ii) any such fees, costs, or out-of-pocket expenses incurred in connection with any Proceeding (including the filing of any lawsuit, or the assertion in the Chapter 11 Case of a request for reimbursement) taken by any Commitment Party that results in a non-appealable final judgment for the Commitment Parties to collect any unpaid amounts described in subsection (i) of this definition.

"Common Equity Convenience Buyout Procedures" means the procedures governing the Cash-Out Offering, which shall be in form and substance acceptable to the Requisite Commitment Parties and the Company and shall provide, among other things, that any Cash-Out Offering Participant (i) that exercises its Subscription Rights may not exercise its Cash-Out Rights and (ii) shall return its cash-out election form to the Cash-Out Agent no later than the Subscription Form and Funding Deadline in order to exercise its Cash-Out Rights.

"Company Entity" means each of the Company and each of its Subsidiaries and Affiliates.

"Consent" means any consent, waiver, approval, Order, or authorization of, or registration, declaration, or filing with or notice to, any Governmental Body or other Person.

"Contemplated Transactions" means all of the transactions contemplated by this Agreement, the RSA, the Disclosure Statement, the Rights Offering Procedures, the Common Equity Convenience Buyout Procedures, the Plan, and/or the other Definitive Documents.

"Contract" means any agreement, contract, obligation, promise, undertaking or understanding, whether written or oral.

"Direct Allocation Commitment Percentage" means, with respect to any Direct Allocation Party, the percentage set forth opposite the name of such Direct Allocation Party under the heading "Direct Allocation Commitment Percentage" on Schedule 2 hereto, as such percentage

may be modified from time to time in accordance with the terms hereof; and "Direct Allocation Commitment Percentages" means the Direct Allocation Commitment Percentages of all of the Direct Allocation Parties collectively.

"Encumbrance" means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of first refusal or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"Environmental Laws" means all applicable Laws relating to pollution or protection of natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Substances, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), Safe Drinking Water Act (42 U.S.C. § 3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), Clean Air Act (42 U.S.C. § 7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and other similar federal, state, provincial, and local statutes.

"Equity Interests" means, with respect to any Person, the shares (or any class thereof) of capital stock (including common stock and preferred stock), limited liability company interests, partnership interests and any other equity, ownership, or profits interests of such Person, and options, warrants, rights, stock appreciation rights, phantom units, incentives, commitments, calls, redemption rights, repurchase rights or other securities or agreements to acquire or subscribe for, or which are convertible into, or exercisable or exchangeable for, the shares (or any class thereof) of capital stock (including common stock and preferred stock), limited liability company interests, partnership interests and any other equity, ownership, or profits interests of such Person (in each case whether or not arising under or in connection with any employment agreement).

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

"FDA" means the United States Food and Drug Administration.

"Final Order" means, as applicable, an Order of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended and is in full force and effect, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the Order could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such Order, or has otherwise been dismissed with prejudice.

"Fundamental Representations" means the representations and warranties of the Company set forth in Sections 3.1, 3.2, 3.3(a), 3.3(b), 3.5, 3.6, and 3.7 hereof.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the related regulations.

"GAAP" means generally accepted accounting principles in the United States, as in effect from time to time, consistently applied.

"Governmental Authorization" means any authorization, approval, consent, license, registration, lease, ruling, permit, tariff, certification, Order, privilege, franchise, membership, entitlement, exemption, filing or registration by, with, or issued by, any Governmental Body.

"Governmental Body" means any federal, national, supranational, foreign, state, provincial, local, county, municipal or other government, any governmental, regulatory or administrative authority, agency, department, bureau, board, commission or official or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, or any court, tribunal, judicial or arbitral body.

"Government Official" means (i) any official, employee, agent, or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Body, (ii) any official, employee, agent, or representative of, or any Person acting in an official capacity for or on behalf of, a company, business, enterprise or other entity owned, in whole or in part, or controlled by any Governmental Body or (iii) any official, employee, agent, or representative of, or any Person acting in an official capacity for or on behalf of, a public international organization.

"Hazardous Substance" means any toxic or hazardous material, substance or waste regulated under any Environmental Laws, including petroleum, any per- or polyfluoroalkyl substances, any polychlorinated biphenyls, radon, and any asbestos.

"Health Care Laws" mean, collectively, the federal Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. Section 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. Section 1320a-7b(a)), the Stark law (42 U.S.C. Section 1395nn), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.), the exclusion laws (42 U.S.C. Section 1320a-7), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, the regulations promulgated pursuant to such laws, and any other state, federal or foreign law, regulation, or other issuance which imposes requirements on the manufacturing, development, testing, labeling, advertising, marketing, or distribution of medical devices, kickbacks, patient, or program charges, recordkeeping, claims process, documentation requirements, medical necessity, referrals, exclusion of individuals or companies from government health care programs, quality, safety, privacy, security, licensure, or any other aspect of providing health care or medical products or services.

"International Trade Laws" means any of the following: (a) any Laws concerning the importation of merchandise and other items (including technology, services, and software), including but not limited to those administered by U.S. Customs and Border Protection; (b) any Laws concerning the exportation or re-exportation of items (including technology, services, and software), including but not limited to those administered by the U.S. Department of Commerce or the U.S. Department of State; or (c) any economic sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"), the U.S. State Department,

the United Nations, Canada, the European Union, the United Kingdom, or any other applicable economic sanctions.

"IP Rights" means, as they exist anywhere in the world, whether registered or unregistered, any and all: (a) patents and applications therefor (including all continuations, divisionals, revisions, extensions, reexaminations, and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations, and extensions thereof); (b) trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, taglines, and other source or business identifiers, together with translations, adaptations, derivations, and combinations thereof (in each case, whether registered or unregistered), including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (c) domain names and social media accounts; (d) copyrights and rights in original works of authorship, whether or not registered or published, all registrations and recordations thereof, and all applications for registration or recordation in connection therewith, along with all reversions, extensions, renewals and restorations thereof and all moral rights in connection with all of the foregoing; (e) trade secrets, know-how, inventions, processes, procedures, databases, and other confidential business information (including confidential financial and marketing plans, customer and supplier lists, and pricing and cost information), and other proprietary information and rights; (f) software, firmware, microcode, operating systems, applications and embedded applications, computer programs and other software programs, including all source code, object code, specifications, data, databases and data collections, designs, descriptions, schematics and documentation, including user documentation, user manuals and training materials, files, related to any of the foregoing; (g) all other similar intellectual property or intangible proprietary rights to the foregoing (in whatever form or medium); and (h) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement, misappropriation, or other violation of any of the foregoing.

"IRS" means the Internal Revenue Service and any Governmental Body succeeding to the functions thereof.

"Joinder Agreement" means a Joinder Agreement substantially in the form attached hereto as Exhibit A.

"Knowledge of the Company" means the knowledge of Taylor C. Harris, Stuart Drummond, Jeff Jones, Stephana Patton, or any other member of the executive leadership team, and, in the case of each of the foregoing, any of their respective successors.

"Law" means any federal, national, supranational, foreign, state, provincial, local, county, municipal or similar statute, law, common law, writ, injunction, decree, guideline, policy, ordinance, regulation, rule, code, Order, Governmental Authorization, constitution, treaty, requirement, judgment or judicial or administrative doctrines enacted, promulgated, issued, enforced, or entered by any Governmental Body.

"Material Adverse Effect" means any matter, event, circumstance, change, development, occurrence or state of facts (each, an "Effect") that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on:

(a) the assets, liabilities, business, results of operations, finances or condition (financial or otherwise) of (i) the Company and/or (ii) the Company Entities, taken as a whole; or

(b) the ability of the Company to consummate the Contemplated Transactions or perform its obligations under this Agreement;

except that, solely in the case of clause (a), such Effect results from, arises out of, or is attributable to the following (either alone or in combination)

(i) general business or economic conditions affecting the industry in which the Company and its Subsidiaries operate,

(ii) national or international political or social conditions, including the engagement by any Governmental Body in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber, or terrorist attack upon any Governmental Body,

(iii) any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak, or any quarantine or trade restrictions or travel restrictions, or guidelines of any Governmental Body related thereto,

(iv) financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, and (C) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated by this Agreement),

(v) (A) the taking of any action required by this Agreement or at the request of the Commitment Parties, (B) the failure to take any action if such action is prohibited by this Agreement or the RSA, or (C) the negotiation, announcement, or pendency of this Agreement or the transactions contemplated hereby or the identity, nature, or ownership of any of the Commitment Parties, including the impact thereof on the relationships, contractual, or otherwise, of the business of the Company or any of its Subsidiaries with employees, customers, lessors, suppliers, vendors, or other commercial partners,

(vi) changes in GAAP,

(vii) to the extent directly related to any action taken by any Commitment Party or its Affiliates in breach of this Agreement,

(viii) the matters set forth on the Company Disclosure Schedules or the Disclosure Statement, or

(ix) the commencement or pendency of the Chapter 11 Case;

provided, however, that with respect to clauses (i)–(v), such Effects will not be excluded to the extent such Effects disproportionately affect the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industries and/or geographies in which the Company and its Subsidiaries operate.

"Material Contract" means (a) all "plans of acquisition, reorganization, arrangement, liquidation or succession" and "material contracts" (as such terms are defined in Items 601(b)(2) and 601(b)(10) of Regulation S-K under the Exchange Act) to which the Company or any of its Subsidiaries is a party, (b) any Contract that may reasonably be expected to result in aggregate revenues to the Company or any of its Subsidiaries in an amount greater than or equal to $5,000,000 during the current or subsequent fiscal year, (c) any Contract that may reasonably be expected to result in aggregate payments by the Company or any of its Subsidiaries to the counterparty of such agreement in an amount greater than or equal to $5,000,000 during the current fiscal year, (d) a Contract with a Related Party, other than obligations to pay fees to any director of any Company Entity in connection with the performance of his or her service as a director of such Company Entity, and (e) a written commitment to enter into any Contract of the type described in clauses (a)–(d) of this definition.

"New Shareholders Agreement" means any agreement entered into by holders of Reorganized Common Equity governing the rights and obligations with respect to the Reorganized Common Equity.

"Non-Defaulting Commitment Party" means a Commitment Party that is not a Defaulting Commitment Party.

"Order" means any order, writ, judgment, injunction, decree, rule, ruling, directive, stipulation, determination, or award made, issued or entered by the Bankruptcy Court or any other Governmental Body, whether preliminary, interlocutory, or final.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Company and the other Company Entities, consistent with past practices, including as to timing and amount, and in compliance with all applicable Laws.

"Organizational Documents" means, with respect to any Person other than a natural person, the documents by which such Person was organized or formed (such as a certificate of incorporation, certificate of formation, 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) or 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).

"Owner" has the meaning given to such term in the definition of "Subsidiary".

"Permitted Encumbrances" means (a) Encumbrances for utilities and current Taxes not yet due and payable, Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the books and records, or Taxes that are due but may not be paid as a result of the commencement of the Chapter 11 Case, (b) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course of Business for sums not yet due and payable or

that are due but may not be paid as a result of the commencement of the Chapter 11 Case and do not result from a breach, default or violation by a Company Entity of any Contract or Law, (c) any obligations, liabilities or duties created by this Agreement or any of the other Definitive Documents, and (d) solely for purposes of the representations and warranties set forth in Section 3 that are made prior to the Plan Effective Date (and excluding from this clause (f), the representations and warranties set forth in Section 3 that are made at the Plan Effective Date), Encumbrances that will be removed by operation of the Confirmation Order or the Plan.

"Person" means an individual, a partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a Governmental Body.

"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 identifiable" information as applied by the Federal Trade Commission, (iii) "Protected Health Information," as defined by HIPAA, (iv) "personal data," "personal information," or any other equivalent term as defined by GDPR or other applicable law, and (v) any other 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.

"Plan Equity Value" means $70,000,000.

"Proceeding" means any action, claim, complaint, petition, suit, arbitration, mediation, alternative dispute resolution procedure, hearing, audit, examination, investigation, or other proceeding of any nature of or before any arbitrator or Governmental Body, whether civil, criminal, administrative, or otherwise, direct or derivative, in Law or in equity.

"Purchase Price" means $7.55, the price for each Rights Offering Security issued pursuant to the Rights Offering, which is at a 35% discount to the Plan Equity Value plus the Rights Offering Amount and the Direct Allocation Amount.

"Qualified Institutional Buyer" shall have the meaning given to it in Rule 144A of the Securities Act.

"Real Property" means, collectively, all right, title, and interest in and to any and all parcels of or interests in real property owned in fee simple or leased by the Company Entities, set forth hereto as Schedule 3.22, together with all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

"Related Fund" means, with respect to any Person, any fund, account, or investment vehicle that is controlled or managed by (i) such Person, (ii) an Affiliate of such Person, or (iii) the same investment manager, advisor or subadvisor as such Person or an Affiliate of such investment manager, advisor, or subadvisor.

"Related Person" means, with respect to any Person, such Person's current and former Affiliates, members, partners, controlling persons, subsidiaries, officers, directors,

managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals, together with their respective successors and assigns.

"Release" means any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substances).

"Representatives" means, with respect to any Person, the employees, officers, directors, officers, members, managers, partners, general partners, agents, employees, investment bankers, accountants, attorneys, advisors and other representatives of such Person.

"Requisite Commitment Parties" means, as of any time of determination, Non-Defaulting Commitment Parties as of such time whose aggregate Backstop Commitment Percentages and Direct Allocation Commitment Percentages constitute more than 50% of the aggregate Backstop Commitment Percentages and Direct Allocation Commitment Percentages of all Non-Defaulting Commitment Parties as of such time.

"Rights Offering Agent" means Kurtzman Carson Consultant, LLC d/b/a Verita Global.

"Rights Offering Participants" means each holder of Allowed Senior Notes Claims.

"Rights Offering Procedures" means the procedures governing the Rights Offering, which shall be in form and substance acceptable to the Requisite Commitment Parties and the Company and shall provide, among other things, that any Rights Offering Participant must return its subscription form to the Rights Offering Agent no later than the Subscription Form and Funding Deadline in order to exercise its Subscription Rights.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules, or regulations. Any reference herein to a specific section, rule, or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

"Specified Issuances" means, collectively, (a) the issuance by the Company of shares of Reorganized Common Equity to the holders of Allowed Senior Notes Claims pursuant to the Plan, (b) the issuance by the Company of Subscription Rights to the Rights Offering Participants pursuant to the Plan and the Rights Offering Procedures, (c) the issuance and sale of the Rights Offering Securities to the Rights Offering Participants upon exercise of Subscription Rights in the Rights Offering, (d) the issuance by the Company of the Reorganized Common Equity in respect of the Put Option Premium to the Commitment Parties (or their respective designees) pursuant to this Agreement and the Plan, (e) the issuance and sale by the Company of the Direct Allocation Shares to the Commitment Parties (or their respective designees) pursuant to this Agreement, (f) the issuance and sale by the Company of the Backstop Commitment Securities to the Commitment Parties (or their respective designees) pursuant to this Agreement, and (g) the

issuance by the Company of the Cash-Out Issued Equity to the Backstop Parties (or their respective designees) pursuant to this Agreement and the Plan.

"Subsidiary" means, with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"Subscription Agent" means one or more financial or other institutions, in each case acceptable to the Requisite Commitment Parties and reasonably acceptable to the Company.

"Subscription Form and Funding Deadline" means the date that is thirty-five (35) days after the Petition Date, or otherwise has the meaning given to such term in the Rights Offering Procedures.

"Tax" means any and all taxes of any kind whatsoever, including all non-U.S., U.S. federal, state, county, or local income, sales and use, excise, franchise, ad valorem, value added, real and personal property, gross income, gross receipt, capital stock, production, license, estimated, environmental, excise, business and occupation, disability, employment, payroll, severance, withholding or all other taxes or assessments, fees, duties, levies, customs, tariffs, imposts, obligations and charges of the same or similar nature of the foregoing, including all interest, additions, surcharges, fees or penalties related thereto.

"Tax Return" means a report, return, disclosures, estimates, statements, claim for refund, amended return, election, combined, consolidated, unitary, or similar return, or other information filed or required to be filed with a Taxing Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Taxing Authority" means the IRS and any other Governmental Body responsible for the administration or collection of any Tax.

"Unallocated Securities" means, collectively, (a) any Rights Offering Securities that holders of Allowed Senior Notes Claims could have purchased, but did not purchase, by not validly subscribing for such Rights Offering Securities in the Rights Offering by the Subscription Form and Funding Deadline in accordance with the Rights Offering Procedures, and (b) any Rights Offering Securities that are not subscribed for and purchased in the Rights Offering on account of any rounding down of fractional Rights Offering Securities.

14.3. **Index of Certain Defined Terms**.

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

COMPANY:

Cutera, Inc.

By: DocuSigned by: Taylor Harris 5293BA3709B7466...

Name: Taylor Harris
Title: Chief Executive Officer

COMMITMENT PARTIES:

[ ]

By: _____
Name:
Title:

DIRECT ALLOCATION PARTIES:

[ ]

By: _____
Name:
Title:

SCHEDULE 1

BACKSTOP PARTIES; RIGHTS OFFERING COMMITMENT; BACKSTOP COMMITMENT; BACKSTOP PREMIUM

[ON FILE WITH THE COMPANY]

SCHEDULE 2

DIRECT ALLOCATION PARTIES; DIRECT ALLOCATION COMMITMENT; DIRECT ALLOCATION PREMIUM

[ON FILE WITH THE COMPANY]

EXHIBIT C

Interim DIP Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re	:	Chapter 11
Cutera, Inc, *et al.*,	:	Case No. 25–[●] ([●])
Debtors.[1]	:	(Joint Administration Requested)
	:	Docket No. [●]

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SENIOR SECURED SUPERPRIORITY FINANCING, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSES STATUS, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of the above referenced debtors and debtors in possession (collectively, the "Debtors") in the above-referenced chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order (this "Interim Order") and a final order ("Final Order"), pursuant to sections 105, 361, 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Local Rules"), and the Procedures for Complex Cases in the Southern District of Texas (the ("Complex Case Procedures"), seeking, *inter alia*:

(i) authority for (a) the Debtors, including Cutera, Inc. (the "Borrower"), to obtain up to $25,000,000.00 in principal amount of senior secured postpetition financing on a superpriority basis in respect of a new money delayed draw

[1] The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Cutera, Inc. (2262) and Crystal Sub, LLC (6339). The Debtors' service address is 3240 Bayshore Boulevard, Brisbane, CA 94005-1021.

term loan facility (the "DIP Facility," and loans made pursuant to the DIP Facility, the "DIP Loans," and the commitments to make DIP Loans thereunder, the "DIP Commitments"), on the terms and conditions set forth in this Interim Order and that certain Superpriority Senior Secured Debtor-in-Possession Credit Agreement (as amended, restated, amended and restated, modified, waived, or supplemented from time to time, the "DIP Credit Agreement," substantially in the form attached hereto as Annex 1 and together with this Interim Order, and all appendices, exhibits or schedules hereto and to the DIP Credit Agreement, including, without limitation, the Approved Budget (as defined below), and all other agreements, instruments, pledge agreements, guarantees, fee letters, control agreements, and other ancillary documents related thereto (including any security agreements, intellectual property security agreements, mortgages, or notes) as the same may be amended, restated, supplemented, waived or modified from time to time in accordance with the terms hereof and thereof, collectively, the "DIP Loan Documents"),[2] among the Borrower, the guarantor identified on the signature pages to the DIP Loan Documents (the "Guarantor"), the other lenders identified on the DIP Credit Agreement (the "DIP Lenders") and Wilmington Savings Fund Society, FSB, as the DIP Agent (the "DIP Agent" and, together with the DIP Lenders, the "DIP Secured Parties"), and (b) the Guarantor to guaranty the Borrower's obligations in respect of the DIP Loans and all other obligations and indebtedness of the Borrower under or arising in connection with the DIP Loan Documents;

(ii) authority for the Debtors to execute and deliver the DIP Loan Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

(iii) authority for the Debtors to borrow up to $15 million of DIP Loans (the "Interim Amount") to be available and funded following the entry of the Interim Order to avoid immediate and irreparable harm to the Debtors and their estates, with the remaining $10 million of DIP Commitments to be available and funded following entry of the Final Order (in accordance with and subject to the terms and conditions set forth in the Final Order and the other DIP Loan Documents);

(iv) authority for the Debtors to, subject to the Carve-Out (defined below) and Permitted Prior Senior Liens,[3] grant security interests, liens, and superpriority

[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to those terms in the Motion and DIP Loan Documents, as applicable.

[3] "Permitted Prior Senior Liens" means liens on property of the Debtors (including the proceeds of such property) that are in existence on the Petition Date but only, if applicable, (A) to the extent such liens on any property is valid, perfected, and not avoidable, or (B) to the extent such liens constitute valid, non-avoidable liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, or the Committee, if any, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Senior Liens.

claims (including a superpriority administrative claim pursuant to sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, and liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code) to the DIP Agent, on behalf of itself and the other DIP Secured Parties, to secure all obligations of the Debtors under and with respect to the DIP Facility (collectively, the "DIP Obligations"), including, subject to entry of the Final Order, on the proceeds and property recovered in respect of the Debtors' claims and causes of action (but not on the actual claims and causes of action) arising under Chapter 5 of the Bankruptcy Code, including sections 544, 545, 547, 548, and 550 or any other similar state or federal law (collectively, the "Avoidance Action Proceeds");

(v) authority for the Debtors to pay the principal, interest, premiums, fees, expenses, and other amounts payable under the DIP Loan Documents as such become earned, due and payable, including the Upfront Payment, the Repayment Premium, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent's and collateral agent's fees, the reasonable and documented fees and disbursements of the DIP Agent's and the other DIP Secured Parties' attorneys, advisors, accountants, and other professionals, consultants, and other representatives, all to the extent provided in, and in accordance with, this Interim Order and the other DIP Loan Documents;

(vi) authority for the Debtors to waive any right to surcharge any DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise (subject to the payment in full in cash of the Carve-Out), and the equitable doctrine of marshaling and other similar doctrines;

(vii) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the Final Order;

(viii) that this Court hold an interim hearing (the "Interim Hearing") to consider the relief sought in the Motion and entry of the proposed Interim Order;

(ix) that this Court schedule a final hearing (the "Final Hearing") to consider entry of the Final Order granting the relief requested in the Motion on a final basis;

(x) waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order or the Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(xi) granting related relief;

and the Interim Hearing having been held by this Court on March [●], 2025; and due and sufficient notice of the Motion and the relief sought at the Interim Hearing having been given under the particular circumstances by the Debtors pursuant to the Bankruptcy Rules and Bankruptcy Local Rules; this Court having considered the Motion, the exhibits attached thereto, the Milne Declaration, the Braun Declaration, the First Day Declaration (collectively, the "Declarations") and all other pleadings related thereto, including the record made by the Debtors at the Interim Hearing; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Loan Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AS FOLLOWS:

A. Petition Date. On March [●], 2025 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court").

B. Debtors in Possession. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to

sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in these Chapter 11 Cases.

C. Committee Formation. No official committee of unsecured creditors (the "Committee"), as provided for under section 1102 of the Bankruptcy Code, has been appointed in the Chapter 11 Cases.

D. Notice. Proper, timely, sufficient and appropriate notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required.

E. Cash Collateral. As of the date of entry of this Interim Order, all of the Debtors' cash, including any cash in their deposit accounts, wherever located, whether as proceeds of the DIP Facility or DIP Collateral (defined below), constitutes cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), of the DIP Secured Parties.

F. Findings Regarding Postpetition Financing.

(a) The Debtors have an immediate and critical need to obtain postpetition financing under the DIP Facility to, among other things, fund working capital requirements, costs, and expenses of administration of the Chapter 11 Cases (including for funding the Carve Out), and fees and expenses relating to the DIP Facility during the pendency of the Chapter 11 Cases. Without access to the DIP Facility to the extent authorized pursuant to this Interim Order, the Debtors and their estates would suffer immediate and irreparable harm. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses,

maintain their properties in the ordinary course of business, and preserve the going-concern value of their estates, without access to the DIP Facility.

(b) The DIP Facility is the best source of debtor-in-possession financing available to the Debtors at this time. Given their current financial condition, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facility. The Debtors would be unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code, or (b) under section 364(c)(1) of the Bankruptcy Code, in each case, from sources other than the DIP Secured Parties on terms more favorable than the terms of the DIP Facility. The only viable source of credit available to the Debtors is the DIP Facility together with its related fees and expenses. The Debtors require additional financing under the DIP Facility under the terms of this Interim Order to satisfy their postpetition liquidity needs.

(c) The DIP Lenders have indicated a willingness to provide the Debtors with the DIP Facility, but solely on the terms and conditions set forth in this Interim Order and in the DIP Loan Documents. Accordingly, after considering all of their practical alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lenders pursuant to the terms of this Interim Order and the DIP Loan Documents represents the best financing currently available to the Debtors.

(d) The security interests and liens granted pursuant to this Interim Order to the DIP Lenders are appropriate under section 364(c) of the Bankruptcy Code because, among other things, such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Debtors' estates.

(e) Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(c)(2) and Bankruptcy Local Rule 4001-2(b). In particular, the authorization granted herein for the Debtors to execute the DIP Loan Documents and to obtain interim financing is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Entry of this Interim Order is in the best interests of the Debtors and their estates and creditors. The terms of the DIP Loan Documents are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and provide the Debtors reasonably equivalent value and fair consideration.

G. Sections 506(c) and Marshaling. In light of, among other things (i) the DIP Agent's and the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve-Out; and (ii) the DIP Agent's and the other DIP Secured Parties' agreement to the payment (in a manner consistent with the Approved Budget and subject to the terms and conditions of this Interim Order and the DIP Loan Documents) of certain expenses of administration of these Chapter 11 Cases, the DIP Agent and the other DIP Secured Parties seek a waiver of the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshaling and other similar doctrines.

H. Good Faith. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (a) the terms and conditions of the DIP Facility have been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties with the assistance and counsel of their respective advisors; (b) any credit to be extended, loans to be made, and other financial accommodations to be extended to the Debtors by the DIP Secured Parties, including, without limitation, pursuant to this Interim Order, have been allowed, advanced, extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the

Bankruptcy Code by the DIP Secured Parties in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code; and (c) the DIP Facility, the DIP Liens (as defined below), and the DIP Superpriority Claims (as defined below), shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is reversed or modified on appeal.

I. Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2) and Bankruptcy Local Rule 4001-1(b). The Motion and this Interim Order comply with the requirements of Bankruptcy Local Rule 4001-1(b).

J. Consents. The Debtors acknowledge, represent, stipulate, and agree that subject to the entry of this Interim Order, no consent or authorization of, filing with, or notice to, any Governmental Authority is required to be obtained or made by any Loan Party for the extensions of credit hereunder or such Loan Party's execution and delivery of, or performance of its obligations under, or validity or enforceability of, the DIP Credit Agreement or any of the other DIP Loan Documents to which it is party, as against or with respect to such Loan Party, except (i) consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, (ii) consents, authorizations, filings and notices the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect and (iii) the filings referred to in the DIP Credit Agreement.

K. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:[4]

1. Jurisdiction and Venue. Consideration of the Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Court may enter a final order approving the relief sought in the Motion consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), and 9013-1.

2. Notice. The Interim Hearing was held pursuant to Bankruptcy Rule 4001(c)(2). Notice of the Motion and the relief requested thereby and granted in this Interim Order has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules, Bankruptcy Local Rules, and Complex Case Procedures, and no further notice was required under the circumstances. This Court concludes that the form, scope, and timing of the foregoing notice complies with the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable law, and, under the circumstances, no further notice relating to the Interim Hearing or Motion is necessary or required.

3. Approved Budget.

(a) Subject to and in accordance with the terms of the DIP Credit Agreement and the other DIP Loan Documents, the Borrower shall from time to time prepare and provide to the DIP Agent a rolling 13-week consolidated weekly operating budget of the Debtors setting

[4] Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact.

forth projected operating receipts, vendor disbursements, net operating cash flow and liquidity on a weekly basis, substantially in the form of the initial budget annexed hereto as Annex 2 (the initial budget and each subsequent budget delivered and approved in accordance with the DIP Credit Agreement, an "Approved Budget"). For the avoidance of doubt, until an updated Approved Budget is approved by the Required Lenders as provided in the DIP Credit Agreement, the existing Approved Budget shall remain in effect. The Borrower may use the proceeds of the DIP Facility and DIP Collateral for the purposes set forth in and up to (but not in excess of) the amounts set forth in the Approved Budget, together with the Permitted Variance (as defined in the DIP Credit Agreement) subject to the terms and conditions set forth in the DIP Credit Agreement, the other DIP Loan Documents and this Interim Order.

(b) The Approved Budget may be updated, amended, restated, amended and restated, supplemented, extended, or otherwise modified from time to time in any manner as to which Debtors and the Required Lenders mutually agree in writing (email being sufficient) without further order of this Court, including through the procedures set forth in the DIP Credit Agreement.

4. Borrowing Authorization.

(a) The DIP Facility. The DIP Facility is hereby approved on an interim basis as set forth herein. The Debtors are expressly and immediately authorized to execute and deliver the DIP Loan Documents, enter into and perform the transactions contemplated in this Interim Order and the DIP Loan Documents and such additional documents, instruments, and agreements as may be reasonably required by the DIP Agent (acting at the direction of the Required Lenders) to implement the terms or effectuate the purposes of this Interim Order, and to receive financial accommodations and borrow under the DIP Facility subject to the terms set forth herein and in

the DIP Credit Agreement. The Debtors shall pay, in accordance with this Interim Order, the principal, interest, premiums, fees, payments, expenses, and other amounts described in the DIP Credit Agreement and the other DIP Loan Documents as such amounts become due and payable, without the need to obtain further Court approval, and to take any other actions that may be necessary or appropriate, all as provided in this Interim Order or the DIP Loan Documents. The DIP Credit Agreement and the other DIP Loan Documents shall constitute and evidence the validity and binding effect of the DIP Obligations, which are hereby deemed to be the legal, valid, and binding obligations of the Debtors and each of their respective estates, enforceable in accordance with the terms hereof and the DIP Loan Documents against each such Debtor, its respective estate, and any successor of each such Debtor or any representative of the estates (including a trustee, responsible person, or examiner with expanded powers appointed in the Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases")). Upon entry of this Interim Order, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agent or any of the DIP Secured Parties, in each case, under the DIP Loan Documents or this Interim Order or secured by the DIP Liens (as defined below), including, without limitation, all principal, accrued and unpaid interest, costs, fees, expenses, and other amounts owing under the DIP Loan Documents. The Debtors shall be jointly and severally liable for the DIP Obligations. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Loan Documents (including any DIP Obligation or DIP Liens) shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law (including,

without limitation, under chapter 5 of the Bankruptcy Code, section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or applicable state or foreign law equivalents) or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise, but other than to the Carve-Out), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(b) Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Interim Order through and including the earliest to occur of (i) entry of the Final Order and (ii) the DIP Termination Date (as defined below), subject to the terms, conditions, and limitations on availability set forth in the DIP Loan Documents and this Interim Order, the Debtors are hereby authorized to (x) borrow under the DIP Facility in an aggregate outstanding principal amount equal to the Interim Amount and (y) use Cash Collateral (including any proceeds of the DIP Facility) of the DIP Secured Parties in accordance with the terms of this Interim Order.

(c) Use of Proceeds. Subject to and in accordance with the Approved Budget, the Debtors are authorized to utilize the proceeds of the DIP Facility to, among other things, (i) pay general corporate or working capital requirements, (ii) pay the costs and expenses of administration of the Chapter 11 Cases, including the fees and expenses of professionals associated with the Chapter 11 Cases, and (iii) pay fees and expenses relating to the DIP Facility during the pendency of the Chapter 11 Cases, including the Upfront Payment and Repayment Premium; provided that the Approved Budget shall not permit or be deemed to limit the Carve-Out (defined below) or the estate professional fees and expenses.

5. Due Authorization. The Debtors acknowledge, represent, stipulate, and agree, and this Court hereby finds and orders, that:

(a) in entering into the DIP Loan Documents, and as consideration therefor and for the other accommodations and agreements of the DIP Secured Parties reflected herein and in the DIP Loan Documents, until such time as all of the DIP Obligations are indefeasibly paid in full in cash (excluding contingent indemnification obligations for which no claim has been asserted) or as otherwise provided in the DIP Credit Agreement[5] and the termination of the DIP Loan Documents in accordance with their terms and all DIP Commitments, with such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms (the "DIP Repayment"), it shall be an Event of Default if the Debtors in any way prime or seek to prime the DIP Obligations, the DIP Liens, or the DIP Superpriority Claims provided to the DIP Secured Parties under this Interim Order by offering a subsequent lender or a party in interest a superior or *pari passu* lien or administrative expense pursuant to sections 105(a), 326, 328, 330, 331, 364(c), 364(d), 503, 506, 507, 546(c), 552(b), 726 (other than expenses of a trustee under section 726(b)) or 1114 of the Bankruptcy Code) or otherwise or acquiesce thereto except as expressly authorized in the DIP Credit Agreement; provided, that the DIP Liens and the DIP Superpriority Claims shall be subordinate and subject to the Carve-Out (defined below) in all respects;

(b) the Guarantor is liable for, and hereby absolutely and unconditionally guarantees to the DIP Secured Parties the full and prompt payment when due (whether at

[5] For the avoidance of doubt, the DIP Credit Agreement provides that, upon the satisfaction of certain conditions, the DIP Obligations shall be repaid through the issuance of term loans under the Exit Facility (as defined in the DIP Credit Agreement) on a dollar-for-dollar basis, subject to the terms and conditions set forth in, and otherwise in accordance with, the Restructuring Support Agreement and an Acceptable Plan of Reorganization; provided that, for the avoidance of doubt, the outstanding amount of interest on the Plan Effective Date shall be paid in full in cash on such date.

maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter) and performance of, all DIP Obligations owed or hereafter owing to the DIP Secured Parties by the Borrower. The Guarantor agrees that its guarantee obligation hereunder shall be, and is, absolute and unconditional for all purposes in these Chapter 11 Cases and any Successor Cases and is a present and continuing guaranty of payment and performance and not of collection. It shall constitute an Event of Default if the Guarantor's obligations under this Interim Order and any DIP Loan Document are discharged prior to the DIP Repayment.

6. DIP Interest and Payment of Expenses.

(a) The DIP Obligations shall bear interest at the applicable rate (including any applicable default rate upon the occurrence and during the continuance of an Event of Default) as and to the extent set forth in the DIP Loan Documents, and be due and payable in accordance with this Interim Order and the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before this Court.

(b) The Debtors shall pay the reasonable and documented prepetition and postpetition fees and expenses of the attorneys and advisors as provided for herein or in the DIP Credit Agreement or the other DIP Loan Documents limited to (i)(A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as co-counsel to the DIP Lenders, (B) Porter Hedges LLP, as co-counsel to the DIP Lenders, (C) Centerview Partners, LLC, as financial advisor to the DIP Lenders, and (D) any other advisors as shall be deemed necessary by the DIP Lenders (the "Ad Hoc Committee Advisors") and (ii)(A) McDermott Will & Emery LLP, as counsel for the DIP Agent, and (B) any other advisors as shall be deemed necessary by the DIP Agent with the consent of the Required Lenders. None of the Ad Hoc Committee Advisors or any legal or financial advisors for the DIP Agent (including any successor agent) shall be required to file an

application seeking compensation for services or reimbursement of expenses incurred following entry of this Interim Order with this Court. Each Ad Hoc Committee Advisor and legal or financial advisor for the DIP Agent seeking compensation for services or reimbursement of expenses under the DIP Credit Agreement or the other DIP Loan Documents, this Interim Order, or a Final Order shall transmit a summary invoice of its reasonable fees and out-of-pocket expenses (which shall include a description of the nature of the matters for which services were performed but shall not be required to contain time entries, and which may be reasonably redacted or modified to protect from disclosure any confidential information or information otherwise subject to a protective privilege such as attorney-client privilege or attorney work-product privilege (and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work-product doctrine)) by e-mail to counsel to the Debtors, the U.S. Trustee, and counsel to the Committee, if any (together, the "Review Parties"); provided that, the Review Parties may reasonably request additional detail regarding the services rendered and expenses incurred by such professionals. The Review Parties, shall have seven (7) business days from receipt of a statement or invoice (the "Review Period") in which to raise an objection to the payment of any fees and expenses of such attorneys and advisors (the "Disputed Fees"), setting forth the specific objections to the Disputed Fees. Upon the expiration of the Review Period, the Debtors shall promptly pay in full in cash all such fees and expenses other than the Disputed Fees. To the extent any objection has been interposed within the Review Period and cannot be consensually resolved, the dispute will be scheduled for adjudication at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases, and the Debtors shall pay any and all portion of the Disputed Fees whose payment has been approved by the Court at such hearing within three (3) business days of such approval. Notwithstanding the

foregoing, the Debtors shall pay on or about the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the Ad Hoc Committee Advisors and any legal or financial advisors for the DIP Agent (including any successor agent), in accordance with, and subject to the DIP Credit Agreement, incurred on or prior to such date without the need for any professional to first deliver a copy of its invoice as provided for herein (other than to the Debtors). For the avoidance of doubt, the Debtors shall not have an obligation to pay such reasonable and documented fees, costs, and out-of-pocket expenses of the Ad Hoc Committee Advisors and any legal or financial advisors for the DIP Agent until invoices are provided to the Debtors.

7. Amendments. The DIP Loan Documents and the Approved Budget may from time to time be amended, restated, amended and restated, modified, waived, or supplemented by the parties thereto in accordance with the terms thereof, and each of the Debtors is expressly authorized and empowered to enter into and implement such amendments, restatements, amendment and restatements, modifications, waivers, or supplements from time to time in accordance with the terms of the DIP Loan Documents, without further order of this Court if the amendment, restatement, amendment and restatement, modification, waiver or supplement is not material or is necessary to conform the terms of the DIP Loan Documents or the Approved Budget to this Interim Order. Any material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Loan Documents (a "Material Amendment") shall be filed with the Court no later than three (3) business days prior to the anticipated date of effectiveness of any such Material Amendment, and if no objection is made by the U.S. Trustee and Committee, if any, within such three (3) business day period, then, without further application to or order of the Court, the Material Amendment shall automatically

be deemed approved and effective; provided that if an objection is made within such three (3) business day period, then such Material Amendment shall be subject to a hearing and approval of the Court; provided, further that, the foregoing shall be without prejudice to the Debtors' right to immediately seek approval from the Court of a Material Amendment on an expedited basis. For the avoidance of doubt, the extension of a Milestone shall not constitute a material amendment, restatement, amendment and restatement, modification, waiver, or supplement to the DIP Loan Documents.

8. DIP Collateral. As security for the DIP Obligations, effective immediately upon entry of this Interim Order pursuant to sections 361, 362, 364(c)(2), and 364(c)(3) of the Bankruptcy Code, and subject in all respects to the Carve Out, the DIP Agent, for the benefit of itself and the other DIP Secured Parties, is hereby granted valid, binding, continuing, enforceable, non-avoidable and automatically perfected liens upon and security interests in all real and personal property, whether now existing or hereafter arising and wherever located, tangible or intangible, of each of the Debtors, including, inter alia, (i) all of those items and types of collateral in which security interests may be created under Article 9 of the Uniform Commercial Code and, to the extent not expressly prohibited by law or contract, all of those items and types of collateral not governed by Article 9 of the Uniform Commercial Code, including any and all cash and cash equivalents, deposit accounts, securities accounts, other receivables and rights to the payment of money (including, without limitation, tax refunds and other extraordinary payments), chattel paper, contract rights, inventory (wherever located), instruments (including, without limitation, promissory notes), documents, securities (whether marketable or not) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of the Debtors' subsidiaries, including foreign subsidiaries), all

securities accounts and security entitlements related thereto, and financial assets carried therein, hedge agreements, furniture, fixtures, equipment (including documents of title), goods, vehicles, franchise rights, trade names, trademarks, service marks, copyrights, patents, pending patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles and hedging agreements), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks, and other electronic storage media and related data processing software related to the foregoing, licenses issued by any federal or state regulatory authority, any leasehold or other real property interests (including, for the avoidance of doubt, all owned real property interests and all proceeds of leased real property; provided that liens shall not attach to or encumber the Debtors' non-residential real property leases (or leasehold interest created thereby) that restrict or prohibit the grant of such liens or security deposits held pursuant to such leases, but such liens shall attach solely to the proceeds of such leases, as applicable), and proceeds, accessions, products, rents, and profits of the foregoing, wherever located, including insurance proceeds and other proceeds; (ii) actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral; (iii) subject to and upon entry of the Final Order, the Avoidance Action Proceeds (but not the Avoidance Actions); (iv) subject to and upon entry of the Final Order, the proceeds of any exercise of the Debtors' rights under sections 506(c) or 550 of the Bankruptcy Code (the "Recovery Actions"), provided that no liens shall attach to the Recovery Actions; (v) all assets of the Debtors that are not otherwise subject to the Permitted Prior Senior Liens; (vi) any assets of the Debtors that are subject to Permitted Prior

Senior Liens (the "Encumbered Collateral"); (vii) any and all other collateral of any nature or form; and (viii) the products, rents, offspring, profits, and proceeds of any of the foregoing (collectively, (i)-(viii), the "DIP Collateral").

9. Superpriority Claims and DIP Liens. In respect of the DIP Obligations under the DIP Credit Agreement, the other DIP Loan Documents and this Interim Order, the DIP Agent, for its own behalf and on behalf of the other DIP Secured Parties, is granted the following with respect to the Debtors, their estates and all DIP Collateral:

(a) a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code with priority over all other administrative expenses pursuant to the Bankruptcy Code (including the kinds specified in or arising or ordered pursuant to sections 105(a), 326, 328, 330, 331, 361, 362, 363, 364, 503(a), 503(b), 506(c), 507, 546, 552(b), 726, 1113, and 1114 of the Bankruptcy Code or otherwise), which superpriority expenses of the DIP Agent (on behalf of itself and the other DIP Secured Parties) shall be subordinate in all respects to the Carve-Out (the "DIP Superpriority Claims"); provided that pursuant to applicable bankruptcy law, the granting of such DIP Superpriority Claims does not affect the status and superior priority of any liens, including the liens of the DIP Agent (for itself and on behalf of the other DIP Secured Parties) and the holder of any of the Permitted Prior Senior Liens. Subject to entry of the Final Order, the DIP Superpriority Claims shall be payable from the Avoidance Action Proceeds;

(b) a first priority security interest and lien pursuant to section 364(c)(2) of the Bankruptcy Code on all DIP Collateral of the Debtors other than Encumbered Collateral (the "Section 364(c)(2) Liens"), including, subject to entry of the Final Order, Avoidance Action

Proceeds and proceeds of Recovery Actions, which Section 364(c)(2) Liens shall be subject only to the Carve-Out; and

(c) a junior security interest and lien pursuant to section 364(c)(3) of the Bankruptcy Code on all DIP Collateral constituting Encumbered Collateral (collectively, the "Section 364(c)(3) Liens" and, together with the Section 364(c)(2) Liens, the "DIP Liens"), which Section 364(c)(3) Liens shall be subject to the Permitted Prior Senior Liens and the Carve-Out.

(d) Except for the Carve-Out and the Permitted Prior Senior Liens, and as otherwise provided in this Paragraph 9, none of the DIP Obligations, DIP Liens, or DIP Superpriority Claims shall be (i) made *pari passu* with or subject or subordinate to, (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Loan Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Debtors, (C) any intercompany or affiliate claims, whether secured or unsecured, or liens of the Debtors or any domestic or foreign subsidiary or affiliate of any Debtor, (D) any orders of attachment or judicial liens, or (E) any other lien or security interest that is heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, including under sections 361, 363 or 364 of the Bankruptcy Code, (ii) avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code, or (iii) be subject to sections 510, 549, or 550 of the Bankruptcy Code. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of

the Chapter 11 Cases to Successor Cases, and/or upon the dismissal or conversion of any of the Chapter 11 Cases or Successor Cases.

(e) Nothing herein waives or modifies any right or remedy of the DIP Lenders to challenge the validity, priority, extent, enforceability, or amount of any Permitted Prior Senior Lien.

10. Carve-Out.

(a) Generally. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including for the avoidance of doubt DIP Collateral. The DIP Liens and the DIP Superpriority Claims, shall in all respects be subject to the payment of, without duplication, and subordinate to, the following fees and expenses (the "Carve-Out") from, at the Debtors' discretion, any Cash Collateral, loan proceeds of the DIP Facility or proceeds resulting from the liquidation of DIP Collateral:

(i) whether allowed by the Court at any time and without regard to whether such fees and expenses are provided for in the Budget, including any interim approval as set forth in any procedures approved by the Court, the unpaid fee and expense claims ("Professional Fees") of the respective professionals retained by the Debtors and the Committee, if any, pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code (the "Retained Professionals"), including any restructuring fee, sale fee, transaction fee or other success fee payable to the Debtors' investment banker ("Success Fees"), which were incurred (A) before the Carve-Out Trigger Date (defined below), and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding $500,000 (the foregoing clause (B) being the "Post Carve-Out Cap");

(ii) the unpaid fees payable to the U.S. Trustee pursuant to section

1930 of Title 28 of the United States Code plus statutory interest, if any, imposed under 31 U.S.C. § 3717 and the Clerk of the Court. There is no limitation on the obligations of the Debtors and their estates with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Court pursuant to section 1930 of Title 28 of the United States Code; and

(iii) all reasonable and documented fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code and allowed by the Court in an amount not to exceed $100,000.

(b) Carve-Out Trigger Date. As used herein, the term "Carve-Out Trigger Date" means the business day following the date upon which the DIP Agent (at the direction of the Required Lenders) provides written notice by email (or other electronic means) (the "Carve-Out Trigger Notice") to the Debtors' lead restructuring counsel (Ropes & Gray LLP and Hunton Andrews Kurth LLP), counsel to the DIP Lenders (Paul, Weiss, Rifkind, Wharton & Garrison LLP and Porter Hedges LLP), the U.S. Trustee, and counsel to the Committee, if any (the "Carve Out Notice Parties"), which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, that the Carve-Out is invoked and the Post-Carve-Out Cap is imposed.

(c) [Reserved].

(d) Professional Fees Account. On Tuesday of each week starting with the first full calendar week following the Petition Date, each Retained Professional shall deliver to the Debtors and the Ad Hoc Committee Advisors a statement (each, a "Weekly Statement") setting forth a good-faith estimate (the "Estimated Fees and Expenses") of the amount of fees and expenses incurred during the preceding week by such professional (through Saturday of such week, the "Calculation Date"); provided, that within two (2) business days after the Carve-Out

Trigger Date, each Retained Professional shall deliver one additional final statement setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Carve-Out Trigger Date. The Debtors shall, on a weekly basis, transfer cash proceeds from cash on hand in an amount equal to the Estimated Fees and Expenses of each Retained Professional (or if a Retained Professional has not delivered a Weekly Statement, the fees for such Retained Professional in the Approved Budget) into a segregated account not subject to the control of the DIP Agent, any DIP Secured Party, or any other secured party and shall not be subject to any cash sweep and/or foreclosure provisions in the DIP Loan Documents (the "Professional Fees Account"). At any time, if the Debtors in good faith believe a restructuring, sale, financing, or other success fee has been earned by a Retained Professional, the Debtors shall deposit in the Professional Fees Account an amount equal to such fee. The Debtors shall cause funds held in the Professional Fees Account to be used to pay Professional Fees solely as they become allowed and payable pursuant to any interim or final orders of the Court or otherwise; provided that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Court), any funds remaining in the Professional Fees Account shall revert to the Debtors for use in accordance with the DIP Orders; provided, further that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Account. The Professional Fees Account, and all funds held in the Professional Fees Account, shall be held in trust exclusively for the benefit of the Retained Professionals, including with respect to obligations arising out of the Carve-Out. Funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted to the DIP Secured Parties, or to any other

party pursuant to this Interim Order, shall not constitute DIP Collateral, and shall not be or be deemed to be property of any Debtor's estate; provided that the DIP Collateral shall include the Debtors' reversionary interest in funds held in the Professional Fees Account, if any, after all Professional Fees have been indefeasibly paid in full in cash (regardless of when such Professional Fees are allowed by the Court). The Debtors shall not be permitted to draw upon the Professional Fees Account other than (i) to pay Professional Fees as they become allowed and payable pursuant to any interim, final or procedural orders of the Court or (ii) to fund the Carve-Out (including for the avoidance of doubt the Post Carve-Out Cap). The Debtors' obligations to pay Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Account. The Professional Fees Account, and all funds held in the Professional Fees Account, shall be held in trust exclusively for the benefit of the Retained Professionals and, after the Carve-Out Trigger Date, the parties benefiting from the Carve-Out.

(e) The occurrence of the Carve-Out Trigger Date shall (1) constitute a demand to the Debtors to transfer cash from cash on hand in an amount equal to the Carve-Out into a segregated account outside the control of any DIP Secured Party exclusively to pay such obligations (the "Carve-Out Reserve Account"), provided that the Carve-Out Reserve Account may be the Professional Fees Account and (2) be deemed a draw request and notice of borrowing by the Debtors for DIP Loans in an amount equal to (x) the then unpaid amounts of the Professional Fees plus (y) reasonably estimated fees not yet allowed for the period through and including the Carve-Out Trigger Date and (z) the Post Carve-Out Cap. Any funding of the Carve Out shall be added to and made a part of the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law. Notwithstanding anything to the contrary

herein, (i) disbursements by the Debtors from the Carve-Out Reserve Account shall not constitute DIP Loans, (ii) the failure of the Carve-Out Reserve Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, the Professional Fees Account, the Carve-Out Reserve Account or the Budget (or Approved Budget), or any of the foregoing be construed as a cap or limitation on the amount of the Professional Fees that may be allowed by the Court and payable by the Debtors and their estates at any time (whether by interim order, final order, or otherwise).

(f) Reduction of Amounts. The Post Carve-Out Cap shall be reduced, dollar-for-dollar, by the aggregate amount of payments made after the Carve-Out Trigger Date on account of fees and expenses incurred after the Carve-Out Trigger Date to Retained Professionals.

(g) Reservation of Rights. The DIP Secured Parties reserve their rights to object to the allowance of any fees and expenses and any fees incurred before, on or after the Carve-Out Trigger Date. The payment of any fees or expenses of the Retained Professionals pursuant to the Carve-Out shall not, and shall not be deemed to, (i) reduce any Debtor's obligations owed to any of the DIP Secured Parties or to any holder of any Permitted Prior Senior Liens, or (ii) modify, alter, or otherwise affect any of the liens and security interests of such parties in the DIP Collateral (or their respective claims against the Debtors). The DIP Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Retained Professional, the U.S. Trustee or Clerk of the Court (or of any other entity) incurred in connection with the Chapter 11 Cases or any Successor Cases, and nothing in this Interim Order or otherwise shall be construed to obligate such parties in any way to pay such compensation to or to reimburse such expenses.

11. Waiver of Right to Surcharge. In light of (a) the consent of the DIP Secured Parties to the current payment of administrative expenses of the Debtors' estates in accordance with the Approved Budget, (b) the agreement of the DIP Secured Parties to subordinate the DIP Superpriority Claims to the Carve-Out, and (c) the agreement of the DIP Secured Parties to subordinate the DIP Liens to the Carve-Out and Permitted Prior Senior Liens, the DIP Secured Parties with respect to the DIP Collateral are entitled to a waiver of the any surcharge pursuant to the provisions of sections 105(a) or 506(c) of the Bankruptcy Code. No costs or expenses of administration or other charge, lien, assessment, or claim incurred at any time (including, without limitation, any expenses set forth in the Approved Budget) by any Debtor or any other person or entity shall be imposed or charged against any or all of the DIP Collateral and the DIP Secured Parties, or their respective claims or recoveries under the Bankruptcy Code, including sections 105(a) and 506(c) thereof or otherwise, and the Debtors, on behalf of their estates, waive any such rights. It is expressly understood by all parties that in making all such undertakings and proceeding in compliance with the Approved Budget, this Interim Order, and the DIP Loan Documents, the DIP Secured Parties have each relied on the foregoing provisions of this Paragraph. Notwithstanding any approval of or consent to the Approved Budget, nothing in this Interim Order shall constitute or be deemed to constitute the consent by any of the DIP Secured Parties to the imposition of any costs or expense of administration or other charge, lien, assessment, or claim (including, without limitation, any amounts set forth in the Approved Budget) against such party, its claims, or its collateral under sections 105(a) or 506(c) of the Bankruptcy Code or otherwise and no such consent shall be implied from any other action or inaction by such parties.

12. No Marshaling. None of the DIP Secured Parties or DIP Collateral shall be subject to the doctrine of marshaling or any similar doctrine or law of any jurisdiction requiring the recovery upon or application to any indebtedness of any collateral or proceeds in any particular order or action.

13. Automatic Perfection.

(a) The DIP Liens granted to the DIP Agent (on behalf of itself and the other DIP Secured Parties) pursuant to this Interim Order and the DIP Loan Documents shall be valid, enforceable, and perfected by operation of law upon entry of this Interim Order by this Court without any further action by any party, including any filing or recording that may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action, and this Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection and priority of all liens granted herein, including the DIP Liens. Neither the DIP Agent or the other DIP Secured Parties in respect of the DIP Liens shall be required to enter into or to obtain any control agreements, landlord waivers (unless required by law or contract), mortgagee waivers, bailee waivers, or warehouseman waivers or to give, file, or record any UCC-1 financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien, or similar instruments in any jurisdiction (including filings (unless required by law or contract) with the United States Patent and Trademark Office, the United States Copyright Office, or any similar agency in respect of trademarks, copyrights, trade names, or patents with respect to intellectual property) (collectively, the "Perfection Documents"), or obtain consents from any licensor or similarly situated party in interest, or take any other action to validate, record, or perfect the DIP Liens granted under the DIP Loan Documents and this Interim Order and approved hereby, all of which are automatically and immediately perfected by

the entry of this Interim Order. If the DIP Agent or any other DIP Secured Party, independently or collectively, in each case in their respective sole discretion, choose to obtain, enter into, give, record, or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded, or filed, as the case may be, as of the Closing Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority, or enforceability of the DIP Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of the optional recording or filing any Perfection Documents, the DIP Agent (acting at the direction of the Required Lenders) may, in its sole discretion, choose to record or file a true and complete copy of this Interim Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the DIP Agent or any other DIP Secured Party shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date. The Debtors are authorized to execute and deliver promptly upon request to the DIP Agent all Perfection Documents as the DIP Agent (at the direction of the Required Lenders) may reasonably request to ensure the DIP Agent and the DIP Lenders have valid and perfected liens as contemplated by the DIP Credit Agreement and this Interim Order.

(b) The authorization, grant, perfection, scope, and vesting of the DIP Liens, the DIP Superpriority Claims, and the DIP Obligations are fully effectuated by this Interim Order and any security agreements, collateral agreements, or other Perfection Documents executed as part of the DIP Loan Documents shall supplement the authorization, grant, perfection, scope, and vesting set forth herein as well as the powers and protections accorded to

the DIP Agent and the other DIP Secured Parties, but in no event shall any such security agreement, collateral agreement, or other Perfection Document be interpreted as a limitation of such provisions of this Interim Order.

14. Limitation on Use of Proceeds. Notwithstanding anything in this Interim Order to the contrary, no portion or proceeds of the DIP Facility, the DIP Collateral, including Cash Collateral, or the Carve-Out, and no disbursements set forth in the Approved Budget may be used by the Debtors or any other party in interest, or their representatives, to (or support any other party to) pay professional fees, disbursements, costs, or expenses incurred in connection with: (a) investigating, analyzing, commencing, prosecuting, threatening, litigating, objecting to, contesting, challenging in any manner or raising any defense to the validity, perfection, priority, or enforceability of, or any amount due under, the DIP Loan Documents or any security interests, liens, or claims granted under this Interim Order or the DIP Loan Documents to secure such amounts; (b) asserting any challenges, claims, actions, or causes of action, including Avoidance Actions, against any of the DIP Secured Parties or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors; (c) preventing, hindering or otherwise delaying the DIP Agent's or the DIP Lenders' assertion, enforcement or realization on the DIP Collateral or the exercise of rights by the DIP Agent or the DIP Lenders once an Event of Default has occurred and is continuing; *provided*, however, the Debtors may challenge the existence of an Event of Default pursuant to Paragraph 18, (d) seeking to modify the rights granted to the DIP Agent or the DIP Lenders under the DIP Loan Documents without the prior written consent of the Required Lenders, or (e) paying any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of the Court (which order may be this Interim Order or the Final Order) and permitted by the DIP Loan

Documents.

15. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors have agreed to the milestones set forth in the DIP Credit Agreement (the "Milestones"). For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones (a) shall constitute an Event of Default under the DIP Facility and this Interim Order, (b) subject to Paragraph 18, result in the automatic termination of the Debtors' authority to use Cash Collateral under this Interim Order, and (c) permit the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders, in each case subject to Paragraph 18, to exercise the rights and remedies provided for in this Interim Order and the DIP Facility. The Milestones may only be extended by agreement of the Debtors and the DIP Agent (acting at the direction of the Required Lenders (in their sole discretion)).

16. Indemnification. The Debtors shall pay, indemnify and reimburse the DIP Agent, each DIP Lender and each of their affiliates, and their respective officers, directors, trustees, employees, agents, sub-agents, attorneys, advisors, controlling persons, successors, and assigns and partners and members of each of the foregoing (each, an "Indemnified Person"), solely to the extent any such Indemnified Person was performing services on behalf of the DIP Agent and/or DIP Lender, for, and hold each of them harmless from and against, any and all reasonable and documented out-of-pocket costs, expenses (including reasonable and documented out-of-pocket fees, disbursements, and other charges of counsel), obligations, losses, damages, penalties, disbursements and liabilities of such Indemnified Person arising out of or relating to any claim or any actions, judgments, suits, litigation or other proceeding of any nature whatsoever (regardless of whether such Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Debtors or any of their affiliates or

shareholders) that relates to or arises out of the execution, delivery, enforcement, performance and administration of the DIP Loan Documents, the DIP Facility or this Interim Order, including the transactions contemplated hereby and thereby, and any actual or proposed use of the proceeds of any loans made under the DIP Facility in accordance with the terms of the DIP Credit Agreement; provided that no Indemnified Person will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted from such Person's gross negligence, willful misconduct, fraud, breach of their obligations under the DIP Facility or violations of this Order. Other than with respect to the proviso at the end of the immediately preceding sentence, nothing herein is meant to limit the scope of any indemnity provided for the benefit of the DIP Agent or the DIP Lenders or any of their representatives in the DIP Loan Documents; provided that in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.

17. Released Parties. Effective as of the date of entry of this Interim Order, the Debtors absolutely and unconditionally release and forever discharge and acquit the DIP Agent, the DIP Lenders, and their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors, and assigns, each solely in such capacity (collectively, the "DIP Released Parties"), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and indemnify and hold harmless from and for any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits,

controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type (in each case, arising on or prior to the date of this Interim Order), whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, in each case, arising in connection with or relating to the DIP Facility, the DIP Liens, and security interests or any of the DIP Loan Documents; but excluding obligations of the DIP Lender under the DIP Loan Documents arising after the date of this Interim Order, and provided that nothing herein shall relieve the DIP Released Parties from fulfilling their obligations under the DIP Loan Documents and/or this Interim Order. For the avoidance of doubt, the releases set forth in this Paragraph 17 do not include the release of the holders of the Prepetition Notes (as defined in the DIP Credit Agreement) that are party to the DIP Credit Agreement (the "Prepetition DIP Notes Parties") in their capacity as such.

18. Remedies.

(a) The automatic stay is hereby modified to the extent necessary to permit the DIP Agent (acting at the direction of the Required Lenders) or the Required Lenders to take any or all of the following actions, at the same or different times, in each case without further order or application to the Court, on not less than five (5) business days' notice (the Remedies Notice Period") after the date of delivery of a written notice (a "Default Notice" and the date of delivery of such Default Notice, the "DIP Termination Date") by the DIP Agent (at the direction of the Required Lenders) to the Debtors, counsel for the Committee, if any, and the U.S. Trustee: immediately upon the occurrence and during the continuance of an Event of Default under the DIP Loan Documents or upon the Maturity Date, (A) declare the termination,

reduction or restriction of any applicable further DIP Commitment to the extent any further DIP Commitment remains, (B) cease making financial accommodations to the Debtors, (C) declare all applicable DIP Obligations to be immediately due, owing and payable in full in cash, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, notwithstanding anything herein or in any DIP Loan Document to the contrary, (D) terminate the DIP Loan Documents as to any future liability or obligation of the DIP Agent or the DIP Lenders with respect to the DIP Commitments thereunder (but, for the avoidance of doubt, without affecting any of the DIP Liens, DIP Superpriority Claims, or DIP Obligations), and (E) fund and apply the Carve-Out through the delivery of a Carve-Out Trigger Notice; provided that upon the occurrence and continuation of an Event of Default or upon the Maturity Date, but prior to the exercise or enforcement of any rights against the DIP Collateral, the DIP Lenders shall be required to file a motion with the Court seeking emergency relief (the "Stay Relief Motion") on not less than five (5) business days' notice to the Debtors, counsel for the Committee, if any, and the U.S. Trustee (which period may run concurrently with the Remedies Notice Period and any notice required to be provided under the DIP Loan Documents) for a further order modifying the automatic stay to permit the DIP Agent (acting at the direction of the Required Lenders) to (A) exercise all of its rights and remedies under this Interim Order, the DIP Loan Documents and otherwise available under applicable law, including, without limitation, to foreclose upon the DIP Collateral or otherwise enforce the DIP Obligations, the DIP Liens, and the DIP Superpriority Claims on any or all of the DIP Collateral and to exercise any other default-related remedies under the DIP Loan Documents, this Interim Order, or applicable law in seeking to recover payment of the DIP Obligations, and (B) withdraw consent to the Debtors' continued use of Cash Collateral.

(b) During the Remedies Notice Period, the Debtors shall be permitted to cure any Event of Default and to use Cash Collateral solely to (A) pay payroll and other critical administrative expenses to keep the business of the Debtors operating, strictly in accordance with the Approved Budget (and Permitted Variance) or as necessary to maintain and maximize the value of the DIP Collateral, or as otherwise agreed by the DIP Agent acting at the direction of the Required Lenders, (B) fund the Carve-Out Account, and (C) contest any Stay Relief Motion.

(c) No rights, protections or remedies of the DIP Agent or the DIP Lenders granted by the provisions of this Interim Order or the other DIP Loan Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination by any party of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral.

19. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Secured Parties contained in this Interim Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents and the terms of Paragraph 18 hereof, upon written notice to the landlord of any leased premises that an Event of Default or the Maturity Date has occurred and is continuing under the DIP Loan Documents, the DIP Agent (acting at the direction of the Required Lenders) may, subject to the applicable notice provisions in this Interim Order and any separate agreement by and between such landlord and the DIP Agent or any DIP Secured Party (or consent of the landlord), enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP

Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder. Nothing herein shall require any DIP Secured Party to assume any lease as a condition to the rights afforded to the DIP Secured Parties in this paragraph.

20. Insurance Policies. Effective as of entry of this Interim Order, the Debtors consent to, and, to the fullest extent provided by applicable law, the DIP Agent (on behalf of itself and the other DIP Secured Parties) shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtors that in any way relates to DIP Collateral.

21. Successors and Assigns. This Interim Order, the DIP Credit Agreement, and the other DIP Loan Documents, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the Debtors, the DIP Agent, the DIP Lenders, the Prepetition DIP Notes Parties, the Committee, if any, all other creditors of any of the Debtors and all other parties in interest in these Chapter 11 Cases or any Successor Cases, any statutory or non-statutory committee, responsible individual, examiner with expanded powers, or other estate representative or other fiduciary appointed as the legal representative of any of the Debtors and the respective successors and assigns of each of the foregoing, including any subsequently appointed or elected chapter 11 trustee or, in the event of the conversion of any of the Chapter 11 Cases or any Successor Cases to a liquidation under chapter 7 of the Bankruptcy Code, any chapter 7 trustee, and shall inure to the benefit of the DIP Lenders and the Debtors and their successors and assigns. Such binding effect is an integral part of this Interim Order.

22. Survival. The provisions of this Interim Order, the DIP Loan Documents

and any actions taken pursuant hereto and thereto, and all of the protections, rights, remedies, liens, priorities, privileges, and benefits granted to any or all of the DIP Secured Parties shall survive, and shall not be modified, impaired, or discharged by, the entry of any subsequent order, including any order (i) confirming any plan of reorganization or liquidation in any of the Chapter 11 Cases (and, to the extent the DIP Repayment does not occur, each of the Debtors have hereby waived the right to seek to discharge the DIP Obligations pursuant to section 1141(d)(4) of the Bankruptcy Code pursuant to such order), (ii) converting any of the Chapter 11 Cases to a Chapter 7 case, (iii) dismissing any of the Chapter 11 Cases or any Successor Case, (iv) withdrawing of the reference of any of these Chapter 11 Cases or any Successor Cases, or providing for abstention from handling or retaining of jurisdiction of any of these Chapter 11 Cases in this Court, or (v) terminating the joint administration of these Chapter 11 Cases, or by any other act or omission. The terms and provisions of this Interim Order as well as the DIP Obligations, the DIP Liens, the DIP Superpriority Claim, and the DIP Loan Documents shall continue in full force and effect in the Chapter 11 Cases, any Successor Cases, and following the dismissal of the Chapter 11 Cases or any Successor Cases, and such protections, rights, remedies, priorities, privileges, benefits, claims, and liens shall maintain their priority as provided by this Interim Order and the DIP Loan Documents to the maximum extent permitted by law until the DIP Repayment has occurred.[6]

23. Discharge. Subject to the terms and conditions of the DIP Credit Agreement, the DIP Obligations shall not be discharged by the entry of an order confirming any plan of

[6] For the avoidance of doubt, the DIP Credit Agreement provides that, upon the satisfaction of certain conditions, the DIP Obligations shall be repaid through the issuance of term loans under the Exit Facility (as defined in the DIP Credit Agreement) on a dollar-for-dollar basis, subject to the terms and conditions set forth in, and otherwise in accordance with, the Restructuring Support Agreement and an Acceptable Plan of Reorganization; provided that, for the avoidance of doubt, the outstanding amount of interest on the Plan Effective Date shall be paid in full in cash on such date.

reorganization in any of the Chapter 11 Cases or any Successor Case, notwithstanding the provisions of Section 1141(d) of the Bankruptcy Code, unless the DIP Repayment has occurred on or before the effective date of such plan of reorganization or the DIP Agent (at the direction of the Required Lenders) has otherwise agreed in writing.

24. Good Faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, (a) the DIP Facility, the use of Cash Collateral, and the other provisions of this Interim Order, the DIP Credit Agreement, and the other DIP Loan Documents have been negotiated in good faith and at arm's length among the Debtors and the DIP Secured Parties, and the extension of the financial accommodations to the Debtors by the DIP Secured Parties pursuant to this Interim Order and the DIP Loan Documents have been and are deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and (b) in the event any or all of the provisions of this Interim Order are hereafter reversed or modified, on appeal, each of the DIP Agent and the DIP Lenders is entitled to, and are hereby granted, the protections provided in section 364(e) of the Bankruptcy Code. To the fullest extent provided by section 364(e) of the Bankruptcy Code, any such reversal or modification shall not affect (i) the validity and enforceability of any obligation, advances, indebtedness or liability under this Interim Order and the DIP Loan Documents by the Debtors prior to the date of receipt of written notice to the DIP Agent of the effective date of such action, and (ii) the validity and enforceability of any lien, administrative expense, right, or priority authorized or created hereby or pursuant to this Interim Order and the DIP Loan Documents, including, without limitation, the DIP Obligations, the DIP Liens, and the DIP Superpriority Claims.

25. No Waiver. This Interim Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Secured Parties or any Prepetition DIP Notes Party may have to bring or be heard on any matter brought before this Court. Any consent, modification, declaration of default, exercise of remedies, or non-exercise of remedies under or in connection with this Interim Order or the DIP Loan Documents shall require the approval of the Required Lenders and shall not be deemed a waiver or relinquishment of any of the rights of any of the DIP Lenders. Except as expressly set forth herein, nothing contained in this Interim Order shall impair, prejudice, or modify any rights, claims, or defenses available in law or equity to any DIP Secured Parties or Prepetition DIP Notes Party, including, without limitation, the right (a) to request conversion of any of the Debtors' Chapter 11 Cases to Chapter 7, (b) to seek to terminate the exclusive rights of the Debtors to file, and solicit acceptances of, a plan of reorganization under section 1121 of the Bankruptcy Code or propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (c) to object to the fees and expenses of any Retained Professional, (d) to seek relief from the automatic stay, and (e) seek any other relief, whether legal, equitable or otherwise. All such rights, claims, and defenses, and the rights, objections, and defenses of all parties in connection therewith, are hereby reserved. The failure of the DIP Agent, the other DIP Lenders, or the Prepetition DIP Notes Parties to seek relief or otherwise exercise their rights and remedies under the Interim Order, the DIP Loan Documents, the Prepetition Notes Documents, or applicable law, as the case may be, shall not constitute a waiver of the rights hereunder, thereunder or otherwise of the DIP Agent, the other DIP Lenders, or the Prepetition DIP Notes Parties.

26. Order Governs. In the event of any inconsistency or conflict between or among, as applicable, the provisions of this Interim Order and the DIP Loan Documents, the Motion, or

any supporting documents, the provisions of this Interim Order shall control and govern to the extent of such conflicts.

27. Right to Credit Bid. In connection with any sale process authorized by the Court, whether effectuated through sections 363, 725, or 1123 of the Bankruptcy Code, the DIP Agent (at the direction of the Required Lenders) shall have the right to use the DIP Obligations, DIP Liens, and DIP Superpriority Claim to credit bid (directly or via one or more acquisition vehicles) with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral, subject in all respects to section 363(k) of the Bankruptcy Code.

28. Waiver of Requirement to File Proofs of Claim. None of the DIP Agent, the DIP Lenders, or the Prepetition DIP Notes Parties shall be required to file proofs of claim in the Chapter 11 Cases or any Successor Cases for any claims allowed herein, including claims for the DIP Obligations under the DIP Loan Documents, the DIP Superpriority Claims, the DIP Liens, or the Prepetition Notes Obligations under the Prepetition Notes Documents. The statements of claim in respect of the DIP Obligations set forth in this Interim Order, together with the evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim for the DIP Agent, the DIP Lenders, and the Prepetition DIP Notes Parties in respect of such obligations, and each of the DIP Agent, the DIP Lenders and the Prepetition DIP Notes Parties shall be treated under section 502(a) of the Bankruptcy Code as if they filed a proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall not apply to (i) the DIP Agent or the other DIP Secured Parties, and (ii) the Prepetition DIP Notes Parties with respect to the Prepetition Notes or any claims under the Prepetition Documents.

29. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) of the Bankruptcy Code in violation of the DIP Loan Documents or this Interim Order at any time prior to the DIP Repayment, including subsequent to the confirmation of any chapter 11 plan with respect to any or all of the Debtors (if applicable), then all the cash proceeds derived from such credit or debt shall immediately be applied to repay the DIP Obligations in accordance with this Interim Order and the DIP Loan Documents until the DIP Repayment occurs.

30. Maintenance of DIP Collateral. Until the DIP Repayment has occurred, the Debtors shall (a) insure the DIP Collateral as required under the DIP Loan Documents; (b) maintain the cash management system in effect as of the Petition Date, as modified by any order of the Court or otherwise agreed to by the DIP Agent (at the direction of the Required Lenders); and (c)(i) maintain accurate records of all transfers (including intercompany transactions) within the cash management system so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors before the Petition Date, and (ii) provide access upon reasonable prior request to such records to the DIP Agent and the DIP Lenders.

31. Disposition of DIP Collateral. Except as otherwise provided for in the DIP Loan Documents, the Debtors may not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral other than in the ordinary course of business, or file a motion or application seeking, or otherwise seek or directly or indirectly support any other person in seeking authority to take such action, without the prior written consent of the DIP Agent (at the

direction of the Required Lenders) and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent or any other DIP Secured Parties.

32. Limits on Lender Liability. Nothing in this Interim Order, any of the DIP Loan Documents, any of the Prepetition Documents, or any other documents related thereto, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent or the other DIP Secured Parties or the Prepetition DIP Notes Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Chapter 11 Cases or any Successor Cases. The DIP Agent or the other DIP Secured Parties shall not, solely by reason of having made loans under the DIP Facility or authorizing the use of Cash Collateral, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this Interim Order or the DIP Loan Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, any of the DIP Secured Parties, or any of the Prepetition DIP Notes Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors. For the avoidance of doubt, this provision applies to the DIP Agent, the other DIP Secured Parties, and the Prepetition DIP Notes Parties solely in their capacity as such.

33. Replacement Agent. Notwithstanding the resignation or replacement of any collateral agent or administrative agent, including the DIP Agent, the DIP Liens on the DIP

Collateral shall remain continuously and properly perfected, notwithstanding the transfer of control, possession, or title of any DIP Collateral to a new collateral or administrative agent.

34. No Third-Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

35. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Loan Documents.

36. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make any loan under the DIP Loan Documents unless (and subject to the occurrence of the Closing Date) all of the conditions precedent to the making of such extension of credit under the DIP Loan Documents, this Interim Order and/or the Final Order, as applicable, have been satisfied in full or waived by the Required Lenders in accordance with the terms of the DIP Loan Documents.

37. No Modification of Order. Until the DIP Repayment occurs, the Debtors shall be prohibited from seeking or consenting to, directly or indirectly, any material modification, stay, vacatur, or amendment to this Interim Order (other than the Final Order) without the prior written consent of the DIP Agent (acting at the direction of the Required Lenders) and no such consent shall be implied by any action or inaction of the DIP Agent.

38. Headings. The headings in this Interim Order are for reference purposes only and will not in any way affect the meaning and interpretation of the terms of this Interim Order.

39. Immediate Effect of Order. This Interim Order shall take effect immediately upon execution hereof, and, notwithstanding anything to the contrary contained in Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, there shall be no stay of execution of effectiveness of this Interim Order. All objections to the entry of this Interim Order have been withdrawn or overruled and the Motion is approved on an interim basis on the terms and conditions set forth herein.

40. Jurisdiction. The Court shall retain exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents, including the interpretation and enforcement of this Interim Order.

41. Final Hearing. The Final Hearing is scheduled for March [●], 2025, at [●].m. (prevailing Central Time) before this Court. Any objections by creditors or other parties in interest to any provisions of this Interim Order shall be deemed waived unless timely filed and served in accordance with this Paragraph. The Debtors shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, or overnight mail upon the Notice Parties. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of the Final Order shall be filed with this Court by no later than [●].m. (prevailing Central Time) on March [●], 2025, with copies to: (i) proposed attorneys for the Debtors: (A) Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036 (Attn: Ryan Dahl (Ryan.Dahl@ropesgray.com), Natasha Hwangpo (Natasha.Hwangpo@ropesgray.com), and Conor McNamara (Conor.McNamara@ropesgray.com)); and (B) proposed co-counsel for the Debtors: Hunton Andrews Kurth LLP, 600 Travis Street, Suite 4200, Houston, Texas 77002

(Attn: Timothy ("Tad") A. Davidson (taddavidson@hunton.com), Phillip M. Guffy (pguffy@hunton.com)); (ii) counsel for the DIP Lenders: (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, (Attn: Jacob Adlerstein (jadlerstein@paulweiss.com), Sean Mitchell (smitchell@paulweiss.com) and Douglas Keeton (dkeeton@paulweiss.com)), and (B) co-counsel for the DIP Lenders, Porter Hedges LLP, 1000 Main St., 36th Floor, Houston, TX 77002, (Attn: John F. Higgins (jhiggins@porterhedges.com), [___] ([___]@porterhedges.com)), (iii) counsel for the DIP Agent: McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, New York 10017, (Attn: Jonathan Levine (jlevine@mwe.com), Alexis D. Soshnick (asoshnick@mwe.com), Lucas Barrett (lbarrett@mwe.com)), (iii) the Office of the United States Trustee for the Southern District of Texas, Attn: Ha Nguyen (Ha.Nguyen@usdoj.gov), Vianey Garza (Vianey.Garza@usdoj.gov); and (iv) counsel to the Committee, if any.

Annex 1

DIP Credit Agreement

SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

among

CUTERA, INC.,
a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code,
as the Borrower,

THE LENDERS PARTY HERETO and

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Administrative Agent and Collateral Agent

Dated as of March [●], 2025

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C	Form of Assignment and Assumption
D	Form of Exemption Certificate
E	Form of Interim Order
F	Form of Initial Budget
G	Form of Prepayment Option Notice
H	Form of Guarantee and Collateral Agreement

SUPERPRIORITY SENIOR SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of March [●], 2025, among CUTERA, INC., a Delaware corporation and a debtor and debtor-in-possession under chapter 11 of the Bankruptcy Code (the "Company" or the "Borrower"), the financial institutions or other entities from time to time parties to this Agreement as lenders (the "Lenders") and WILMINGTON SAVINGS FUND SOCIETY, FSB ("WSFS"), as Administrative Agent and Collateral Agent.

WHEREAS, on March [●], 2025 (the "Petition Date"), the Borrower and certain of the Borrower's Domestic Subsidiaries (each, a "Debtor" and collectively, the "Debtors") filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a "Case" and collectively, the "Cases") and have continued in the possession of their assets and the management of their business pursuant to Section 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lenders provide a superpriority senior secured debtor-in-possession term loan credit facility in an aggregate principal amount not to exceed $25,000,000 (the "DIP Facility"), consisting of $15,000,000 in term loan commitments in respect of Initial Draw T-1 Loans to be made in a single draw on the Initial Draw T-1 Availability Date and $10,000,000 in delayed draw term loan commitments in respect of Delayed Draw T-2 Loans, with all of the Borrower's obligations under the DIP Facility to be guaranteed by each Guarantor, and the Lenders are willing to extend such credit to Borrower on the terms and subject to the conditions set forth herein;

WHEREAS, the relative priority of the DIP Facility with respect to the Collateral granted as security for the payment and performance of the Obligations shall be as set forth in the Interim Order and the Final Order, in each case, upon entry thereof by the Bankruptcy Court, and in the Security Documents;

WHEREAS, all of the claims and the Liens granted under the Orders and the Loan Documents to the Agents, the Lenders and the other Secured Parties in respect of the DIP Facility shall be subject to the Carve-Out; and

WHEREAS, the Borrower and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit to the Borrower under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

SECTION I. DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"ABR": for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two (2) U.S. Government Securities Business Days prior to such day plus 1.00%; provided that, for purposes of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the ABR due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted

Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted Term SOFR Rate, respectively. If the ABR is being used as an alternate rate of interest pursuant to Section 2.17 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.17(b)), then the ABR shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the ABR as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"ABR Borrowing": a Borrowing comprised of ABR Loans.

"ABR Loan": each Loan bearing interest based on the ABR.

"ABR Term SOFR Determination Day": as defined in the definition of "Term SOFR".

"Acceptable Plan of Reorganization": a Chapter 11 Plan for each of the Cases that, upon the consummation thereof, provides for the termination of all unused Commitments hereunder (if any) and either (a) the indefeasible payment in full in cash of all of the Obligations under the Loan Documents or (b) the Exit Conversion as is agreed to by the Required Lenders pursuant to Section **Error! Reference source not found.**.

"Ad Hoc Committee": the committee of holders of, or investment managers advisors, or sub-advisors on behalf of certain clients, funds and/or accounts that are holders of, the Prepetition Notes identified on Schedule 1.1(a) (including Affiliates and commonly advised or managed funds and institutions).

"Ad Hoc Committee Advisors": Paul, Weiss, Rifkind, Wharton & Garrison LLP, Porter & Hedges LLP and Centerview Partners LLC.

"Adjusted Term SOFR Rate": for (a) an Interest Period of one month or less, an interest rate per annum equal to (i) Term SOFR for such Interest Period, plus (ii) 0.10%, and (b) an Interest Period of greater than one month but less than or equal to three months, an interest rate per annum equal to (i) Term SOFR for such Interest Period, plus (ii) 0.10%; provided that in the case of each of the foregoing clauses (a) and (b), if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Administrative Agent": WSFS, as the administrative agent for the Lenders under this Agreement and the other Loan Documents, together with any of its successors and permitted assigns in such capacity in accordance with Section 9.9.

"Affected Financial Institution": (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, in either case whether by contract or otherwise.

"Agent Fee Letter": that certain Fee Letter, dated as of March [●], 2025, by and between the Borrower and the Agents, as amended or modified from time to time.

"Agents": the collective reference to the Collateral Agent and the Administrative Agent, and "Agent" refers to either one, as applicable.

"Agreed Purposes": as defined in Section 10.14.

"Agreement": this Superpriority Senior Secured Debtor-In-Possession Credit Agreement, as amended, supplemented, waived or otherwise modified from time to time.

"Anti-Corruption Law": the United States Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, any applicable law or regulation implementing the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, or any other applicable similar law or statute.

"Applicable Margin": (a) for SOFR Loans, 9.50% and (b) for ABR Loans, 8.50%.

"Approved Bankruptcy Court Order": (a) each of the Orders, as such order is amended and in effect from time to time in accordance with this Agreement, (b) any other material order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of any Secured Party, (ii) the Loan Documents (including the Loan Parties' obligations thereunder), (iii) the Collateral, any Liens thereon or any Superpriority Claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or Superpriority Claims), (iv) use of cash collateral, (v) debtor-in-possession financing, or (vi) any Chapter 11 Plan, (A) in the case of the foregoing clauses (i) through (v), that (x) is in form and substance reasonably satisfactory to the Administrative Agent (with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders, (y) has not been vacated, reversed or stayed and (z) has not been amended or modified in a manner adverse to the rights of the Lenders except as agreed in writing by Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders in their sole discretion, and (B) in the case of the foregoing clause (vi), that (x) is in form and substance reasonably satisfactory to the Administrative Agent (with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders, (y) has not been vacated, reversed or stayed and (z) has not been amended or modified in a manner adverse to the rights of the Lenders except as agreed in writing by Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders, and (c) any other order entered by the Bankruptcy Court that (i) is in form and substance reasonably satisfactory to the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders, (ii) has not been vacated, reversed or stayed and (iii) has not been amended or modified except in a manner reasonably satisfactory to the Administrative Agent (solely with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders; *provided* that the foregoing shall not apply to any orders approving any (x) retention applications, (y) procedures with respect to retention or compensation of ordinary course professionals or (z) professional compensation or applications for professional compensation; *provided*, *further* that the right of the DIP Secured Parties to object to the entry of the orders set forth in the foregoing proviso shall not be affected by such limitation.

"Approved Budget": as defined in Section 6.1(d).

"Approved Fund": as defined in Section 10.6(b).

"Asset Sale": any Disposition of Property or series of related Dispositions of Property by the Borrower or any of its Subsidiaries, other than any such Disposition or series of related Dispositions of inventory in the ordinary course of business.

"Assignee": as defined in Section 10.6(b).

"Assignment and Assumption": an Assignment and Assumption, substantially in the form of Exhibit C or such other form reasonably acceptable to the Administrative Agent and the Borrower.

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

"Backstop Commitment Agreement": the backstop commitment agreement, as defined in the Restructuring Support Agreement.

"Backstop Commitment Order": an order of the Bankruptcy Court in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Required Lenders approving the Debtor's entry into and performance under the Backstop Commitment Agreement.

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

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

"Bankruptcy Code": Title 11, U.S.C., as now or hereafter in effect, or any successor thereto.

"Bankruptcy Court": the United States Bankruptcy Court for the Southern District of Texas, Houston Division, or any other court having jurisdiction over the Cases from time to time.

"Benchmark" shall mean, initially, Term SOFR; provided that if a replacement of the Benchmark has occurred pursuant to Section 2.17, then "Benchmark" shall mean the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.17.

"Benchmark Replacement": for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable currency at such time and (b) the related Benchmark Replacement Adjustment;

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents. If the Benchmark Replacement is Daily Simple SOFR plus the related Benchmark Replacement Adjustment, all interest payments will be payable on a quarterly basis.

"Benchmark Replacement Adjustment": with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable currency at such time.

"Benchmark Replacement Conforming Changes": with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR", the definition of "Business Day", the definition of "U.S. Government Securities Business Day", the definition of "Interest Period" or any similar or analogous definition, timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides in its reasonable discretion that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines in its reasonable discretion that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date": the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event", the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used

in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness, non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event": with respect to any Benchmark, the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

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

"Benefited Lender": as defined in Section 10.7(a).

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

"Board of Directors": (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (b) with respect to a partnership, the board of directors of the general partner of the partnership, or any committee thereof duly authorized to act on behalf of such board or the board or committee of any Person serving a similar function; (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof or any Person or Persons serving a similar function; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower": as defined in the preamble hereto.

"Borrower Materials": as defined in Section 10.2(c).

"Borrowing": Loans made, converted or continued on the same date and, in the case of SOFR Loans, as to which a single Interest Period is in effect.

"Borrowing Date": any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lenders to make Loans hereunder.

"Budget": the Initial Budget, as amended, modified, supplemented or replaced from time to time in accordance with Section 6.1(d).

"Budget Variance Report": a variance report prepared by a Responsible Officer of the Borrower, comparing for each applicable Test Period the actual results against anticipated results under the applicable Approved Budget(s), on an aggregate basis (excluding professional fees and expenses) and in the same level of detail set forth in the then Approved Budget, together with a written explanation for all variances of greater than the Permitted Variance for the given Test Period and such other information as the Administrative Agent or the Required Lenders may reasonably request.

"Budget Variance Test Date": as defined in Section 6.1(e).

"Business": the business activities and operations of the Borrower and/or its Subsidiaries on the Closing Date.

"Business Day": any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent's office is located.

"Capital Lease Obligations": as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal Property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP, provided, that for the purposes of this definition, "GAAP" shall mean generally accepted accounting principles in the United States as in effect on the Closing Date.

"Capital Stock": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, and any and all equivalent ownership interests in a Person (other than a corporation).

"Carve-Out": as defined in the Interim Order or the Final Order, as applicable.

"Cases": as defined in the recitals to this Agreement.

"Cash Equivalents":

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within 18 months from the date of acquisition thereof;

(b) certificates of deposit, time deposits and eurodollar time deposits with maturities of 18 months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 18 months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus at the date of acquisition thereof in excess of $250,000,000;

(c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clauses (a) and (b) above entered into with any financial institution meeting the qualifications specified in clause (b) above;

(d) commercial paper having a rating of at least A-1 from S&P or P-1 from Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another rating agency) and maturing within 18 months after the date of acquisition and Indebtedness and preferred stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's with maturities of 18 months or less from the date of acquisition;

(e) readily marketable direct obligations issued by or directly and fully guaranteed or insured by any state of the United States or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of 18 months or less from the date of acquisition;

(f) marketable short-term money market and similar securities having a rating of at least P-1 or A-1 from Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another rating agency) and in each case maturing within 18 months after the date of creation or acquisition thereof;

(g) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AA- (or the equivalent thereof) or better by S&P or Aa3 (or the equivalent thereof) or better by Moody's;

(h) (x) such local currencies in those countries in which the Borrower and its Subsidiaries transact business from time to time in the ordinary course of business and (y) investments of comparable tenor and credit quality to those described in the foregoing clauses (a) through (g) or otherwise customarily utilized in countries in which the Borrower and its Subsidiaries operate for short term cash management purposes; and

(i) Investments in funds which invest substantially all of their assets in Cash Equivalents of the kinds described in clauses (a) through (h) of this definition.

"Cash Management Obligations": obligations in respect of any overdraft or other liabilities arising from treasury, depository and cash management services, credit or debit card, or any automated clearing house transfers of funds.

"Cash Management Order": means the interim and final order of the Bankruptcy Court authorizing the Debtors to maintain their cash management and treasury arrangements, as the same may be amended, modified or supplemented from time to time with the reasonable consent of the Administrative Agent (solely with respect to the treatment of the Agents) and Required Lenders.

"Certificated Security": as defined in the Guarantee and Collateral Agreement.

"Chapter 11 Plan": a plan of reorganization in any or all of the Cases.

"Charges": as defined in Section 10.20.

"Chattel Paper": as defined in the Guarantee and Collateral Agreement.

"Closing Date": March [●], 2025.

"Code": the Internal Revenue Code of 1986, as amended from time to time (unless otherwise indicated).

"Collateral": as the term "Collateral" is defined in the Interim Order (and, when applicable, the Final Order) and words of similar intent, and in any of the Security Documents, and shall include all present and after acquired assets and property, whether real, personal, tangible, intangible or mixed of the Loan Parties, wherever located, on which Liens are or are purported to be granted pursuant to the Orders, and/or the Security Documents to secure the payment and performance of the Obligations.

"Collateral Agent": WSFS, in its capacity as collateral agent for the Secured Parties under this Agreement and the Security Documents, together with any of its successors and permitted assigns in such capacity in accordance with Section 9.9.

"Commitment": an Initial Draw T-1 Commitment and/or a Delayed Draw T-2 Commitment, as the context may require.

"Committed Loan Notice": a request by the Borrower in accordance with the terms of Section 2.2 and substantially in the form of Exhibit A or another form approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent).

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Commonly Controlled Entity": an entity, whether or not incorporated, that is under common control with any Loan Party within the meaning of Section 4001 of ERISA or is part of a group that includes any Loan Party and that is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"Company": as defined in the preamble hereto.

"Company Parties": as defined in the Restructuring Support Agreement.

"Compliance Certificate": a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B or such other form reasonably acceptable to the Administrative Agent and the Borrower.

"Confidential Information": as defined in Section 10.14.

"Consenting Senior Noteholders": as defined in the Restructuring Support Agreement.

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any written or recorded agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

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

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

"Debtor" or "Debtors": as defined in the recitals to this Agreement.

"Debtor Relief Laws": (a) the Bankruptcy Code of the United States, (b) all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, administration, receivership, insolvency, reorganization, debt adjustment, or similar debtor relief laws from time to time in effect and affecting the rights of creditors generally (including, without limitation, any plan of arrangement provisions of applicable corporation statutes) of the United States or other applicable jurisdictions from time to time in effect, and (c) any order made by a court of competent jurisdiction in respect of any of the foregoing.

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

"Default Rate": as defined in Section 2.15(c).

"Defaulting Lender": any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) pay over to any Loan Party any other amount required to be paid by it hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one

or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Administrative Agent or the Borrower in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after request by the Administrative Agent or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans under this Agreement, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied; *provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the Administrative Agent's or the Borrower's, as applicable, receipt of such certification in form and substance satisfactory to the Borrower or the Administrative Agent, as applicable, or (d) has become, or is a direct or indirect Subsidiary of any Person that is, the subject of (i) a Bail-In Action or (ii) a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business or assets appointed for it, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; *provided* that, none of the foregoing events or circumstances under this clause (ii) shall result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of the foregoing clauses shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender.

"Definitive Documents": as defined in the Restructuring Support Agreement.

"Delayed Draw T-2 Availability Date": the first date on which the conditions set forth in Section 5.2 are satisfied.

"Delayed Draw T-2 Commitment": with respect to any Lender, the commitment (if any) of such Lender to make Delayed Draw T-2 Loans to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.1(T-2), as such commitment may be (a) terminated pursuant to Section VIII, (b) terminated or reduced pursuant to Section 2.1(b) or (c) modified from time to time to reflect any assignments permitted by Section 10.6. The aggregate amount of the Lenders' Delayed Draw T-2 Commitments on the Closing Date is $10,000,000.

"Delayed Draw T-2 Lenders": the Persons listed on Schedule 2.1(T-2) and any other Person that shall have become a party to this Agreement pursuant to an Assignment and Assumption in accordance with the terms of Section 10.6, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption in accordance with the terms of Section 10.6.

"Delayed Draw T-2 Loans": any Loan made pursuant to Section 2.1(b).

"Designated Jurisdiction": any country or territory that is the target of comprehensive Sanctions (as of the date of this Agreement, Iran, Syria, Cuba, North Korea, and Crimea, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, Kherson, and Zaporizhzhia regions of Ukraine).

"DIP Facility": as defined in the recitals to this Agreement.

"Disinterested Director": with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction. A member of any such Board of Directors shall not be deemed to have such a financial interest by reason of such member's holding Capital Stock of the Borrower or any options, warrants or other rights in respect of such Capital Stock.

"Disposition": with respect to any Property, any sale, sale and leaseback, assignment, conveyance, transfer, license or other disposition thereof, in each case, to the extent the same constitutes a complete sale, sale and leaseback, assignment, conveyance, transfer or other disposition, as applicable. The terms "Dispose" and "Disposed of" shall have correlative meanings.

"Disqualified Capital Stock": Capital Stock that (a) requires the payment of any dividends (other than dividends payable solely in shares of non-Disqualified Capital Stock), (b) matures or is mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof (other than solely for non-Disqualified Capital Stock), in each case in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation on a fixed date or otherwise (including as the result of a failure to maintain or achieve any financial performance standards) or (c) are convertible or exchangeable, automatically or at the option of any holder thereof, into any Indebtedness, Capital Stock or other assets other than non-Disqualified Capital Stock (other than (i) upon payment in full of the Obligations (other than indemnification and other contingent obligations not yet due and owing) or (ii) upon a "change in control"; provided, that any payment required pursuant to this clause (ii) is subject to the prior repayment in full of the Obligations (other than indemnification and other contingent obligations not yet due and owing) that are then accrued and payable and the termination of the Commitments); provided, further, however, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Borrower or the Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the Borrower or a Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability.

"Disqualified Institution": (i) those institutions identified by the Borrower in writing to the Administrative Agent prior to the Petition Date and (ii) business competitors of the Borrower and its Subsidiaries identified by Borrower in writing to the Administrative Agent from time to time. A list of the Disqualified Institutions provided by Borrower will be posted by the Administrative Agent on the Platform and be available for inspection by all Lenders. Any designation of Disqualified Institutions by the Borrower at any time after the Closing Date in accordance with the foregoing shall not apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in the Loans or Commitments.

"Dollars" and "$": dollars in lawful currency of the United States.

"Domestic Subsidiary": any direct or indirect Subsidiary that (i) is organized under the laws of any jurisdiction within the United States and (ii) is not a direct or indirect Subsidiary of a Foreign Subsidiary.

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

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

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

"Environmental Laws": any and all laws, rules, orders, regulations, statutes, ordinances, codes or decrees (including principles of common law) of any international authority, foreign government, the United States, or any state, provincial, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution, the preservation or protection of the environment, natural resources or human health and safety (as related to Releases of or exposure to Materials of Environmental Concern), as have been, are now, or at any time hereafter are, in effect.

"Environmental Liability": any liability, claim, action, suit, judgment or order under or relating to any Environmental Law for any damages, injunctive relief, losses, fines, penalties, fees, expenses (including reasonable fees and expenses of attorneys and consultants) or costs, whether contingent or otherwise, to the extent arising from or relating to: (a) non-compliance with any Environmental Law or any permit, license or other approval required thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the Release or threatened Release of any Materials of Environmental Concern, (e) any investigation, remediation, removal, clean-up or monitoring required under Environmental Laws or required by a Governmental Authority (including without limitation Governmental Authority oversight costs that the party conducting the investigation, remediation, removal, clean-up or monitoring is required to reimburse) or (f) any contract, agreement or other consensual arrangement pursuant to which any Environmental Liability under clause (a) through (e) above is assumed or imposed.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

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

"Event of Default": any of the events specified in Section 8.1; provided, that any requirement set forth therein for the giving of notice, the lapse of time, or both, has been satisfied.

"Exchange Act": the Securities Exchange Act of 1934, as amended.

"Excluded Collateral": as defined in Section 6.8(e); provided that the Borrower may designate in a written notice to the Administrative Agent any asset not to constitute "Excluded Collateral", whereupon the Borrower shall be obligated to comply with the applicable requirements of Section 6.8 as if it were newly acquired.

"Excluded Equity Securities": (i) to the extent applicable law requires that any Subsidiary issue directors' qualifying shares, such shares or nominee or other similar shares and (ii) any Capital Stock in joint ventures or other entities in which the Loan Parties directly own 50% or less of the Capital Stock, but only in the case of this clause (ii) if, and to the extent that, and for so long as granting a security interest or other Liens therein would violate applicable law or regulation or a shareholder agreement or other contractual obligation (in each case, after giving effect to Section 9-406(d), 9-407(a) or 9-408 of the Uniform Commercial Code, if and to the extent applicable, and other applicable law) binding on such Capital Stock and in effect on the Petition Date; provided that, in no event shall any equity securities or other Capital Stock be Excluded Equity Securities under any Loan Document if the issuer thereof is a Debtor.

"Excluded Subsidiary": any Subsidiary that is

(a) not wholly owned directly by the Borrower or one or more of its wholly owned Subsidiaries, but only if, and to the extent that, and for so long as the guaranteeing or granting of a Lien on its assets to secure obligations in respect of the DIP Facility would violate applicable law or regulation or a binding shareholder agreement or other contractual obligation in effect on the Petition Date (in each case, after giving effect to Section 9-406(d), 9-407(a) or 9-408 of the Uniform Commercial Code, if and to the extent applicable, and other applicable law),

(b) any Subsidiary that is a Foreign Subsidiary or any Domestic Subsidiary of a Foreign Subsidiary on the Petition Date (other than, in each case, (i) any Subsidiary not identified as an Excluded Subsidiary on Schedule 4.14 and (ii) any other Subsidiary if, at any time after the Closing Date, the Administrative Agent (acting on the instructions of the Required Lenders, acting reasonably and in good faith), shall have notified the Borrower that such Subsidiary shall no longer constitute an Excluded Subsidiary pursuant to this clause (b)) or any other future Foreign Subsidiary or any Domestic Subsidiary of a Foreign Subsidiary if agreed by the Required Lenders,

(c) a Subsidiary that (i) is prohibited by any applicable Requirement of Law from guaranteeing or granting of a Lien on its assets to secure obligations in respect of the DIP Facility, but only if, and to the extent that, and for so long as, such prohibition remains in effect and applicable to such Subsidiary or (ii) which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee or grant any Lien unless, such consent, approval, license or authorization has been received, but only if, and to the extent that, and for so long as such consent, approval, license or authorization has not been received and continues to be required,

(d) a Subsidiary (other than, for the avoidance of doubt, any Debtor) that is prohibited from guaranteeing or granting a Lien on its assets to secure obligations in respect of the DIP Facility by any Contractual Obligation in existence on the Petition Date (or, in the case of any newly-acquired Subsidiary, in existence at the time of acquisition thereof but not entered into in contemplation thereof and not created in contemplation of such guarantee), provided, that this clause (d) shall not be applicable if (1) the other party to such Contractual Obligation is a Loan Party, a wholly-owned Subsidiary of the Borrower or a Debtor or (2) consent has been obtained to provide such guarantee or such prohibition is otherwise no longer in effect, or

(e) a Subsidiary with respect to which a guarantee by it of, or granting a Lien on its assets to secure obligations in respect of, the DIP Facility would reasonably be expected to result in material adverse tax consequences (including as a result of Section 956 of the Code or any related provision) to the Borrower and their respective Subsidiaries, taken as a whole, as agreed by the Borrower and the Required Lenders,

provided, that (x) if a Subsidiary executes the Guarantee and Collateral Agreement as a "Guarantor," then it shall not constitute an "Excluded Subsidiary" and (y) the Borrower may designate in a written notice to the Administrative Agent a Subsidiary not to constitute an "Excluded Subsidiary" whereupon such Subsidiary shall be obligated to comply with the applicable requirements of Section 6.8 as if it were newly acquired; provided, further, that no Loan Party on the Closing Date may be designated an Excluded Subsidiary and each such Loan Party shall remain a Subsidiary Guarantor hereunder.

Notwithstanding the foregoing or anything else to the contrary, no Subsidiary that is or becomes a Debtor or a Loan Party shall be an Excluded Subsidiary under the Loan Documents.

"Excluded Taxes": any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to any Recipient, (i) net income Taxes (however denominated), net profits Taxes, franchise Taxes, and branch profits Taxes (and net worth Taxes and capital Taxes imposed in lieu of net income Taxes), in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, if such Recipient is a Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) any U.S. federal withholding Taxes (including backup withholding) imposed on amounts payable to or for the account of such Recipient with respect to an applicable interest in a Loan or Commitment or this Agreement pursuant to a law in effect on the date on which (A) such Recipient becomes a party to this Agreement (other than pursuant to an assignment requested by the Borrower under Section 2.24) or (B) if such Recipient is a Lender, such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.20, amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or, if such Recipient is a Lender, to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with paragraphs (e) or (g), as applicable, of Section 2.20 and (iv) any withholding Taxes imposed under FATCA.

"Executive Officer": means Borrower's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer or Chief Legal Officer.

"Exit Credit Agreement" means the definitive credit agreement governing the (i) continuation and conversion of the Term Loans (excluding accrued interest which will be paid in cash on the Plan Effective Date) and (ii) the new money delayed draw exit term loan in an aggregate principal amount of $10 million.

"Extraordinary Receipts": an amount equal to (a) any cash payments or proceeds (including permitted Investments) received (directly or indirectly) by or on behalf of the Borrower or any of its Subsidiaries not in the ordinary course of business (and other than consisting of Net Cash Proceeds from an Asset Sale or any Recovery Event or in connection with any issuance or sale of debt securities or instruments or the incurrence of Indebtedness) in respect of (i) foreign, U.S. federal, state or local tax refunds (excluding for the avoidance of doubt, tariff refunds and value added tax refunds to the extent reflected in the Approved Budget), (ii) pension plan reversions, (iii) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (other than receipts from settlements with customers), (iv) indemnity payments (other than to the extent such indemnity payments are (A) immediately payable to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries

or (B) received by the Borrower or its Subsidiaries as reimbursement for any payment previously made to such Person) and (v) any purchase price adjustment received in connection with any purchase agreement to the extent not constituting Net Cash Proceeds, minus (b) any selling and settlement costs and out-of-pocket expenses (including reasonable broker's fees or commissions and legal fees) and any taxes paid or reasonably estimated to be payable by the Borrower or any of its Subsidiaries (after taking into account any tax credits or deductions actually realized by the Borrower or any of its Subsidiaries with respect to the transactions described in clause (a) of this definition) in connection with the transactions described in clause (a) of this definition.

"Fair Market Value": with respect to any asset (including any Capital Stock of any Person), the fair market value thereof as determined in good faith by the Borrower, the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset; provided that with respect to any such asset determined to have a Fair Market Value in excess of (i) $1,000,000, such Fair Market Value shall be determined in good faith by the board of directors or, pursuant to a specific delegation of authority by such board of directors or a designated senior executive officer, of the Borrower, or the Subsidiary of the Borrower which is selling or owns such asset and (ii) $2,500,000, such Fair Market Value shall be determined by (x) a nationally recognized investment banking firm which determination shall be documented in a letter delivered to the Administrative Agent stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view or (y) a written valuation of such asset from a recognized independent third party appraiser reasonably acceptable to the Administrative Agent.

"Fair Value": the amount at which the assets (both tangible and intangible), in their entirety, of the Borrower and its Subsidiaries taken as a whole and would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

"FATCA": Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreements (together with any law implementing such agreements), treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it; provided, that if the Federal Funds Effective Rate is less than zero, it shall be deemed to be zero hereunder for all instances.

"Final Non-Appealable Order": a final order of the Bankruptcy Court as to which no stay is pending and which has not been reversed, vacated or overturned, and as to which the time to appeal or move to reconsider has expired, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with prejudice.

"Final Order": a final order of the Bankruptcy Court in substantially the form of the Interim Order, with only such modifications thereto as are reasonably necessary to convert the Interim Order to a final order and such other modification as are reasonably satisfactory in form and substance to

the Administrative Agent (solely with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory in form and substance to the Borrower and the Required Lenders.

"Final Order Entry Date": the date on which the Final Order is entered by the Bankruptcy Court and has become a Final Non-Appealable Order.

"First Day Orders": the orders entered by the Bankruptcy Court in respect of first day motions, applications and other pleadings in respect of the Cases, *provided* that this shall not apply to any retention applications or procedures with respect to ordinary course professionals or professional compensation; *provided, further* that the right of the DIP Secured Parties to object to the entry of the orders set forth in the foregoing proviso shall not be affected by such limitation.

"First Day Pleadings": the first-day motions, applications and other pleadings in form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Borrower and the Required Lenders filed by the Debtors on the Petition Date seeking entry of the First Day Orders, *provided* that the foregoing shall not apply to any retention applications or procedures with respect to ordinary course professionals or professional compensation; *provided, further* that the right of the DIP Secured Parties to object to the pleadings set forth in the foregoing proviso shall not be affected by such limitation.

"Floor": the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to any Benchmark. With respect to Adjusted Term SOFR Rate, the "Floor" shall be 1.00%.

"Foreign Plan": any Plan that is not subject to U.S. law and is established, maintained or contributed to by any Loan Party or any other Commonly Controlled Entity.

"Foreign Plan Event": with respect to any Foreign Plan, (a) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (b) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, (d) the incurrence of any liability by any Loan Party or any other Commonly Controlled Entity under applicable law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein or (e) the occurrence of any transaction that is prohibited under any applicable law and that would reasonably be expected to result in the incurrence of any liability by a Loan Party or any other Commonly Controlled Entity, or the imposition on a Loan Party or any other Commonly Controlled Entity of, any fine, excise tax or penalty resulting from any noncompliance with any applicable law.

"Foreign Subsidiary": any Subsidiary of the Borrower that is not a Domestic Subsidiary in accordance with clause (i) of such definition and each direct or indirect Subsidiary of another Foreign Subsidiary.

"Funding Office": the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles in the United States as in effect from time to time.

"Governmental Authority": any nation or government, any state, province or other political subdivision thereof and any governmental entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and, as to any Lender, any securities exchange, any self-regulatory organization (including the National Association of Insurance Commissioners) and any supranational bodies (including the European Union and the European Central Bank).

"Guarantee": collectively, the guarantee made by the Subsidiary Guarantors under the Guarantee and Collateral Agreement in favor of the Secured Parties, together with each other guarantee delivered pursuant to Section 6.8.

"Guarantee and Collateral Agreement": the Guarantee and Collateral Agreement, substantially in the form of Exhibit H, among the Borrower, each Subsidiary Guarantor from time to time party thereto and the Collateral Agent, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) pursuant to which the guaranteeing person has issued a guarantee, reimbursement, counterindemnity or similar obligation, in either case guaranteeing or by which such Person becomes contingently liable for any Indebtedness (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets or any Investment permitted under this Agreement. The amount of any Guarantee Obligation of any guaranteeing Person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case, the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such Person in good faith.

"Hedge Agreements": all agreements with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, entered into by the Borrower or any Subsidiary; provided, that no phantom stock, deferred compensation or similar plan providing for payments only on account of

services provided by current or former directors, officers, employees or consultants of Holdings, the Borrower or any of its Subsidiaries shall be a Hedge Agreement.

"Indebtedness": of any Person: without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by (i) bonds (excluding surety bonds), debentures, notes or similar instruments, and (ii) surety bonds, (c) all obligations of such Person for the deferred purchase price of Property or services already received, (d) all Guarantee Obligations by such Person of Indebtedness of others, (e) all Capital Lease Obligations of such Person, (f) [reserved], (g) the principal component of all obligations, contingent or otherwise, of such Person (i) as an account party in respect of letters of credit (other than any letters of credit, bank guarantees or similar instrument in respect of which a back-to-back letter of credit has been issued under or permitted by this Agreement) and (ii) in respect of bankers' acceptances and (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Capital Stock of such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; provided, that Indebtedness shall not include (A) trade and other payables, accrued expenses and liabilities and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset, (D) earn-out and other contingent obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP and (E) obligations owing under any Hedge Agreements or in respect of Cash Management Obligations. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof (or provides for reimbursement to such Person).

"Indebtedness for Borrowed Money": (a) to the extent the following would be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP, the principal amount of all Indebtedness of the Borrower and its Subsidiaries with respect to (i) borrowed money, evidenced by debt securities, debentures, acceptances, notes or other similar instruments and (ii) Capital Lease Obligations, (b) reimbursement obligations for letters of credit and financial guarantees (without duplication) (other than ordinary course of business contingent reimbursement obligations) and (c) Hedge Agreements; provided, that the Obligations shall not constitute Indebtedness for Borrowed Money.

"Indemnified Liabilities": as defined in Section 10.5.

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

"Indemnitee": as defined in Section 10.5.

"Initial Budget": the initial 13-week consolidated weekly operating budget of the Debtors setting forth projected operating receipts, vendor disbursements, net operating cash flow and liquidity for the periods described therein prepared by the Borrower's management, covering the period commencing on or about the Petition Date in form and substance acceptable to the Required Lenders, it being agreed that the copy of the Initial Budget attached as Exhibit F shall be in form and substance acceptable to the Required Lenders.

"Initial Draw T-1 Availability Date": the date on which the conditions set forth in Section 5.1 are satisfied.

"Initial Draw T-1 Commitment": with respect to any Lender, the commitment (if any) of such Lender to make Initial Draw T-1 Loans to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.1(T-1), as such commitment may be (a) terminated pursuant to Section VIII, (b) terminated or reduced pursuant to Section 2.1(a) or (c) modified from time to time to reflect any assignments permitted by Section 10.6. The aggregate amount of the Lenders' Initial Draw T-1 Commitments on the Closing Date is $15,000,000.

"Initial Draw T-1 Lenders": the Persons listed on Schedule 2.1(T-1) and any other Person that shall have become a party to this Agreement pursuant to an Assignment and Assumption in accordance with the terms of Section 10.6, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption in accordance with the terms of Section 10.6.

"Initial Draw T-1 Loans": any Loan made pursuant to Section 2.1(a).

"Insolvency": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Instrument": as defined in the Guarantee and Collateral Agreement.

"Intellectual Property": as defined in the Guarantee and Collateral Agreement.

"Interest Payment Date": (a) with respect to any SOFR Loan, (i) the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, (ii) [reserved] and (iii) in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type and (b) with respect to any ABR Loan, the last Business Day of each calendar quarter.

"Interest Period": as to any SOFR Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing (in the case of a conversion or continuation), as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1 or 3 months thereafter as the Borrower may elect or as shall be deemed elected pursuant to Section 2.2 (as long as such tenor is available for such SOFR Borrowing); provided, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim Order": an interim order of the Bankruptcy Court (and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of (solely with respect to the treatment of the Agents) the Administrative Agent and the Required Lenders in their sole discretion) in the form set forth as Exhibit E, with changes to such form as are reasonably satisfactory to the Administrative Agent (solely with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders, approving the Loan Documents and related matters.

"Interim Order Entry Date": the date on which the Interim Order is entered by the Bankruptcy Court.

"Investments": as defined in Section 7.7.

"IRS": the United States Internal Revenue Service.

"Latest Initial Draw T-1 Date": as defined in Section 2.1(a).

"Lenders": the Initial Draw T-1 Lenders and/or the Delayed Draw T-2 Lenders, as the context may require.

"Lien": any mortgage, pledge, hypothecation, collateral assignment, encumbrance, lien (statutory or other), charge or other security interest or any other security agreement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

"Loan": any loan made by any Lender to the Borrower pursuant to this Agreement, including for the avoidance of doubt, the Initial Draw T-1 Loans and/or the Delayed Draw T-2 Loans, as the context may require.

"Loan Documents": the collective reference to this Agreement, the Orders, the Security Documents, and the Agent Fee Letter, together with any amendment, supplement, waiver, or other modification to any of the foregoing.

"Loan Parties": the Borrower and each Subsidiary Guarantor, and "Loan Party" means any one of them.

"Mandatory Prepayment Date": as defined in Section 2.12(e).

"Material Adverse Effect": a material adverse effect on (a) the business, operations, assets, financial condition or results of operations of the Borrower and its Subsidiaries, taken as a whole (other than by virtue of the commencement of the Cases and the events and circumstances giving rise thereto and the effects thereof), or (b) the material rights and remedies available to the Administrative Agent and the Lenders, taken as a whole, or on the ability of the Loan Parties, taken as a whole, to perform their payment obligations to the Lenders, in each case, under the Loan Documents; provided that Material Adverse Effect shall expressly exclude the effect of the filing of the Cases, the events and conditions resulting from or leading up thereto, and any action required to be taken under the Loan Documents or the Orders.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, pollutants, contaminants, radioactivity and any other substances that are defined, listed or regulated as hazardous, toxic (or words of similar regulatory intent or meaning) under any Environmental Law, or that are regulated pursuant to Environmental Law or which may give rise to any Environmental Liability.

"Maturity Date": the earliest of (a) the Scheduled Maturity Date, (b) the effective date of any Chapter 11 Plan for the Borrower or any other Debtor, (c) the consummation of a sale or other disposition of all or substantially all assets of the Debtors, taken as a whole, under section 363 of the Bankruptcy Code, (d) the date of acceleration or termination of the DIP Facility in accordance with the

terms hereof and (e) 35 days from the Petition Date (or such later date as agreed to by the Required Lenders), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date.

"Maximum Rate": as defined in Section 10.20.

"Moody's": Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"Multiemployer Plan": a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Proceeds": (a) in connection with any Asset Sale or any Recovery Event occurring on or after the Closing Date, (I) the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received) received by any Loan Party or any Subsidiary and (II) the proceeds in the form of cash and Cash Equivalents received by any Loan Party or any Subsidiary from any sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in connection with any such Asset Sale or Recovery Event, net of (i)(x) selling expenses, attorneys' fees, accountants' fees, investment banking fees, brokers' fees and consulting fees, (y) the principal amount, premium or penalty, if any, interest and other amounts required to be applied to the repayment of Indebtedness (other than any Prepetition Indebtedness) secured by a Lien permitted hereunder on any asset which is the subject of such Asset Sale or Recovery Event (other than any Lien pursuant to a Security Document or an order of the Bankruptcy Court) and (z) other customary fees and expenses actually incurred by any Loan Party or any Subsidiary in connection therewith; (ii) Taxes paid or reasonably estimated to be payable by any Loan Party or any Subsidiary as a result thereof and, without duplication, any tax distribution that is required as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements); (iii) the amount of any liability paid or to be paid or reasonable reserve established in accordance with GAAP against any liabilities (other than any Taxes deducted pursuant to clause (ii) above) (A) associated with the assets that are the subject of such event and (B) retained by the Borrower or any of its Subsidiaries, provided, that the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be Net Cash Proceeds of such event occurring on the date of such reduction and (iv) the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (iv)) attributable to minority interests and not available for distribution to or for the account of the Borrower or any Domestic Subsidiary as a result thereof and (b) in connection with any issuance or sale of debt securities or instruments or the incurrence of Indebtedness, the cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants' fees, consulting fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith.

"Non-Debtor": any Subsidiary of the Borrower that is not a Debtor.

"Non-Excluded Subsidiary": any Subsidiary of the Borrower which is not an Excluded Subsidiary.

"Non-Guarantor Subsidiary": any Subsidiary of the Borrower which is not a Subsidiary Guarantor.

"Non-Supporting Senior Noteholder": as defined in the Restructuring Support Agreement.

"Non-US Lender": as defined in Section 2.20(e).

"Obligations": the unpaid principal of and interest on (including interest accruing after maturity) the Loans and all other obligations and liabilities (including fees, premiums and make-whole) of the Borrower or any Subsidiary Guarantor to the Agents or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, in each case, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, premiums, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of Ad Hoc Committee Advisors and counsel to the Agents or any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise and including all indemnity claims of the Ad Hoc Committee, the Agents and the Lenders pursuant to Section 10.5.

"OFAC": the Office of Foreign Assets Control of the United States Department of the Treasury.

"Other Connection Taxes": with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from (and that would not have existed but for) such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document.

"Other Taxes": all present or future stamp, court or documentary, intangible, recording, filing similar Taxes that arise from any payment made under or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.25).

"Participant": as defined in Section 10.6(c)(i).

"Participant Register": as defined in Section 10.6(c)(iii).

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Periodic Term SOFR Determination Day": as defined in the definition of "Term SOFR".

"Permitted Business": (i) the Business or (ii) any business that is a natural outgrowth or a reasonable extension, development or expansion of any such Business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing.

"Permitted Variance": as defined in Section 7.17.

"Person": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Petition Date": as defined in the recitals to this Agreement.

"Plan": at a particular time, any employee benefit plan as defined in Section 3(3) of ERISA (whether or not subject to ERISA) and in respect of which any Loan Party or any other Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or has any liability, including a Multiemployer Plan.

"Plan Effective Date": the date of the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date) of one or more Chapter 11 Plans confirmed pursuant to an order entered by the Bankruptcy Court.

"Platform": as defined in Section 10.2(c).

"Pledged Securities": as defined in the Guarantee and Collateral Agreement.

"Pledged Stock": as defined in the Guarantee and Collateral Agreement.

"Prepayment Option Notice": as defined in Section 2.12(e).

"Prepetition Notes": the Borrower's (a) 2.25% convertible senior notes due 2026 pursuant to the Prepetition 2026 Note Indenture, (b) 2.25% convertible senior notes due 2028 pursuant to the Prepetition 2028 Notes Indenture, and (c) 4.00% convertible senior notes due 2029 pursuant to the Prepetition 2029 Notes Indenture.

"Prepetition 2026 Notes Indenture": that certain Indenture, dated as of March 9, 2021, among the Borrower and U.S. Bank National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

"Prepetition 2028 Notes Indenture": that certain Indenture, dated as of May 27, 2022, among the Borrower and U.S. Bank National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

"Prepetition 2029 Notes Indenture": that certain Indenture, dated as of December 12, 2022, among the Borrower and U.S. Bank National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

"Prepetition Indebtedness": collectively, the indebtedness in respect of the Prepetition Notes and any other Indebtedness (whether secured or unsecured) of each Debtor.

"Prepetition Payment": any payment, prepayment or repayment made on account of, or with respect to, any Prepetition Indebtedness.

"Prime Rate": the "U.S. Prime Lending Rate" published in The Wall Street Journal; provided that if The Wall Street Journal ceases to publish for any reason such rate of interest, "Prime Rate" shall mean the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent); each change in the Prime Rate shall be effective on the date such change is publicly announced as effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

"Proceeding": as defined in Section 10.5(c).

"Property": any right or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Capital Stock.

"Public Information": as defined in Section 10.2(c)

"Public Lender": as defined in Section 10.2(c).

"Real Property": collectively, all right, title and interest of the Borrower or any of its Subsidiaries in and to any and all parcels of real property owned or leased by the Borrower or any such Subsidiary together with all improvements and appurtenant fixtures, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Recipient": (a) any Lender, (b) the Administrative Agent or (c) the Collateral Agent, as applicable.

"Recovery Event": any settlement of or payment in respect of any Property or casualty insurance claim or any condemnation proceeding relating to any asset of the Borrower or any Subsidiary, in an amount for each such event exceeding $1,000,000.

"Register": as defined in Section 10.6(b)(iv).

"Related Parties": with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Related Person": as defined in Section 10.5.

"Release": any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure or facility.

"Relevant Governmental Body": the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"Repayment Premium": as defined in Section 2.19.

"Replaced Lender": as defined in Section 2.24.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived by the PBGC in accordance with the regulations thereunder.

"Representatives": as defined in Section 10.14.

"Required Consenting Senior Noteholders": as defined in the Restructuring Support Agreement.

"Required Lenders": at any time, Lenders holding more than 50% of the sum of (a) the unused Commitments then in effect and (b) the aggregate unpaid principal amount of the Loans then outstanding (excluding any unused Commitments and outstanding Loans of Defaulting Lenders).

"Requirement of Law": as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Resolution Authority": an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer": any officer at the level of Vice President or higher of the relevant Person or, with respect to financial matters, the Chief Financial Officer, Treasurer, Controller or any other Person in the Treasury Department at the level of Vice President or higher of the relevant Person.

"Restricted Payments": as defined in Section 7.6.

"Restructuring Support Agreement": the Restructuring Support Agreement, dated as of March [●], 2025, among the Debtors and the members of the Ad Hoc Committee.

"S&P": Standard & Poor's Ratings Group, Inc., or any successor to the rating agency business thereof.

"Sanction(s)": any international economic sanction administered or enforced by the U.S. government, including OFAC and the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury, or any other applicable sanctions authorities.

"Scheduled Maturity Date": July [●], 2025; provided that, if such date is not a Business Day, the Scheduled Maturity Date shall be the immediately preceding Business Day.

"SEC": the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

"Secured Parties": collectively, the Lenders, the Administrative Agent, the Collateral Agent, any other holder from time to time of any of the Obligations and, in each case, their respective successors and permitted assigns.

"Security": as defined in the Guarantee and Collateral Agreement.

"Security Documents": the collective reference to the Orders, the Guarantee and Collateral Agreement, and all other security documents hereafter delivered to the Administrative Agent or the Collateral Agent, as applicable, purporting to grant a Lien on any Property of any Loan Party to secure the Obligations.

"Single Employer Plan": any Plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA and in respect of which any Loan Party or any other Commonly Controlled Entity is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA or has any liability.

"SOFR": a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator": the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Borrowing": a Borrowing comprised of SOFR Loans.

"SOFR Loan": any Loan bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate in accordance with the provisions of Section II, other than pursuant to clause (c) of the definition of "ABR".

"Subsidiary": as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a direct or indirect Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantors": (a) each Subsidiary other than any Excluded Subsidiary, and (b) any other Subsidiary of the Borrower that is a party to the Guarantee and Collateral Agreement. For the avoidance of doubt, as of the Petition Date, only the Borrower's Domestic Subsidiaries shall be Subsidiary Guarantors.

"Superpriority Claims": as defined in Section 2.25(a)(i).

"T-1 Upfront Payment": as defined in Section 2.9(a)(i).

"T-2 Upfront Payment": as defined in Section 2.9(a)(ii).

"Taxes": all present and future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

"Term Prepayment Amount": as defined in Section 2.12(e).

"Term SOFR":

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "ABR Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR Term SOFR Determination Day.

"Term SOFR Administrator" shall mean CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Reference Rate" shall mean the forward-looking term rate based on SOFR.

"Test Period": the rolling cumulative 2-week period most recently ended on the last Saturday prior to the delivery of each Budget Variance Report.

"Transactions": (a) with respect to the Borrower, the execution, delivery and performance by the Borrower of this Agreement, and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof, and the granting of Liens by the Borrower on Collateral pursuant to the Security Documents, (b) with respect to each Subsidiary Guarantor, the execution, delivery and performance by such Subsidiary Guarantor of each Loan Document to which it is a party, the guaranteeing of the Indebtedness and the other obligations under the Guaranty and Collateral Agreement by such Subsidiary Guarantor, and the granting of Liens by such Subsidiary Guarantor on Collateral pursuant to the Security Documents (for the avoidance of doubt, excluding Excluded Collateral) and (c) the payment of fees, costs, premiums and expenses in connection with the foregoing.

"Type": shall mean, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Term SOFR and the ABR.

"U.S. Government Securities Business Day": any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"UK Financial Institution": any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement": the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States" or "U.S.": the United States of America.

"US Lender": as defined in Section 2.20(g).

"USA Patriot Act": as defined in Section 10.18.

"Wages Order": The interim and final orders of the Bankruptcy Court approving the *Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits and Other Compensation and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations, and (II) Granted Related Relief* [Docket No. [●]].

"Write-Down and Conversion Powers": (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to the Borrower and its Subsidiaries not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," and (iii) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The term "license" shall include sub-license. The term "documents" includes any and all documents whether in physical or electronic form.

(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(f) 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 (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein, and (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

1.3 [Reserved].

1.4 Exchange Rates; Currency Equivalents. If any basket is exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such basket was utilized, such basket will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates.

1.5 [Reserved].

1.6 Accounting Terms. For purposes of determining compliance with any provision of this Agreement, the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of proposed Accounting Standards Update (ASU) Leases (Topic 840) issued August 17, 2010, or any successor proposal.

1.7 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION II. AMOUNT AND TERMS OF COMMITMENTS

2.1 Commitments.

(a) Initial Draw T-1 Loans. Subject to the terms and conditions set forth in Section 5.1 hereof and in the Orders, each Lender severally, and not jointly, agrees to make Loans denominated in Dollars to the Borrower on or after the Initial Draw T-1 Availability Date in an aggregate principal amount not to exceed such Lender's Initial Draw T-1 Commitment (if any); provided that, if the Initial Draw T-1 Availability Date shall not have occurred on or prior to the date that is 5 Business Days after the Petition Date (the "Latest Initial Draw T-1 Date"), the Initial Draw T-1 Commitments of all Lenders shall automatically and permanently terminate on and as of the Latest Initial Draw T-1 Date. For the avoidance of doubt, the Initial Draw T-1 Commitment of each Lender shall be automatically and permanently reduced to $0 upon the making of such Lender's Initial Draw T-1 Loans. Initial Draw T-1 Loans borrowed and repaid or prepaid may not be reborrowed.

(b) Delayed Draw T-2 Loans. Subject to the terms and conditions set forth in Section 5.2 hereof and in the Orders, each Lender severally, and not jointly, agrees to make Loans denominated in Dollars to the Borrower or after on the Delayed Draw T-2 Availability Date in an

aggregate principal amount not to exceed such Lender's Delayed Draw T-2 Commitment; provided, that the unused Delayed Draw T-2 Commitments of all Lenders shall automatically and permanently terminate on the Maturity Date. For the avoidance of doubt, the Delayed Draw T-2 Commitment of each Lender shall be automatically and permanently reduced to $0 upon the making of such Lender's Delayed Draw T-2 Loans. Delayed Draw T-2 Loans borrowed and repaid or prepaid may not be reborrowed. If the Delayed Draw T-2 Loans are not fungible for U.S. federal income tax purposes with the Initial Draw T-1 Loans, the Delayed Draw T-2 Loans shall be identified separately.

2.2 Procedure for Borrowing, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of loans from one Type to the other, and each continuation of Loans shall be made upon irrevocable notice by the Borrower to the Administrative Agent. Each such notice must be in writing and must be received by the Administrative Agent not later than (i) 11:00 a.m. (New York City time) two Business Days prior to the requested date of (x) conversion of ABR Loans to, or continuation of, SOFR Loans, or (y) conversion of SOFR Loans to, or continuation of, ABR Loans (ii) 5:00 pm (New York City time) one Business Day prior to the requested date of any Borrowing of Initial Draw T-1 Loans on or after the Initial Draw T-1 Availability Date and (iii) 11:00 a.m. (New York City time) two Business Days for all other Borrowings (but not conversion) of Loans. Each notice by the Borrower pursuant to this Section 2.2(a) shall be delivered to the Administrative Agent in the form of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of SOFR Loans shall be in a principal amount equal to $1,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other or a continuation of SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which an existing Loans are to be converted and/or continued and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to ABR Loans. Any such automatic conversion of SOFR Loans to ABR Loans pursuant to the immediately preceding sentence shall be effective as of the last day of the Interest Period then in effect with respect to such SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No more than six Interest Periods among SOFR Loans shall be outstanding at any time.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each applicable Lender of the amount of its ratable share of the applicable Loans, and if no timely notice of a conversion or continuation of a SOFR Loan is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans or SOFR Loans with an Interest Period of one month, as applicable, described in Section 2.2(a). Each Lender shall make the amount of its Loan available to the Administrative Agent in same day funds at the Funding Office not later than (i) 1:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Loan Notice for any Borrowing of SOFR Loans and (ii) 1:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Loan Notice for any Borrowing of ABR Loans. Upon satisfaction of the applicable conditions set forth in Section 5.1 or Section 5.2, as applicable, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to the Administrative Agent by the Borrower.

(c) Conversions and continuations of Loans are also subject to the following terms: (i) each conversion or continuation shall be made pro rata among the applicable Lenders in accordance with the respective principal amounts of the Term Loans comprising the converted or continued Borrowing; (ii) the Interest Periods and Types of any Loans that have been borrowed or issued on the same date shall at all times be identical, including with respect to any subsequent extensions or conversions thereof; (iii) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Borrowing of such Lender resulting from such conversion, and accrued interest on any Term SOFR Loan (or a portion thereof) being converted shall be paid by the Borrower at the time of conversion; (iv) except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan unless the Borrower pays the amount due under Section 2.22 in connection therewith at the time of conversion; (v) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Term SOFR Borrowing; (vi) any portion of a Term SOFR Borrowing that cannot be converted into or continued as a Term SOFR Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; (vii) no Interest Period may be selected for any Term SOFR Borrowing that would end later than the scheduled Maturity Date occurring on or after the first day of such Interest Period if, after giving effect to such selection, the aggregate outstanding amount of the Term SOFR Borrowings with Interest Periods ending on or prior to the applicable date would not be at least equal to the principal amount of applicable Term SOFR Borrowings to be paid on such date; and (viii) during the existence of an Event of Default which is continuing, at the written election of the Required Lenders, no Loans may be requested as, converted to or continued as SOFR Loans.

2.3 [Reserved].

2.4 [Reserved].

2.5 [Reserved].

2.6 [Reserved].

2.7 [Reserved].

2.8 Repayment of Loans.

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the appropriate Lender, the principal amount of each outstanding Loan of such Lender made to the Borrower on the Maturity Date (or on such earlier date on which the Loans become due and payable pursuant to Section 8.1). The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans made to the Borrower from time to time outstanding from the date made until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.15.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(b)(iv), in which shall be recorded (i) the amount of each Loan made hereunder and each Interest Period applicable thereto, (ii) the amount of any principal, interest and fees, as applicable, due and payable or to become due and payable from the Borrower to each Lender hereunder

and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.8(b) and 2.8(c) shall, to the extent permitted by applicable law, be presumptively correct absent demonstrable error of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of the Administrative Agent or any Lender to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

2.9 Fees and Premiums.

(a) *Upfront Payment*.

(i) On the Closing Date, the Borrower shall pay to the Administrative Agent for the account of each applicable Lender, an upfront payment (the "T-1 Upfront Payment") in an amount equal to 5.50% of the aggregate principal amount of the Initial Draw T-1 Commitment on the Closing Date, which T-1 Upfront Payment shall be payable in the form of an increase in the principal amount of Loans owing to each Lender as set forth on Schedule 2.9(a)(i).

(ii) On the Delayed Draw T-2 Availability Date, the Borrower shall pay to the Administrative Agent for the account of each applicable Lender, an upfront payment (the "T-2 Upfront Payment") in an amount equal to 5.50% of the aggregate principal amount of the Delayed Draw T-2 Commitment on the Delayed Draw T-2 Availability Date, which T-2 Upfront Payment shall be payable in the form of an increase in the principal amount of Loans owing to each Lender as set forth on Schedule 2.9(a)(ii).

(b) The Borrower agrees to pay (i) to the Administrative Agent, for the account of each Agent, fees payable in the amounts and on the dates separately agreed upon in writing between the Borrower and such Agents, including pursuant to the Agent Fee Letter, and (ii) such other fees as separately agreed upon in writing to be paid by the Borrower to the Lenders (after giving effect to clause (a) above).

(c) All fees and premiums payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution (i) to the applicable Agent for its own account or (ii) to the Lenders, in the case of fees and premiums due to the Lenders hereunder, as applicable. Fees or premiums paid hereunder shall not be refundable under any circumstances.

(d) For the avoidance of doubt, the parties hereto agree to treat, for U.S. federal and applicable state and local income tax purposes, any increase in the principal amount of Loans owing to any Lender under this Section 2.9 as "original issue discount".

2.10 [Reserved].

2.11 Optional Prepayments.

(a) The Borrower may at any time and from time to time prepay the Loans (subject to Section 2.11(b) below), in whole or in part, without premium or penalty except as specifically provided in Section 2.19, upon irrevocable written notice delivered to the Administrative Agent no later than 12:00 Noon, New York City time, three Business Days prior thereto, which notice shall specify the date and

amount of prepayment; provided, that if a SOFR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Sections 2.21 and 2.22. Promptly following receipt of any such notice the Administrative Agent shall notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein (provided, that any such notice may state that such notice is conditioned upon the occurrence or non-occurrence of any transaction or the receipt of proceeds to be used for such payment, in each case specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied), together with accrued interest to such date on the amount prepaid. Partial prepayments of Loans shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof, and in each case shall be subject to the provisions of Section 2.18.

(b) In connection with any optional prepayments by the Borrower of the Loans pursuant to Section 2.11(a), such prepayment shall be applied to all then outstanding Loans on a pro rata basis.

2.12 Mandatory Prepayments.

(a) Unless the Required Lenders shall otherwise agree, if any Indebtedness (excluding any Indebtedness permitted to be incurred in accordance with Section 7.2) shall be incurred by the Borrower or any Subsidiary, an amount equal to 100% of the Net Cash Proceeds thereof shall be applied not later than one (1) Business Day after the date of receipt of such Net Cash Proceeds toward the prepayment of the Loans as set forth in Section 2.12(d).

(b) Unless the Required Lenders shall otherwise agree, if on any date the Borrower or any Subsidiary shall for its own account receive Net Cash Proceeds from any Asset Sale or Recovery Event with respect to any assets or Property (including, for the avoidance of doubt, any Intellectual Property licenses in respect thereof), then such Net Cash Proceeds shall be applied not later than two (2) Business Days after such date toward the prepayment of the Loans as set forth in Section 2.12(d).

(c) Unless the Required Lenders shall otherwise agree, if on any date the Borrower or any Subsidiary shall for its own account receive Extraordinary Receipts, then such Extraordinary Receipts shall be applied not later than two (2) Business Days after such date toward the prepayment of the Loans as set forth in Section 2.12(d).

(d) Amounts to be applied in connection with prepayments of Loans pursuant to this Section 2.12 shall, subject to the Orders, be applied to the prepayment of the Loans in accordance with Section 2.18 until all Loans are paid in full. In connection with any mandatory prepayments by the Borrower of the Loans pursuant to this Section 2.12, such prepayments shall be applied on a pro rata basis to the then outstanding Loans being prepaid. Each prepayment of the Loans under this Section 2.12 shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid, any amounts owing pursuant to Section 2.22, and the Repayment Premium described in Section 2.19.

(e) Notwithstanding anything to the contrary in Section 2.12 or 2.18, with respect to the amount of any mandatory prepayment pursuant to Section 2.12(b) or (c) (such amount, the "Term Prepayment Amount"), the Borrower may, in its sole discretion, in lieu of applying such amount to the prepayment of Loans as provided in paragraph (d) above, not later than 12:00 p.m. (New York City time) on the Business Day prior to the date specified in this Section 2.12 for such prepayment, give the Administrative Agent notice in writing requesting that the Administrative Agent provide to each Lender a notice (each, a "Prepayment Option Notice") as described below. As promptly as practicable after

receiving such notice from the Borrower, the Administrative Agent will send to each Lender a Prepayment Option Notice, which shall be in the form of Exhibit G (or such other form approved by the Administrative Agent and the Borrower), and shall include an offer by the Borrower to prepay, on the date (each a "Mandatory Prepayment Date") that is ten Business Days after the date of the Prepayment Option Notice, the Loans of such Lender by an amount equal to the portion of the Term Prepayment Amount indicated in such Lender's Prepayment Option Notice as being applicable to such Lender's Loans. Each Lender may reject all or a portion of its Term Prepayment Amount by providing written notice to the Administrative Agent and the Borrower no later than 5:00 p.m. (New York City time) five (5) Business Days after such Lender's receipt of the Prepayment Option Notice (which notice shall specify the principal amount of the Term Prepayment Amount to be rejected by such Lender); provided, that any Lender's failure to so reject such Term Prepayment Amount shall be deemed an acceptance by such Lender of such Prepayment Option Notice and the amount to be prepaid in respect of Loans held by such Lender. On the Mandatory Prepayment Date, the Borrower shall pay to the relevant Lenders the aggregate amount necessary to prepay that portion of the outstanding Loans in respect of which such Lenders have (or are deemed to have) accepted prepayment as described above.

(f) [Reserved].

(g) Notwithstanding any other provisions of this Section 2.12, (A) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary (a "Foreign Asset Sale") or the Net Cash Proceeds of any Recovery Event with respect to a Foreign Subsidiary (a "Foreign Recovery Event"), in each case giving rise to a prepayment event pursuant to Section 2.12(b), are or is prohibited, restricted or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.12 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit or restricts repatriation to the United States (the Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Cash Proceeds will be promptly (and in any event not later than five Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof including, without duplication, any repatriation costs associated with repatriation of such proceeds from the applicable recipient to the Borrower) to the repayment of the Loans in accordance with this Section 2.12 and (B) to the extent that the Borrower has determined in good faith that repatriation of any or all of the Net Cash Proceeds of any Foreign Asset Sale or any Foreign Recovery Event derived from a Foreign Subsidiary could reasonably be expected to result in a material adverse tax consequence (taking into account any foreign tax credit or benefit, in the Borrower's reasonable judgment, expected to be realized in connection with such repatriation) with respect to such Net Cash Proceeds, the Net Cash Proceeds so affected may be retained by the applicable Foreign Subsidiary, provided, that, in the case of this clause (B), on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to prepayments pursuant to this Section 2.12, (x) the Borrower shall apply an amount equal to such Net Cash Proceeds to such prepayments as if such Net Cash Proceeds had been received by the Borrower rather than such Foreign Subsidiary, less the amount of additional taxes that would have been payable or reserved against if such Net Cash Proceeds had been repatriated (or, if less, the Net Cash Proceeds that would be calculated if received by such Foreign Subsidiary) or (y) such Net Cash Proceeds shall be applied to the repayment of Indebtedness of a Foreign Subsidiary, in each case, other than as mutually agreed by the Borrower and the Administrative Agent (acting on the instructions of the Required Lenders).

2.13 [Reserved].

2.14 [Reserved].

2.15 Interest Rates and Payment Dates.

(a) The unpaid principal amount of each ABR Loan shall bear interest from the date of the Borrowing thereof until Maturity (whether by acceleration or otherwise) at a rate per annum that shall at all times be the Applicable Margin for ABR Loans *plus* the ABR, in each case, in effect from time to time.

(b) The unpaid principal amount of each SOFR Loan shall bear interest from the date of the Borrowing thereof until maturity thereof (whether by acceleration or otherwise) at a rate per annum that shall at all times be the Applicable Margin for SOFR Loans *plus* the Adjusted Term SOFR Rate.

(c) Upon the occurrence and during the continuance of an Event of Default, the principal amount of outstanding Loans, any fees and/or any other amount outstanding or payable by the Borrower or any other Loan Party hereunder shall automatically bear interest (after as well as before judgment) at a rate per annum (the "Default Rate") equal to (i) in the case of the principal amount of any Loan, 2.00% per annum plus the rate otherwise applicable to such Loan and (ii) in the case of any other amount, 2.00% per annum plus the rate applicable to ABR Loans, in each case, from the date of the occurrence of such Event of Default until no Event of Default is continuing or the Loans are paid in full. Such interest shall be payable in cash by the Borrower from time to time on demand.

2.16 Computation of Interest and Fees.

(a) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted Term SOFR Rate or Term SOFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be presumptively correct in the absence of demonstrable error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.15(a) and Section 2.15(b).

2.17 Alternate Rate of Interest.

(a) [Reserved].

(b) If prior to the commencement of any Interest Period for a SOFR Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate for such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such

Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or electronic means as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Committed Loan Notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing shall be ineffective and such Borrowing shall be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing, and (ii) if any Committed Loan Notice requests a SOFR Borrowing, such Borrowing shall be made as an ABR Borrowing.

(c) Upon the occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, solely if the Administrative Agent and the Borrower determine that (x) the Relevant Governmental Body has not made any selection or recommendation for a replacement benchmark rate or the mechanism for determining such a rate and (y) there is no evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark, so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right, in consultation with the Borrower, to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.17, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.17.

(f) At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the administrator of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Borrowing of, conversion to or continuation of Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request for a SOFR Loan into a request for a Borrowing of or conversion to ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

(h) Furthermore, if any Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to the rate applicable to such Loan, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute an ABR Loan on such day.

2.18 Pro Rata Treatment and Payments.

(a) Except as expressly otherwise provided herein (including as expressly provided in Sections 2.12, 2.20, 2.21, 2.24, 10.5 and 10.7), each payment (other than prepayments) in respect of principal or interest in respect of any Loans and each payment in respect of fees payable hereunder with respect to the Loans shall be applied to the amounts of such obligations owing to the Lenders, pro rata according to the respective amounts then due and owing to such Lenders.

(b) Each optional and mandatory prepayment of the Loans shall be allocated among the Loans then outstanding pro rata; provided, that, any mandatory prepayment of Loans under Section 2.12(b) or (c) shall be subject to the opt-out provision under Section 2.12(e). Amounts repaid or prepaid on account of the Loans may not be reborrowed.

(c) [Reserved].

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff, deduction or

counterclaim and shall be made prior to 3:00 p.m., New York City time, on the due date thereof to the Administrative Agent, for the account of the relevant Lenders and/or Agents, as applicable, at the Funding Office, in immediately available funds. Any payment received by the Administrative Agent after 3:00 p.m., New York City time may be considered received on the next Business Day in the Administrative Agent's sole discretion. The Administrative Agent shall distribute such payments to the relevant Lenders and/or Agents, as applicable, promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the SOFR Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a SOFR Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding sentence, interest thereon shall be payable at the then applicable rate during such extension.

(e) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent on demand, such amount with interest thereon, at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate reasonably determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be presumptively correct in the absence of demonstrable error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days after such Borrowing Date, the Administrative Agent shall give notice of such fact to the Borrower and the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to SOFR Loans with an Interest Period of one month, on demand, from the Borrower.

(f) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder or under any other Loan Document that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the relevant Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each relevant Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

2.19 Repayment Premium. In the event that all or any portion of the Loans is repaid or prepaid or required to be repaid or prepaid in any manner and for any reason, whether pursuant to Section 2.11(a), Section 2.12(a), Section 2.12(b), or Section 2.12(c) (excluding a replacement of a Lender pursuant to Section 2.24), on the Maturity Date or following acceleration of the Loans or otherwise, such prepayment or repayment shall be accompanied by a premium (the "Repayment Premium") in an amount equal to 3.50% *multiplied by* the aggregate principal amount of the Loans so prepaid or repaid or required to be repaid or prepaid. If the Loans are accelerated or otherwise become due prior to their Maturity Date,

in each case as a result of an Event of Default (including the acceleration of claims by operation of law), the amount of principal of and premium on the Loans that becomes due and payable shall automatically equal 100% of the principal amount of the Loans *plus* the Repayment Premium as if such acceleration or other occurrence were a voluntary prepayment of the Loans or otherwise becoming due, and such Repayment Premium shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's loss as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each Lender and the Borrower agrees that it is reasonable under the circumstances currently existing. THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE APPLICABLE PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Repayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Repayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Repayment Premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph and in Sections 2.9 of this Agreement. For the avoidance of doubt, the parties hereto agree to treat, for U.S. federal and applicable state and local income tax purposes, any increase in the principal amount of Loans owing to any Lender under this Section 2.19 as "original issue discount."

2.20 Taxes.

(a) Except as otherwise required by law, all payments made by or on account of the Borrower or any Loan Party under this Agreement and the other Loan Documents to any Recipient under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes. If applicable law requires withholding or deduction of any Tax from any such payment, the Borrower, any other Loan Party or other withholding agent shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. If any Indemnified Taxes are required to be deducted or withheld from any such payments, the amounts so payable to the applicable Recipient shall be increased to the extent necessary so that after deduction or withholding of such Indemnified Taxes (including Indemnified Taxes attributable to amounts payable under this Section 2.20(a)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Without duplication of other amounts payable by the Borrower under this section, the Borrower or any Loan Party under this Agreement and the other Loan Documents shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Taxes are payable by the Borrower or any Loan Party under this Agreement or the other Loan Documents, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for the account of the Administrative Agent or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower or Loan Party showing payment thereof if such receipt is obtainable, or, if not, such other evidence of payment as may reasonably be required by the Administrative Agent or such Lender.

(d) The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes, including any amounts payable pursuant to this Section 2.20, payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any incremental Taxes and reasonable expenses arising therefrom or with respect

thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability prepared in good faith and delivered to the Borrower by a Recipient (with a copy to the Administrative Agent if applicable) shall be conclusive absent manifest error.

(e) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) (a "Non-US Lender") shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) (A) (i) two accurate and complete copies of IRS Form W-8ECI, W-8BEN or W-8BEN-E, as applicable, (ii) in the case of a Non-US Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement substantially in the form of Exhibit D and two accurate and complete copies of IRS Form W-8BEN or W-8BEN-E, or any subsequent versions or successors to such forms, in each case properly completed and duly executed by such Non-US Lender claiming complete exemption from, or reduced rate of, U.S. federal withholding tax on all payments by the Borrower or any Loan Party under this Agreement and the other Loan Documents, or (iii) IRS Form W-8IMY (or any applicable successor form) and all necessary attachments (including the forms described in clauses (i) and (ii) above, provided that if the Non-US Lender is a partnership, and one or more of the partners is claiming portfolio interest treatment, the certificate in the form of Exhibit D may be provided by such Non-US Lender on behalf of such partners) and (B) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made. Such forms shall be delivered by each Non-US Lender on or about the date it becomes a party to this Agreement (or, in the case of any Participant, on or about the date such Participant purchases the related participation). In addition, each Non-US Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-US Lender, and from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent. Each Non-US Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower and the Administrative Agent (or any other form of certification adopted by the United States taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-US Lender shall not be required to deliver any form pursuant to this paragraph that such Non-US Lender is not legally able to deliver provided that it shall promptly notify the Borrower and the Administrative Agent in writing of such inability.

(f) [reserved]

(g) Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) (a "US Lender") shall deliver to the Borrower and the Administrative Agent two accurate and complete copies of IRS Form W-9, or any subsequent versions or successors to such form and certify that such Lender is not subject to backup withholding. Such forms shall be delivered by each US Lender on or about the date it becomes a party to this Agreement. In addition, each US Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such US Lender, and from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent. Each US Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certifications to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose).

(h) If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall

promptly pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid under this Section 2.20, with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such indemnifying party, upon the request of such Recipient, agrees to repay the amount paid over to the indemnifying party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority other than any such penalties, interest or other charges resulting from the gross negligence or willful misconduct of the relevant Recipient (as determined by a final and non-appealable judgment of a court of competent jurisdiction)) to such Recipient in the event such Recipient is required to repay such refund to such Governmental Authority; provided, further, that such Recipient shall, at the indemnifying party's request, provide a copy of any notice of assessment or other evidence of the requirement to pay such refund received from the relevant Governmental Authority (provided that the Recipient may delete any information therein that it deems confidential). This paragraph shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person. In no event will any Recipient be required to pay any amount to an indemnifying party the payment of which would place such Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund of any Indemnified Taxes had never been paid.

(i) [reserved]

(j) If a payment made to a Lender under any Loan Document would be subject to withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or Administrative Agent as may be necessary for the Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that, if any, such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.20(j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(k) To the extent required by any applicable laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting the provisions of this Section 2.20, each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(c)(iii) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (k).

(l) The agreements in this Section 2.20 shall survive the termination of this Agreement and payment of the Loans and all other amounts payable under any Loan Document, the resignation of the Administrative Agent and any assignment of rights by, or replacement of, any Lender.

(m) For purposes of this Section 2.20, for the avoidance of doubt, applicable law includes FATCA.

2.21 Indemnity. Other than with respect to Taxes, which shall be governed solely by Section 2.20, the Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense (other than lost profits, including the loss of the interest rate margin) that such Lender actually sustains or incurs as a consequence of (a) any failure by the Borrower in making a borrowing of or continuation of SOFR Loans after the Borrower has given notice requesting the same in accordance with the provisions of this Agreement, (b) any failure by the Borrower in making any prepayment of SOFR Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or continuation of SOFR Loans on a day that is not the last day of an Interest Period with respect thereto. A reasonably detailed certificate as to (showing in reasonable detail the calculation of) any amounts payable pursuant to this Section 2.21 submitted to the Borrower by any Lender shall be presumptively correct in the absence of demonstrable error. This covenant shall survive the termination of this Agreement and the payment of the Obligations.

2.22 Break Funding Payments. In the event of (a) the payment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow (other than due to the default of the relevant Lender), convert, continue or prepay any SOFR Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.24, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a SOFR Loan, such loss, cost or expense to any Lender shall be deemed to be the amount determined by such Lender (it being understood that the deemed amount shall not exceed the actual amount) to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Term SOFR, as applicable, that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a SOFR Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.22 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.23 Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the payment of additional amounts pursuant to Section 2.20(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) that would, in the Lender's judgment, avoid or minimize any amounts payable pursuant to such Section (including by designating another lending office for any Loans affected by such event with the object of avoiding the consequences of such event); provided, that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage or unreimbursed cost or expense; provided, further, that nothing in this Section 2.23 shall affect or postpone any of the obligations of the

Borrower or the rights of any Lender pursuant to Section 2.20(a). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with such designation or assignment.

2.24 Replacement of Lenders. The Borrower shall be permitted to replace with a financial entity or financial entities any Lender (each such Lender, a "Replaced Lender") that (i) requests reimbursement for amounts owing or otherwise results in increased costs imposed on the Borrower or on account of which the Borrower is required to pay additional amounts to any Governmental Authority, in each case, pursuant to Section 2.20 or 2.21 (to the extent a request made by a Lender pursuant to the operation of Section 2.21 is materially greater than requests made by other Lenders), (ii) is a Disqualified Institution, (iii) has refused to consent to any waiver or amendment with respect to any Loan Document that requires such Lender's consent and has been consented to by the Required Lenders, or (iv) is a Defaulting Lender; provided, that, in the case of a replacement pursuant to clause (i) above:

(a) such replacement does not conflict with any Requirement of Law;

(b) the replacement financial entity or financial entities shall purchase, at par (which purchase price shall exclude, for the avoidance of doubt, any Repayment Premium), all Loans and other amounts owing to such Replaced Lender on or prior to the date of replacement;

(c) the Borrower shall be liable to such Replaced Lender under Section 2.22 (as though Section 2.22 were applicable) if any SOFR Loan owing to such Replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto;

(d) the replacement financial entity or financial entities, (x) if not already a Lender, an Affiliate of a Lender or an Approved Fund, shall be reasonably satisfactory to the Administrative Agent to the extent that an assignment to such replacement financial institution of the rights and obligations being acquired by it would otherwise require the consent of the Administrative Agent pursuant to Section 10.6(b)(i)(2) and (y) shall pay (unless otherwise paid by the Borrower) any processing and recordation fee otherwise required under Section 10.6(b)(ii)(2);

(e) the Administrative Agent (solely with respect to providing its consent in accordance with the terms hereof), any replacement financial entity or entities and in accordance with the last paragraph of this Section 2.24, the Replaced Lender or the Borrower shall execute and deliver, and such Replaced Lender shall thereupon be deemed to have executed and delivered, an appropriately completed Assignment and Assumption to effect such substitution;

(f) the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.20, as the case may be, in respect of any period prior to the date on which such replacement shall be consummated;

(g) in respect of a replacement pursuant to clause (iii) above, the replacement financial entity or financial entities shall consent to such amendment or waiver;

(h) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the Replaced Lender; and

(i) in the case of any such replacement resulting from a requirement that the Borrower pay additional amounts pursuant to Section 2.20 or 2.21, such replacement will result in a reduction in such payments thereafter.

In connection with any such replacement under this Section 2.24, if the Replaced Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary to reflect such replacement by the later of (x) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and (y) the date as of which all obligations of the Borrower owing to the Replaced Lender relating to the Loans and Commitments so assigned shall be paid in full to such Replaced Lender, then such Replaced Lender shall be deemed to have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Replaced Lender, and the Administrative Agent shall record such assignment in the Register.

2.25 Priority and Liens; No Discharge.

(a) Each Loan Party hereby covenants, represents, warrants and agrees that upon the execution on this Agreement and entry of the Interim Order (and, when applicable, the Final Order), the obligations hereunder and under the Loan Documents shall, subject to the Carve-Out, at all times:

(i) be entitled to superpriority administrative expense claim status in the Cases having a priority over all administrative expenses and any claims of any kind or nature whatsoever, specified in or ordered pursuant to section 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503, 506, 507(a), 507(b), 546, 552, 726, 1113 or 1114 or any other provisions of the Bankruptcy Code (the "Superpriority Claims");

(ii) be secured by a fully perfected security interest in and lien on all Collateral of each Debtor, as provided in and with the priority contemplated by the Interim Order (and, when applicable, the Final Order).

(b) Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim Order (and, when entered, the Final Order), Liens in favor of the Collateral Agent on behalf of and for the benefit of the Secured Parties in all of the Debtors' Collateral, which includes, without limitation, all of such Debtor's Real Property, now existing or hereafter acquired, shall be created and perfected without the recordation or filing in any land records or filing offices of any mortgage, assignment or similar instrument.

(c) All of the Liens described in this Section 2.25 (x) shall be effective and perfected upon entry of the Interim Order (and, when entered, the Final Order) without the necessity of the execution, recordation or filings by any Debtor of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral, as set forth in the Orders and (y) for the avoidance of doubt, shall in no way limit the Liens and security interests granted by any Loan Party pursuant to the Orders, or the Security Documents.

(d) Each of the Loan Parties agrees that (i) its obligations under the Credit Documents shall not be discharged by the entry of an order confirming a Chapter 11 Plan (and each of the Loan Parties, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby irrevocably waives any such discharge) and (ii) the Superpriority Claim granted to the Administrative Agent and the Lenders pursuant to the Orders and the Liens granted to the Collateral Agent and the Lenders pursuant to the Orders shall not be affected in any manner by the entry of an order confirming a Chapter 11 Plan.

2.26 Exit Conversion. Upon consummation of an Acceptable Plan of Reorganization, on the Plan Effective Date, so long as (a) no Default or Event of Default has occurred and is continuing,

including, without limitation, of any payment or prepayment obligations hereunder and (b)(i) the Restructuring Support Agreement has not terminated with respect to the Consenting Senior Noteholders and no default exists thereunder that would permit the Required Consenting Senior Noteholders to terminate the Restructuring Support Agreement on such date or after the giving of notice, the lapse of time, or both, and such default has not been otherwise waived in accordance with the Restructuring Support Agreement, *provided* that the condition set forth in the foregoing clause (b)(i) shall not fail to have been satisfied to the extent the Company Parties terminate the Restructuring Support Agreement as to a Non-Supporting Senior Noteholder so long as the Consenting Senior Noteholders (excluding any Non-Supporting Senior Noteholders as to which the Restructuring Support Agreement has been terminated) continue to hold or control at least two-thirds in principal amount of the then-outstanding principal amount of the Senior Notes, each Lender severally and not jointly, agrees (i) that the principal amount of the Obligations outstanding (including the amount of the Upfront Payment and the Repayment Premium) at such time shall be deemed repaid and converted through the issuance of term loans under the Exit Credit Agreement on a dollar-for-dollar basis, and (ii) to provide the portion of the new money $10,000,000 incremental exit loans under the Exit Credit Agreement as specified in the Restructuring Support Agreement, in each case, subject to the terms and conditions set forth in and otherwise in accordance with, the Restructuring Support Agreement and such Acceptable Plan of Reorganization (the "Exit Conversion"); *provided* that, for the avoidance of doubt, the outstanding amount of interest on the Plan Effective Date, all fees and expenses of the DIP Secured Parties payable pursuant to the Loan Documents and all indemnification obligations (solely to the extent due and payable as of the Plan Effective Date in cash on the Plan Effective Date) shall be paid in full in cash on such date.

SECTION III. [RESERVED]

SECTION IV. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Loans, the Borrower h**ere**by represents and warrants (as to itself and each of its Subsidiaries) to the Agents and each Lender, which representations and warranties shall be deemed made on the Closing Date and on the date of each Borrowing of Loans hereunder that:

4.1 Financial Condition.

(a) The audited consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at December 31, 2023, and the related statements of income, stockholders' equity and of cash flows for the fiscal year ended on such date, reported on by and accompanied by an unqualified report from BDO USA, P.C., present fairly in all material respects the financial condition of the Borrower and its consolidated Subsidiaries as at such date and the results of their operations, their cash flows and their changes in stockholders' equity for the respective fiscal year then ended. All such financial statements, including the related schedules and notes thereto and year-end adjustments, have been prepared in accordance with GAAP (except as otherwise noted therein).

(b) The financial projections (including the Initial Budget) and estimates and information of a general economic nature prepared by or on behalf of the Borrower or any of its representatives, and that have been made available to any Lenders or the Administrative Agent in connection with the DIP Facility or the other transactions contemplated hereby (i) have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date thereof (it being understood that actual results may vary materially from such projections and estimates), as of the date such projections and estimates were furnished to the Lenders and as of the Closing Date, and (ii) as of the Closing Date, have not been modified in any material respect by the Borrower.

4.2 No Change. Since the Closing Date, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

4.3 Existence; Compliance with Law. Each of the Borrower and its Subsidiaries, subject to the entry of the Orders and the terms thereof, (a) (i) is duly organized (or incorporated), validly existing and in good standing (or, only where applicable, the equivalent status in any foreign jurisdiction) under the laws of the jurisdiction of its organization or incorporation, except in each case (other than with respect to the Borrower) to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect, (ii) has the corporate or other organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect and (iii) is duly qualified as a foreign corporation or other entity and in good standing (where such concept is relevant) under the laws of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification except, in each case, to the extent that the failure to be so qualified or in good standing (where such concept is relevant) would not have a Material Adverse Effect and (b) is in compliance with all Requirements of Law except to the extent that any such failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

4.4 Corporate Power; Authorization; Enforceable Obligations.

(a) Each Loan Party and, subject to the entry of the Orders and terms thereof, has the corporate or other organizational power and authority to execute and deliver, and perform its obligations under, the Loan Documents to which it is a party and, in the case of the Borrower, to borrow hereunder, except in each case (other than with respect to the Borrower) to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect. Each Loan Party and, subject to the entry of the Orders and the terms thereof, each Loan Party has taken all necessary corporate or other action to authorize the execution and delivery of, and the performance of its obligations under, the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement, except in each case (other than with respect to the Borrower) to the extent such failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Subject to the entry of the Orders and the terms thereof, no consent or authorization of, filing with, or notice to, any Governmental Authority is required to be obtained or made by any Loan Party for the extensions of credit hereunder or such Loan Party's execution and delivery of, or performance of its obligations under, or validity or enforceability of, this Agreement or any of the other Loan Documents to which it is party, as against or with respect to such Loan Party, except (i) consents, authorizations, filings and notices which have been obtained or made and are in full force and effect, (ii) consents, authorizations, filings and notices the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect and (iii) the filings referred to in Section 4.17.

(c) Subject to the entry of the Orders and the terms thereof, each Loan Document has been duly executed and delivered on behalf of each Loan Party that is a party thereto. Assuming the due authorization of, and execution and delivery by, the parties thereto (other than the applicable Loan Parties) and, subject to the entry of the Orders and the terms thereof, this Agreement constitutes, and each other Loan Document upon execution and delivery by each Loan Party that is a party thereto will constitute, a legal, valid and binding obligation of each such Loan Party that is a party thereto, enforceable against each such Loan Party in accordance with its terms (provided, that, with respect to the creation and perfection of security interests with respect to the Capital Stock of Foreign Subsidiaries, only to the extent enforceability thereof is governed by the Uniform Commercial Code or the Bankruptcy Code, as applicable), except as enforceability may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law) and the implied covenants of good faith and fair dealing.

4.5 No Legal Bar. Assuming the consents, authorizations, filings and notices referred to in Section 4.4(b) are obtained or made and in full force and effect, the execution, delivery and performance of this Agreement and the other Loan Documents by the Loan Parties thereto, the borrowings hereunder and the use of the proceeds thereof will not (a) violate the organizational or governing documents of (i) the Borrower, or (ii) except as would not reasonably be expected to have a Material Adverse Effect, any other Loan Party, (b) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, violate any Requirement of Law binding on the Borrower or any of its Subsidiaries that would not reasonably be expected to have a Material Adverse Effect, (c) other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Court, violate any material Contractual Obligation (other than the Prepetition Indebtedness) of the Borrower or any of its Subsidiaries or (d) except as would not have a Material Adverse Effect, result in or require the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Loan Documents or Liens created under the Orders).

4.6 No Material Litigation. Except for the Cases and as set forth on Schedule 4.6, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened against the Borrower or any of its Subsidiaries or against any of their Properties which, taken as a whole, would reasonably be expected to have a Material Adverse Effect.

4.7 No Default. No Default or Event of Default has occurred and is continuing.

4.8 Ownership of Property; Leasehold Interests; Liens. Each of the Borrower and its Subsidiaries has good title in fee simple to, or a valid leasehold interest in, all of its Real Property, and good title to, or a valid leasehold interest in, all of its other Property (other than Intellectual Property), in each case, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, and none of such Real Property or other Property is subject to any Lien, except as permitted by the Loan Documents. Schedule 4.8 lists all Real Property owned in fee simple by any Loan Party as of the Closing Date.

4.9 Intellectual Property. Each of the Borrower and its Subsidiaries owns, or has a valid license or right to use, all Intellectual Property necessary for the conduct of its business as currently conducted free and clear of all Liens, except as permitted by Section 7.3 and except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries is infringing, misappropriating, diluting or otherwise violating any Intellectual Property rights of any Person in a manner that would reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened, which would reasonably be expected to have a Material Adverse Effect. The Borrower and its Subsidiaries take all reasonable actions that should be taken to protect their Intellectual Property, including Intellectual Property that is confidential in nature, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

4.10 Taxes. Subject to Debtor Relief Laws, the terms of the applicable Orders and any required approval by the Bankruptcy Court, each of the Borrower and its Subsidiaries (a) has filed or caused to be filed all federal, state, and other Tax returns that are required to be filed and (b) has paid or

caused to be paid all taxes shown to be due and payable on said returns and all other taxes, fees or other charges imposed on it or on any of its Property by any Governmental Authority (other than (i) any returns or amounts that are not yet due or (ii) amounts the validity of which are currently being contested in good faith by appropriate proceedings and with respect to which any reserves required in conformity with GAAP have been provided on the books of the Borrower or such Subsidiary, as the case may be), except in each case where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

4.11 Federal Regulations. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for any purpose that violates the provisions of the regulations of the Board.

4.12 ERISA.

(a) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect: (i) neither a Reportable Event nor a failure to meet the minimum funding standards under Section 412 of the Code or Section 302 of ERISA has occurred during the five-year period prior to the date on which this representation is made with respect to any Single Employer Plan, and each Single Employer Plan has complied with the applicable provisions of ERISA and the Code; (ii) no termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen on the assets of any Loan Party or any other Commonly Controlled Entity, during such five-year period; the present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Single Employer Plan allocable to such accrued benefits; (iii) no Loan Party or any other Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or would reasonably be expected to result in a liability under ERISA; (iv) no Loan Party or any other Commonly Controlled Entity would become subject to any liability under ERISA if such Loan Party or such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made; (v) no Multiemployer Plan is Insolvent or is in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA); and (vi) no Foreign Plan Event has occurred during the five-year period prior to the date on which this representation is made with respect to any Foreign Plan, and each Foreign Plan has complied with the provisions of any applicable law.

(b) The Borrower and its Subsidiaries have not incurred, and do not reasonably expect to incur, any liability under ERISA or the Code with respect to any Plan which is subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA that is maintained or contributed to by a Commonly Controlled Entity (other than the Borrower and its Subsidiaries) merely by virtue of being treated as a single employer under Title IV of ERISA with the sponsor of such plan that would reasonably be likely to have a Material Adverse Effect.

4.13 Investment Company Act. No Loan Party is an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

4.14 Subsidiaries. Schedule 4.14 sets forth a list of all of the Subsidiaries of the Borrower as of the Closing Date, together with the name and jurisdiction of incorporation of each such Subsidiary, the breakdown of ownership of each class of Capital Stock of such Subsidiary and whether any such Subsidiary is an Excluded Subsidiary.

4.15 Environmental Matters. Other than exceptions to any of the following that would not reasonably be expected to have a Material Adverse Effect, to the knowledge of any Executive Officer, (A) none of the Borrower or any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law for the operation of the Business; or (ii) has become subject to any pending or threatened Environmental Liability and (B) to the Borrower's knowledge, there are no existing facts or circumstances (including any presence or Release of Materials of Environmental Concern at any Real Property or any real property formerly owned or operated by Borrower or its Subsidiaries) that are reasonably likely to give rise to any Environmental Liability of the Borrower or any of its Subsidiaries.

4.16 Accuracy of Information, etc. As of the Closing Date, no statement or written information (excluding the projections and pro forma financial information referred to below) contained in this Agreement, any other Loan Document or otherwise furnished to the Administrative Agent or the Lenders or any of them (in their capacities as such), by or on behalf of any Loan Party for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, when taken as a whole, contained as of the date such statement, information or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not materially misleading. As of the Closing Date, the projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, in light of the circumstances under which they were made, it being recognized by the Agents and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

4.17 Security Documents.

(a) Upon entry of the Interim Order (and, if entered, the Final Order), the Liens granted thereunder by the Debtors to the Collateral Agent on any Collateral shall be valid and automatically perfected with the priority set forth herein and in the Orders, and no filing or other action will be necessary to perfect or protect such Liens and security interests with respect to the Debtors' Obligations under the Loan Documents and such Order.

(b) Subject to, and upon entry of the Orders, the Orders shall be effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, enforceable and perfected Lien on the Real Property located in the United States in which the Borrower or any other Debtor that is a Domestic Subsidiary has an interest and proceeds thereof, in each case subject only to Liens permitted by Section 7.3.

4.18 [Reserved].

4.19 Anti-Terrorism. As of the Closing Date, the Borrower and its Subsidiaries are in compliance with the USA Patriot Act, except as would not reasonably be expected to have a Material Adverse Effect.

4.20 Use of Proceeds. The Borrower will use the proceeds of the Loans solely in compliance with Section 6.9 of this Agreement and the Orders.

4.21 Labor Matters. Except as set forth on Schedule 4.21 or, in the aggregate, as would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other

labor disputes against the Borrower or its Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of the Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from the Borrower or any of its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the Borrower or such Subsidiary, as applicable.

4.22 [Reserved].

4.23 Sanctions Compliance. No Loan Party, to the knowledge of any Executive Officer, (i) is currently the target of any Sanctions or (ii) is located, organized or residing in any Designated Jurisdiction. To the knowledge of the Borrower, the Borrower and each its Subsidiaries (and all Persons acting on behalf of the Borrower and each of its Subsidiaries) is in material compliance with applicable Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used by any Loan Party, directly or indirectly, to lend, contribute, provide or has been or will be otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the target of any Sanctions, or in any other manner that will, in each case, result in any violation by any party hereto (including any Lender or the Administrative Agent) of Sanctions.

4.24 Anti-Corruption Compliance. To the knowledge of the Borrower, the Borrower and each of its Subsidiaries (and all Persons acting on behalf of the Borrower and each of its Subsidiaries) is in compliance with applicable Anti-Corruption Laws. No part of the proceeds of the Loans has been or will be used by the Borrower or its Subsidiaries, directly or indirectly, for any payments to any Person, governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any applicable Anti-Corruption Law.

4.25 Cases; Orders.

(a) The Cases were commenced on the Petition Date, duly authorized in accordance with applicable laws, and proper notice thereof has been or will be given, as will proper notice of (i) the motion seeking approval of the Loan Documents, the Interim Order and the Final Order, and (ii) the hearing for the entry of the Final Order. Proper notices of the motion for entry of the Interim Order and the hearings thereon have been given.

(b) The Loan Parties are in compliance in all material respects with the terms and conditions of the Orders. Each of the Interim Order (with respect to the period prior to the entry of the Final Order) and the Final Order (from and after the date on which the Final Order is entered) is in full force and effect and has not been vacated or reversed, is not subject to a stay and has not been modified or amended other than as consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Required Lenders and (solely with respect to the treatment of the Agents) the Administrative Agent.

(c) From and after the entry of the Interim Order, pursuant to and to the extent permitted in the Interim Order, the Obligations (i) will constitute allowed joint and several Superpriority Claims and (ii) will be secured by a valid, binding, continuing, enforceable, fully perfected Lien on all of the Collateral pursuant to Sections 364(c)(2), and (c)(3) of the Bankruptcy Code, subject only to the Carve-Out.

(d) The entry of the Interim Order (and, when applicable, the Final Order) is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, the Superpriority Claims and Liens, as applicable, described in Section 2.25 and the Orders, without the necessity of the execution (or recordation or filing) of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

SECTION V. CONDITIONS PRECEDENT

5.1 Conditions to Initial Draw T-1 Availability Date. The agreement of each Lender to make the Initial Draw T-1 Loans requested to be made by it is subject to the satisfaction, prior to or concurrently with the making of such Initial Draw T-1 Loans on or after the Initial Draw T-1 Availability Date, of the following conditions precedent:

(a) Credit Agreement; Guarantee and Collateral Agreement. The Administrative Agent shall have received (i) this Agreement, executed and delivered by the Borrower, and (ii) the Guarantee and Collateral Agreement, executed and delivered by the Borrower and each Subsidiary Guarantor party thereto.

(b) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to any of the Loan Documents shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or a Material Adverse Effect) on the Closing Date.

(c) Borrowing Notice. The Administrative Agent shall have received a Committed Loan Notice from the Borrower with respect to the Initial Draw T-1 Loans in accordance with Section 2.2.

(d) Fees. (i) The Borrower shall have paid all fees and premiums due and payable under the DIP Facility including all fees payable to the Administrative Agent, Collateral Agent or any Lender with respect to the DIP Facility and separately agreed in writing with the Borrower and (ii) the Administrative Agent shall have received all fees and premiums due and payable on or prior to the Closing Date in respect of the DIP Facility and, to the extent invoiced at least two Business Days prior to the Closing Date (or such later date as the Borrower may reasonably agree), shall have been reimbursed for all reasonable and documented out-of-pocket expenses, including the reasonable fees, charges and disbursements of each of (x) McDermott Will & Emery LLP, counsel for the Administrative Agent and (y) the Ad Hoc Committee Advisors, required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document; provided, in each case, that such fees may be net funded from the proceeds of the Initial Draw T-1 Loans.

(e) [Reserved].

(f) No Default. No Default or Event of Default exists or has occurred and is continuing on the Closing Date or, after giving effect to this Agreement and the consummation of the Transactions, including the Borrowings, would result from the consummation of such Transactions.

(g) Officer's Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in clauses (b) and (o) of this Section 5.1.

(h) Secretary Certificates. The Administrative Agent shall have received certificates dated as of the Closing Date and executed by a Responsible Officer of each Loan Party, in form and

substance satisfactory to the Required Lenders attaching thereto (i) a copy of the certificate or articles of incorporation or organization (or similar organizational document), including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the secretary of state of the state of its organization, and a certificate as to the good standing (or local equivalent) of each Loan Party (to the extent available in the relevant jurisdiction) as of a recent date, from such Secretary of State or similar Governmental Authority, (ii) a certificate of the Secretary, Assistant Secretary or another Responsible Officer of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the by-laws or operating (or limited liability company) agreement (or similar governing document) of such Loan Party as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (B) below, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party, the transactions contemplated hereby and thereby and, in the case of the Borrower, the Borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation or formation of such Loan Party have not been amended since the date of the last amendment thereto shown on the documents furnished pursuant to clause (i) above, and (D) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party, and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary, Assistant Secretary or another Responsible Officer executing the certificate pursuant to clause (ii) above

(i) USA Patriot Act. The Administrative Agent and the Lenders shall have received from the Borrower and each of the Loan Parties, at least 2 Business Days prior to the Closing Date, all documentation and other information reasonably requested by the Administrative Agent and any Lender no less than 5 calendar days prior to the Closing Date that the Administrative Agent and any such Lender reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(j) Filings. Except as set forth on Schedule 6.10, there shall have been delivered to the Collateral Agent in proper form for filing each Uniform Commercial Code financing statement as required by the Guarantee and Collateral Agreement in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein.

(k) Pledged Stock; Stock Powers. Except as set forth on Schedule 6.10, the Collateral Agent pursuant to the terms of the Security Documents shall have received the certificates, if any, representing the shares of Pledged Stock held by the Loan Parties pledged pursuant to the Guarantee and Collateral Agreement and the other Security Documents, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(l) Lien Searches. The Administrative Agent and the Lenders shall have received appropriate UCC search results or other relevant search certificates reflecting no Liens (other than Liens permitted pursuant to Section 7.3) encumbering the Collateral in each of the jurisdictions or offices in which UCC financing statements should be made to evidence perfected security interests in all Collateral.

(m) Petition Date. The Petition Date shall have occurred, and the Borrower and each Subsidiary Guarantor as of the Closing Date shall be a debtor and a debtor-in-possession in the Cases.

(n) No Trustee. No trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(o) Material Adverse Effect. Since the Petition Date, there shall not have been a Material Adverse Effect.

(p) Cases. The Cases of any of the Debtors shall have not been dismissed or converted to cases under chapter 7 of the Bankruptcy Code.

(q) Budget. The Administrative Agent and the Lenders shall have received a copy of the Initial Budget.

(r) First Day Orders. (i) The Lenders and the Administrative Agent shall have received advanced drafts of the First Day Orders (including, without limitation, any order approving significant or outside the ordinary course of business transactions entered on (or prior to) the Closing Date and a Cash Management Order) and a list of critical vendors, in each case, in form and substance reasonably satisfactory to (solely with respect to the treatment of the Agents) the Administrative Agent and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders and (ii) all First Day Orders intended to be entered by the Bankruptcy Court at or immediately following the Debtors' "first day" hearing shall have been entered by the Bankruptcy Court in a form and substance consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Required Lenders (it being understood that the forms of such draft material First Day Orders related to pleadings and motions approved by the Required Lenders prior to the Closing Date are deemed reasonably acceptable) and (solely with respect to the treatment of the Agents) the Administrative Agent, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Required Lenders and (solely with respect to the treatment of the Agents) the Administrative Agent; provided, that notwithstanding anything herein to the contrary, any right of approval or consent of the Administrative Agent pursuant to this Section 5.1(r) shall be solely limited to the treatment of the Agents under the First Day Orders.

(s) Interim Order. The Interim Order Entry Date shall have occurred and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the reasonable consent of the Administrative Agent and the Required Lenders, and the Loan Parties and their Subsidiaries shall be in compliance with the Interim Order; provided, that notwithstanding anything herein to the contrary, any right of approval or consent of the Administrative Agent pursuant to this Section 5.1(s) shall be solely limited to the treatment of the Agents under the Interim Order.

(t) [Reserved].

(u) The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower, dated as of the Closing Date, certifying that there shall not occur, after giving effect to the initial credit extension under the DIP Facility, a default (or any event which with the giving of notice or lapse of time or both would be a default) under the debt instruments and other material agreements of any Subsidiary that is not a Loan Party, could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) To the extent such items can be delivered on or prior to the Closing Date after the exercise of commercially reasonable efforts, subject to the paragraph immediately following subsection (ii) below, the Administrative Agent shall have received the following:

(i) Agreements for filing with the United States Copyright Office or the United States Patent and Trademark Office providing notice of the security interest granted in favor of

the Collateral Agent in the Intellectual Property registered or applied for in the United States listed on the applicable schedules to the Security Documents, duly executed by the Borrower and each other Loan Party, as applicable.

(ii) Evidence of all insurance required to be maintained, and evidence that the Administrative Agent shall have been named as an additional insured and loss payee, as applicable, on all insurance policies covering loss or damage to Collateral and on all liability insurance policies as to which the Administrative Agent (at the direction of the Required Lenders) has reasonably requested to be so named; provided that the Administrative Agent (at the direction of the Required Lenders) may rely on the Orders for purposes of being named as an additional insured and loss payee, as applicable, on any or all of such insurance policies and liability insurance policies.

To the extent that any of the items described in this Section 5.1(v) shall not have been received by the Administrative Agent notwithstanding the Borrower's use of its commercially reasonable efforts to provide same, delivery of such items shall not constitute a condition to effectiveness of this Agreement and the obligations of each Lender to make Loans hereunder, and the Borrower shall, instead, cause such items to be delivered to the Administrative Agent not later than 45 days following the Closing Date (or such later date as the Required Lenders shall agree in their discretion).

5.2 Conditions to Delayed Draw T-2 Availability Date. The agreement of each Lender to make the Delayed Draw T-2 Loans requested to be made by it is subject to the satisfaction, prior to or concurrently with the making of such Delayed Draw T-2 Loans on or after the Delayed Draw T-2 Availability Date, of the following conditions precedent:

(a) Closing Date. The Initial Draw T-1 Availability Date shall have occurred and the Initial Draw T-1 Loans shall have been made.

(b) Final Order. The Final Order Entry Date shall have occurred and the Final Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to any stay, and shall not have been modified or amended in any respect without the consent of the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders, and the Loan Parties and their Subsidiaries shall be in compliance with the Final Order; provided, that notwithstanding anything herein to the contrary, any right of approval or consent of the Administrative Agent pursuant to this Section 5.2(b) shall be solely limited to the treatment of the Agents under the Final Order.

(c) Second Day Orders. (x) All material "second day orders" and all related pleadings intended to be entered on or prior to the date of entry of the Final Order and any order establishing material procedures for the administration of the Cases, shall have been entered by the Bankruptcy Court, and (y) all pleadings related to procedures for approval of significant transactions, including, without limitation, asset sale procedures, regardless of when filed or entered, shall be reasonably satisfactory in form and substance to the Administrative Agent (solely with respect to the treatment of the Agents) and consistent with the Restructuring Support Agreement or otherwise reasonably satisfactory to the Required Lenders, or this condition is waived by the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders. The Administrative Agent and Required Lenders acknowledge that the form of such orders substantially in the forms filed on the Petition Date are reasonably acceptable; provided, that notwithstanding anything herein to the contrary, any right of approval or consent of the Administrative Agent pursuant to this Section 5.2(c) shall be solely limited to the treatment of the Agents under the "second day orders" and pleadings described herein.

(d) Officer's Certificate. The Administrative Agent shall have received a certificate from a Responsible Officer of the Borrower, dated the Delayed Draw T-2 Availability Date certifying that the conditions set forth in clauses (f) and (i) of this Section 5.2 have been satisfied.

(e) Borrowing Notice. The Administrative Agent shall have received a notice of borrowing from the Borrower with respect to the Delayed Draw T-2 Loans in accordance with Section 2.2.

(f) Representations and Warranties. On the Delayed Draw T-2 Availability Date, each of the representations and warranties made by any Loan Party in or pursuant to any of the Loan Documents shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or a Material Adverse Effect) except to the extent that such representations and warranties expressly relate to an earlier date or period, in which case such representations and warranties shall have been true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or a Material Adverse Effect) as of such earlier date or respective period.

(g) Cases. The Cases of any of the Debtors shall have not been dismissed or converted to cases under chapter 7 of the Bankruptcy Code.

(h) Trustee. No Trustee under chapter 7 or chapter 11 of the Bankruptcy Code or examiner with enlarged powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code shall have been appointed in any of the Cases.

(i) No Default or Event of Default. At the time of and immediately after giving effect to such Borrowing of Delayed Draw T-2 Loans, no Default or Event of Default shall have occurred and be continuing.

(j) Reports. The Administrative Agent shall have received (x) each Approved Budget required to be delivered pursuant to Section 6.1(d) and (y) each Budget Variance Report required to be delivered pursuant to Section 6.1(e).

SECTION VI. AFFIRMATIVE COVENANTS

The Borrower (on behalf of itself and each of its Subsidiaries) hereby agrees that, from and after the Closing Date, so long as the Commitments remain in effect or any Loan or other amount is owing to any Lender or any Agent hereunder (other than contingent or indemnification obligations not then due), the Borrower shall, and shall cause (except in the case of the covenants set forth in Section 6.1, Section 6.2 and Section 6.7) each of its Subsidiaries to:

6.1 Financial Information. Furnish to the Administrative Agent for delivery to each Lender (which may be delivered via posting on the Platform):

(a) within 90 days after the end of each fiscal year of the Borrower, commencing with the fiscal year ended December 31, 2024, a copy of the unaudited consolidated balance sheets, income statements and statements of cash flow of the Borrower and its consolidated Subsidiaries as at the end of such year, setting forth, commencing with the financial statements with respect to the fiscal year ended December 31, 2024, in comparative form the figures as of the end of and for the previous year, certified by a Responsible Officer as fairly presenting in all material respects the financial condition of the Borrower and its consolidated Subsidiaries in conformity with GAAP (subject to normal year-end audit adjustments and the lack of complete footnotes);

(b) within 45 days after the end of each of the first three quarterly periods of each fiscal year of the Borrower, commencing with the fiscal quarter ending March 31, 2025, the unaudited consolidated balance sheets, income statements and statements of cash flow of the Borrower and its consolidated Subsidiaries as at the end of such quarter and the portion of the fiscal year through the end of such quarter, setting forth, in comparative form the figures as of the end of and for the corresponding period in the previous year, certified by a Responsible Officer as fairly presenting in all material respects the financial condition of the Borrower and its consolidated Subsidiaries in conformity with GAAP (subject to normal year-end audit adjustments and the lack of complete footnotes).

(c) within 30 days after the end of each fiscal month of each year, commencing with the fiscal month ending February 28, 2025, the unaudited consolidated balance sheets, income statements and statements of cash flow of the Borrower and its consolidated Subsidiaries as at the end of such fiscal month and the portion of the fiscal year through the end of such fiscal month, setting forth, in comparative form the figures as of the end of and for the corresponding period in the previous year, and, with respect to the financial statements being delivered at the end of such fiscal month that is also the end of any fiscal quarter, such financial statements may also include, in satisfaction of the requirements set forth in clause (b) above, the portion of the fiscal year through the end of such quarter, setting forth, in comparative form the figures as of the end of and for the corresponding period in the previous year, certified by a Responsible Officer as fairly presenting in all material respects the financial condition of the Borrower and its consolidated Subsidiaries in conformity with GAAP (subject to normal year-end audit adjustments and the lack of complete footnotes);

(d) (i) on or prior to the Closing Date, the Initial Budget and (ii) not later than 5:00 p.m. (Eastern time) every fourth week commencing on Friday, April 11, 2025) or, to the extent such Friday is not a Business Day, the next Business Day thereafter, an update to the Initial Budget to cover the period commencing on the Friday of the prior week and include a rolling 13-week cash flow forecast for the Borrower and its Subsidiaries substantially in the form of the Initial Budget; provided, that each such updated Budget shall be in form and substance acceptable to the Required Lenders (the Initial Budget and each such Budget, if so approved, an "Approved Budget") (it being understood that if the Required Lenders or the Ad Hoc Committee Advisors shall not have approved such Budget within 5 Business Days after the delivery thereof (which approval may be provided via email from the Ad Hoc Committee Advisors), such Budget shall be deemed not to be acceptable to the Required Lenders and the previously delivered Approved Budget shall constitute the Approved Budget, until an updated Budget has been so approved);

(e) Not later than 5:00 p.m. (Eastern time) on Friday of every week (commencing with Friday, March 28, 2025) or, to the extent such Friday is not a Business Day, the next Business Day thereafter (such date, a "Budget Variance Test Date"), a Budget Variance Report for the most recently expired Test Period (or, if earlier, the period ending on the most recent Saturday prior thereto), which such report shall be certified by a Responsible Officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein;

(f) [Reserved]; and

(g) Every 30 days after the Closing Date, the Borrower shall provide to the Ad Hoc Committee Advisors a matrix/schedule of payments made pursuant to the First Day Orders or second day orders (other than the Wages Orders), including the following information: (i) the names of the payee; (ii) the date and amount of the payment; (iii) the category or type of payment, as further described and classified in the first day motions; and (iv) the Debtor or Debtors that made the payment.

All such financial statements and deliverables shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as disclosed therein and except in the case of the financial statements referred to in clause (b), for customary year-end adjustments and the absence of complete footnotes). Any financial statements or other deliverables required to be delivered pursuant to this Section 6.1 and any financial statements or reports required to be delivered pursuant to clause (d) of Section 6.2 shall be deemed to have been furnished to the Administrative Agent on the date that (i) such financial statements or deliverable (as applicable) are posted on the SEC's website at www.sec.gov or the website for the Borrower and (ii) the Administrative Agent has been provided written notice of such posting.

Documents required to be delivered pursuant to this Section 6.1 may also be delivered by posting such documents electronically and if so posted, shall be deemed to have been delivered on the date on which such documents are posted on the Borrower's behalf on the Platform.

The deadline for providing any reporting or other documentation pursuant to this Section 6.1 may be extended in writing by the Required Lenders (which approval may be provided via email from the Ad Hoc Committee Advisors).

6.2 Certificates; Other Information. Furnish to the Administrative Agent for delivery to each Lender or, in the case of clause (e), to the relevant Lender (in each case, which may be delivered via posting on the Platform):

(a) concurrently with the delivery of any financial statements pursuant to Section 6.1, commencing with delivery of financial statements for the first period ending after the Closing Date, (i) a Compliance Certificate of a Responsible Officer on behalf of the Borrower stating that such Responsible Officer has obtained no knowledge of any Default or Event of Default that has occurred and is continuing except as specified in such certificate and (ii) to the extent not previously disclosed to the Administrative Agent, (x) a description of any Default or Event of Default that occurred, (y) a description of any new Subsidiary and of any change in the name or jurisdiction of organization of any Loan Party since the date of the most recent list delivered pursuant to this clause (or, in the case of the first such list so delivered, since the Closing Date) to the extent not previously disclosed pursuant to Section 6.8 and (z) solely in the case of financial statements delivered pursuant to Section 6.1(a), a listing of any registrations of or applications for United States Intellectual Property by any Loan Party filed since the last such report, together with a listing of any intent-to-use applications for trademarks or service marks for which a statement of use or an amendment to allege use has been filed since the last such report;

(b) promptly after the same become publicly available, copies of all financial statements and material reports that the Borrower sends to the holders of any class of its publicly traded debt securities or public equity securities, in each case to the extent not already provided pursuant to Section 6.1 or any other clause of this Section 6.2;

(c) promptly, such additional financial and other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary as the Administrative Agent (for its own account or upon the request from any Lender) may from time to time reasonably request to the extent such additional financial or other information is reasonably available to, or can be reasonably obtained by, the Borrower; and

(d) within a reasonable period following the delivery of any financial statements pursuant to Section 6.1, dial-in details in respect of a conference call with Lenders (which may be satisfied by a call with holders of the Borrower's publicly listed debt or equity securities attended by any Lender) and during which representatives from the Borrower will be available to discuss the details of the

relevant financial statements and otherwise address additional matters in a manner consistent with the Borrower's past practice.

Notwithstanding anything to the contrary in this Section 6.2, (a) none of the Borrower or any of its Subsidiaries will be required to disclose any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited or restricted by Requirements of Law or any binding agreement or obligation, (iii) is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) constitutes classified information and (b) unless such material is identified in writing by the Borrower as "Public" information, the Administrative Agent shall deliver such information only to "private-side" Lenders (i.e., Lenders that have affirmatively requested to receive information other than Public Information).

Documents required to be delivered pursuant to this Section 6.2 may be delivered by posting such documents electronically and if so posted, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website or (ii) on which such documents are posted on the Borrower's behalf on the Platform.

6.3 Payment of Taxes. Subject to Debtor Relief Laws, the terms of the applicable Order and any required approval by the Bankruptcy Court, pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its Taxes, governmental assessments and governmental charges (other than Indebtedness) (in the case of any such Person that is a Debtor, solely to the extend arising after the Petition Date), except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves required in conformity with GAAP with respect thereto have been provided on the books of the Borrower or its Subsidiaries, as the case may be, or (b) to the extent that failure to pay or satisfy such obligations would not reasonably be expected to have a Material Adverse Effect.

6.4 Conduct of Business and Maintenance of Existence, etc.; Compliance. (a) Preserve and keep in full force and effect its corporate or other existence and take all reasonable action to maintain all rights, privileges and franchises necessary in the normal conduct of its business, except, in each case, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Requirements of Law (including ERISA, Environmental Laws, and the USA Patriot Act) except to the extent that failure to comply therewith would not reasonably be expected to have a Material Adverse Effect; provided, that with respect to Environmental Laws, none of the Borrower or any Subsidiary shall be required to undertake any remedial action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.5 Maintenance of Property; Insurance.

(a) Keep all Property useful and necessary in its business in reasonably good working order and condition, ordinary wear and tear excepted, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Take all commercially reasonable steps, including in any proceeding before the United States Patent and Trademark Office or the United States Copyright Office, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material United States Intellectual Property owned by the Borrower or its Subsidiaries, including filing of applications for renewal, affidavits of use and affidavits of incontestability.

(c) Maintain insurance with financially sound and reputable insurance companies on all its Property that is necessary in, and material to, the conduct of business by the Borrower and its Subsidiaries, taken as a whole, in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business, and use its commercially reasonable efforts to ensure that all such material insurance policies shall, to the extent customary (but in any event, not including business interruption insurance and personal injury insurance) name the Collateral Agent as an additional insured and loss payee/mortgagee.

(d) Permit representatives of the Administrative Agent, the Ad Hoc Committee and/or the Ad Hoc Committee Advisors (in each case at the direction of Required Lenders) to have reasonable discussions regarding the business, operations, properties and financial and other condition of the Borrower and its Subsidiaries with its independent certified public accountants to the extent permitted by the internal policies of such independent certified public accountants upon reasonable notice and at such reasonable times during normal business hours (provided, that (i) a Responsible Officer of the Borrower shall be afforded the opportunity to be present during such discussions and (ii) such discussions shall be limited to no more than once per calendar year except during the continuance of an Event of Default).

6.6 Inspection of Property; Books and Records; Discussions.

(a) Keep proper books of records and accounts in a manner to allow financial statements to be prepared in conformity with GAAP (or, with respect to Subsidiaries organized outside of the United States, the local accounting standards applicable to the relevant jurisdiction; provided, that, to the extent that any such Subsidiary is permitted to prepare financial statements in accordance with different local accounting standards, such Subsidiary shall continue to apply the local accounting standard applied as of the Closing Date (as such standard may be updated or revised from time to time and, for the avoidance of doubt, with any discretions, judgments and elections afforded by such local accounting standard, including any changes in the application of such discretions, judgments and elections as such Subsidiary shall determine) except to the extent of changes between local accounting standards required by applicable law or regulation).

(b) Permit representatives designated by the Administrative Agent, the Ad Hoc Committee and/or the Ad Hoc Committee Advisors (in each case at the direction of Required Lenders) to visit and inspect any of its properties and examine and make abstracts from any of its books and records upon reasonable notice and at such reasonable times during normal business hours (provided, that (i) such visits shall be limited to no more than one such visit per calendar year at each facility, and (ii) such visits by the Administrative Agent or its designee shall be at the Lenders' expense, except in the case of the foregoing clauses (i) and (ii) during the continuance of an Event of Default).

(c) Permit representatives designated by the Administrative Agent, the Ad Hoc Committee and/or the Ad Hoc Committee Advisors (in each case at the direction of Required Lenders) to have reasonable discussions regarding the business, operations, properties and financial and other condition of the Borrower and its Subsidiaries with officers of the Borrower and its Subsidiaries upon reasonable notice and at such reasonable times during normal business hours (provided, that (i) a Responsible Officer of the Borrower shall be afforded the opportunity to be present during such discussions, (ii) such discussions shall be coordinated by the Administrative Agent, and (iii) such discussions shall be limited to no more than once per calendar year except during the continuance of an Event of Default).

(d) Permit representatives of the Administrative Agent, the Ad Hoc Committee and/or the Ad Hoc Committee Advisors (in each case at the direction of Required Lenders) to have

reasonable discussions regarding the business, operations, properties and financial and other condition of the Borrower and its Subsidiaries with its independent certified public accountants to the extent permitted by the internal policies of such independent certified public accountants upon reasonable notice and at such reasonable times during normal business hours (provided, that (i) a Responsible Officer of the Borrower shall be afforded the opportunity to be present during such discussions and (ii) such discussions shall be limited to no more than once per calendar year except during the continuance of an Event of Default).

Notwithstanding anything to the contrary in this Section 6.6, none of the Borrower or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discuss, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited or restricted by Requirements of Law or any binding agreement or obligation, (iii) is subject to attorney-client or similar privilege or constitutes attorney work product or (iv) constitutes classified information.

6.7 Notices. Promptly upon a Responsible Officer of the Borrower obtaining knowledge thereof, give notice to the Administrative Agent of:

(a) the occurrence of any Default or Event of Default;

(b) any litigation, investigation or proceeding which may exist at any time between the Borrower or any of its Subsidiaries and any other Person, that in either case, would reasonably be expected to have a Material Adverse Effect;

(c) the occurrence of any Reportable Event or Foreign Benefit Event, where there is any reasonable likelihood of the imposition of liability on any Loan Party as a result thereof that would reasonably be expected to have a Material Adverse Effect; and

(d) any other development or event that has had or would reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.7 shall be accompanied by a statement of a Responsible Officer setting forth in reasonable detail the occurrence referred to therein and stating what action the Borrower or the relevant Subsidiary proposes to take with respect thereto.

6.8 Additional Collateral, etc.

(a) With respect to any Property (other than Excluded Collateral) located in the United States having a value, individually or in the aggregate, of at least $1,000,000 acquired after the Closing Date by the Borrower or any Subsidiary Guarantor (other than (i) any interests in Real Property and any Property described in paragraph (c) or paragraph (d) of this Section 6.8, (ii) any Property subject to a Lien expressly permitted by Section 7.3(g) or 7.3(v), and (iii) Instruments, Certificated Securities, Securities and Chattel Paper, which are referred to in the last sentence of this paragraph (a)) as to which the Collateral Agent for the benefit of the Secured Parties does not have a perfected Lien, promptly (A) give notice of such Property to the Collateral Agent and execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Collateral Agent reasonably requests to grant to the Collateral Agent for the benefit of the Secured Parties a security interest in such Property and (B) take all actions reasonably requested by the Collateral Agent to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (to the extent required by the Loan Documents and with the priority required by Section 4.17) in such Property (with

respect to Property of a type owned by the Borrower or any Subsidiary Guarantor as of the Closing Date to the extent the Collateral Agent, for the benefit of the Secured Parties, has a perfected security interest in such Property as of the Closing Date), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or other Security Documents or by law or as may be reasonably requested by the Collateral Agent. If any amount in excess of $1,000,000 payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Certificated Security, Security or Chattel Paper (or, if more than $1,000,000 in the aggregate payable under or in connection with the Collateral shall become evidenced by Instruments, Certificated Securities, Securities or Chattel Paper), such Instrument, Certificated Security, Security or Chattel Paper shall be promptly delivered to the Collateral Agent in accordance with the Security Documents indorsed in a manner reasonably satisfactory to Collateral Agent.

(b) [Reserved].

(c) Subject to clause (f) below, with respect to any new Subsidiary that is a Non-Excluded Subsidiary created or acquired after the Closing Date (which, for the purposes of this paragraph, shall include any Subsidiary that was previously an Excluded Subsidiary that becomes a Non-Excluded Subsidiary) by the Borrower or any Subsidiary Guarantor, promptly, and in any event within 5 calendar days:

(i) give notice of such acquisition or creation to the Collateral Agent, execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement or such other documents as are required to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (to the extent required by the Security Documents and with the priority required by Section 4.17) in the Capital Stock of such new Subsidiary that is owned by the Borrower or such Subsidiary Guarantor (as applicable);

(ii) deliver to the Collateral Agent pursuant to the terms of the Security Documents, the certificates, if any, representing such Capital Stock (other than Excluded Collateral), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or such Subsidiary Guarantor (as applicable); and

(iii) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take such actions reasonably necessary to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (to the extent required by the Security Documents and with the priority required by Section 4.17) in the Collateral described in the Guarantee and Collateral Agreement with respect to such new Subsidiary (to the extent the Collateral Agent, for the benefit of the Secured Parties, has or should have a perfected security interest in the same type of Collateral as of the Closing Date), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Collateral Agent.

(d) With respect to any new first-tier Foreign Subsidiary created or acquired after the Closing Date by the Borrower or any Subsidiary Guarantor, promptly (i) give notice of such acquisition or creation to the Collateral Agent and execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as are required to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected security interest (to the extent required by the Security Documents and with the priority required by Section 4.17) in the Capital Stock of such new Subsidiary (other than any Excluded Collateral) that is owned by the Borrower or such Subsidiary Guarantor (as applicable) and (ii) deliver to the Collateral Agent pursuant to the terms of the Security Documents the certificates, if any, representing such Capital Stock (other than any Excluded Collateral), together with undated stock powers,

in blank, executed and delivered by a duly authorized officer of the Borrower or such Subsidiary Guarantor (as applicable).

(e) Notwithstanding anything in this Section 6.8 or any Security Document to the contrary, no Liens shall be required to be pledged or created with respect to any of the following (collectively, the "Excluded Collateral"):

(i) any "intent-to-use" application for registration of a trademark or service mark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing and acceptance of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(ii) any property or asset to the extent that such grant of a security interest is prohibited or effectively restricted by any applicable law (only so long as such prohibition exists and subject to any limitation on such prohibitions under the Bankruptcy Code) or requires a consent not obtained of any Governmental Authority pursuant to such applicable laws (only so long as such consent requirement exists);

(iii) any Excluded Equity Securities;

(iv) the property and assets of the Excluded Subsidiaries;

(v) (w) any assets owned on or acquired after the Closing Date, to the extent that, and only for so long as, taking such actions would violate applicable law or regulation (after giving effect to Section 9-406(d), 9-407(a), 9-408 or 9-409 of the Uniform Commercial Code and other applicable law), (x) any assets acquired before or after the Closing Date, to the extent that and for so long as such grant would violate an enforceable contractual obligation binding on such assets that existed at the time of the acquisition thereof and was not created or made binding on such assets in contemplation or in connection with the acquisition of such assets, (y) any assets (1) owned on the Petition Date or (2) acquired after the Petition Date, in each case in this clause (y), securing Indebtedness of the type permitted pursuant to Section 7.2(c) (or other Indebtedness permitted under Section (c) or (f) if such Indebtedness is of the type that is contemplated by Section (b)) that is secured by a Lien permitted by Section 7.3 so long as the documents governing such Lien do not permit the pledge of such assets to the Collateral Agent, or (z) any lease, license or other agreement, any asset embodying rights, priorities or privileges granted under such leases, licenses or agreements, or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate, breach or invalidate such lease, license or agreement or purchase money arrangement or create a right of acceleration, modification, termination or cancellation in favor of any other party thereto (other than any Loan Party) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or applicable law, other than proceeds and receivables thereof, and only for so long such prohibition exists and to the extent such prohibition was not creation in contemplation of such grant; and

(vi) (x) any assets to the extent a security interest in such assets would reasonably be expected to result in material adverse tax consequences (including as a result of Section 956 of the Code or any related provision) to the Borrower and their respective Subsidiaries, taken as a whole, as agreed by the Borrower and the Required Lenders, or (y) any assets as to which the

Required Lenders and the Borrower shall reasonably determine that the costs and burdens of obtaining a security interest therein outweigh the value of the security afforded thereby.

(f) From time to time the Loan Parties shall execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Collateral Agent may reasonably request for the purposes implementing or effectuating the provisions of this Agreement and the other Loan Documents, or of continuing the rights of the Secured Parties with respect to the Collateral as to which the Collateral Agent, for the benefit of the Secured Parties, has or should have a perfected Lien pursuant hereto or thereto, including filing any financing or continuation statements or financing statement amendments under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created thereby. Notwithstanding the foregoing, the provisions of this Section 6.8 shall not apply to assets as to which the Required Lenders and the Borrower shall reasonably determine that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby. The Administrative Agent (at the direction of the Required Lenders) may grant extensions of time or waivers of requirement for the creation or perfection of security interests in or the obtaining of insurance (including title insurance) or surveys with respect to particular assets (including extensions beyond the Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where the Required Lenders reasonably determine, in consultation with the Borrower, that perfection or obtaining of such items cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the other Loan Documents.

6.9 Use of Proceeds. Subject to additional restrictions on use of proceeds provided in the Orders, the proceeds of the Initial Draw T-1 Loans and the Delayed Draw T-2 Loans shall be used, in accordance with the Approved Budget (subject to the Permitted Variance set forth in Section 7.17), (i) to pay the fees, costs and expenses related to the Cases, and (ii) for working capital and general corporate purposes of the Borrower.

6.10 Post-Closing. Satisfy the requirements set forth on Schedule 6.10, on or before the date set forth opposite such requirements or such later date as consented to by the Required Lenders in their reasonable discretion, which consent may be provided via electronic mail from the Ad Hoc Committee Advisors.

6.11 [Reserved].

6.12 Line of Business. Continue to operate solely as a Permitted Business.

6.13 [Reserved].

6.14 Changes in Jurisdictions of Organization; Name. Provide prompt written notice to the Collateral Agent of any change of name or change of jurisdiction of organization of any Loan Party, and deliver to the Collateral Agent all additional executed financing statements, financing statement amendments and other documents required or reasonably requested by the Collateral Agent to maintain the validity, perfection and priority of the security interests to the extent provided for in the Security Documents.

6.15 [Reserved].

6.16 [Reserved].

6.17 Certain Case Milestones. Each Loan Party shall ensure that each of the milestones set forth in the Restructuring Support Agreement is achieved in accordance with the applicable timing referred to therein (as may be waived or extended in accordance with the Restructuring Support Agreement).

6.18 Certain Bankruptcy Matters. The Loan Parties and the Subsidiaries shall comply (i) after entry thereof, with all of the requirements and obligations set forth in the Orders and the Cash Management Order, as each such order is amended and in effect from time to time in accordance with this Agreement, (ii) after entry thereof, with each order of the type referred to in clause (b) of the definition of "Approved Bankruptcy Court Order", as each such order is amended and in effect in accordance with this Agreement (including, for the avoidance of doubt, the requirements set forth in clause (b) of the definition of "Approved Bankruptcy Court Order") and (iii) after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Debtors' "first day" and "second day" relief and any pleadings seeking to establish material procedures for administration of the Cases or approving significant or material outside the ordinary course of business transactions in the Cases, as each such order is amended and in effect in accordance with this Agreement (including, for the avoidance of doubt, the requirements set forth in clause (c) of the definition of "Approved Bankruptcy Court Order"); provided, that any actions taken to enforce any rights or remedies arising from a breach of this Section 6.18 shall be subject to any requirements in the Orders requiring a ruling or entry of an order of the Bankruptcy Court.

6.19 Bankruptcy Notices.

(a) The Borrower will furnish to the Ad Hoc Committee Advisors and counsel to the Administrative Agent prior to filing with the Bankruptcy Court, as soon as reasonably practicable, the Final Order and all other proposed orders and pleadings related to the Loans and the Loan Documents, any other financing or use of cash collateral, any sale or other disposition of Collateral outside the ordinary course, having a value in excess of $500,000, cash management, adequate protection, any Chapter 11 Plan and/or any disclosure statement or supplemental document related thereto.

(b) The Borrower will furnish to the Ad Hoc Committee Advisors as soon as reasonably practicable but no later than two calendar days (or such shorter period as Ad Hoc Committee Advisors may agree) prior to filing with the Bankruptcy Court all other filings, motions, pleadings, other papers or material notices to be filed with the Bankruptcy Court relating to any request (x) to approve any compromise and settlement of claims whether under Rule 9019 of the Federal Rules of Bankruptcy Procedure or otherwise, or (y) for relief under Section 363, 365, 1113 or 1114 of the Bankruptcy Code, in each case other than notices, filings, motions, pleadings or other information concerning less than $1,000,000 in value; *provided* that this shall not apply to any retention applications, procedures with respect to ordinary course professionals or professional compensation, or applications for professional compensation; *provided, further* that the right of the DIP Secured Parties to object to the pleadings set forth in the foregoing proviso shall not be affected by such limitation.

SECTION VII. NEGATIVE COVENANTS

The Borrower hereby agrees that, from and after the Closing Date, so long as the Commitments remain in effect or any Loan or other amount is owing to any Lender or any Agent hereunder (other than contingent or indemnification obligations not then due), the Borrower shall not, and shall not permit any of its Subsidiaries to:

7.1 [Reserved].

7.2 Indebtedness. Create, issue, incur, assume, or permit to exist any Indebtedness, except:

(a) Indebtedness of the Borrower and any of its Subsidiaries pursuant to this Agreement and any other Loan Document;

(b) unsecured Indebtedness of the Borrower or any of its Subsidiaries owing to the Borrower or any of its Subsidiaries, provided, that any such Indebtedness owing by a non-Loan Party to a Loan Party is permitted by Section 7.7 (other than by reference to Section 7.2 or any clause thereof);

(c) Capital Lease Obligations, and Indebtedness of the Borrower or any of its Subsidiaries incurred to finance or reimburse the cost of the acquisition, development, construction, purchase, lease, repair, addition or improvement of any property (real or personal), equipment or other assets used or useful in a Permitted Business, whether such property, equipment or assets were originally acquired directly or as a result of the purchase of any Capital Stock of any Person owning such property, equipment or assets, in an aggregate outstanding principal amount not to exceed $1,000,000; provided, that any Capital Lease Obligations existing on the Petition Date shall be listed on Schedule (c);

(d) Indebtedness outstanding or incurred pursuant to (i) the Prepetition Notes and (ii) the other facilities outstanding on the Petition Date up to the aggregate principal amounts listed on Schedule (c);

(e) Guarantee Obligations (i) by the Borrower or any of its Subsidiaries of obligations of the Borrower or any Subsidiary Guarantor not prohibited by this Agreement to be incurred; provided that any Subsidiary that is not a Subsidiary Guarantor providing such Guarantee Obligations with respect to Indebtedness of the Borrower in reliance on this clause (e) shall also provide a Guarantee with respect to the Obligations on a pari passu basis, (ii) by the Borrower or any Subsidiary Guarantor of obligations of any Non-Guarantor Subsidiary or joint venture or other Person that is not a Subsidiary to the extent permitted by Section 7.7 (other than by reference to Section 7.2 or any clause thereof), (iii) by any Non-Guarantor Subsidiary of obligations of any other Non-Guarantor Subsidiary; and (iv) by any Non-Guarantor Subsidiary of the obligations of any other Person that is not a Subsidiary to the extent permitted by Section 7.7 (other than by reference to Section 7.2 or any clause thereof);

(f) Indebtedness of the Borrower or any of its Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by the Borrower or such Subsidiary in the ordinary course of business against insufficient funds, so long as such Indebtedness is promptly repaid;

(g) Indebtedness of the Borrower or any other Loan Party in an aggregate principal amount (for the Borrower and all such Loan Parties) not to exceed $1,000,000 at any time outstanding);

(h) Indebtedness of Non-Guarantor Subsidiaries that are Foreign Subsidiaries under local bilateral credit facilities for working capital and general corporate purposes, in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(i) Indebtedness of the Borrower or any of its Subsidiaries in respect of workers' compensation claims, bank guarantees, warehouse receipts or similar facilities, property casualty

or liability insurance, take-or-pay obligations in supply arrangements, self-insurance obligations, performance, bid, customs, government, VAT, duty, tariff, appeal and surety bonds, completion guarantees, and other obligations of a similar nature, in each case in the ordinary course of business;

(j) Indebtedness incurred by the Borrower or any of its Subsidiaries arising from agreements providing for indemnification related to sales, leases or other Dispositions of goods or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or Disposition of any business, assets or Subsidiary, in each case in the ordinary course of business;

(k) Indebtedness of the Borrower or any Subsidiary as an account party in respect of trade letters of credit issued in the ordinary course of business or otherwise consistent with industry practice;

(l) Indebtedness (i) owing to any insurance company in connection with the financing of any insurance premiums permitted by such insurance company in the ordinary course of business and (ii) in the form of pension and retirement liabilities not constituting an Event of Default, to the extent constituting Indebtedness;

(m) (i) Guarantee Obligations made in the ordinary course of business; provided, that such Guarantee Obligations are not of Indebtedness for Borrowed Money, (ii) Guarantee Obligations in respect of lease obligations of the Borrower and its Subsidiaries in the ordinary course of business, (iii) Guarantee Obligations in respect of Indebtedness of joint ventures, (iv) Guarantee Obligations in respect of Indebtedness permitted by clause (l)(ii) above and (v) Guarantee Obligations by the Borrower or any of its Subsidiaries of any Subsidiary's purchase obligations under supplier agreements and in respect of obligations of or to customers, distributors, franchisees, lessors, licensees and sublicensees; provided, that all Guarantee Obligations under this clause (m) are not of Indebtedness for Borrowed Money and are incurred in the ordinary course of business;

(n) Indebtedness representing deferred compensation or stock-based compensation to employees of Holdings, any Parent Company, the Borrower or any Subsidiary incurred in the ordinary course of business;

(o) Indebtedness (and Guarantee Obligations in respect thereof) in respect of overdraft facilities, employee credit card programs, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements in the ordinary course of business;

(p) Indebtedness of the Borrower or any of its Subsidiaries undertaken in connection with cash management and related activities with respect to any Subsidiary or joint venture in the ordinary course of business;

(q) Indebtedness to any Person (other than an Affiliate of the Borrower) in respect of the undrawn portion of the face amount of or unpaid reimbursement obligations in respect of letters of credit for the account of the Borrower or any of its Subsidiaries in an aggregate amount at any one time outstanding not to exceed $500,000; and

(r) all premiums (if any), interest (including post-petition interest), fees, expenses, charges, accretion or amortization of original issue discount, accretion of interest paid in kind and additional or contingent interest on obligations described in clauses (a) through (p) above.

7.3 Liens. Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for:

(a) Liens for Taxes not yet due or which are being contested in good faith by appropriate proceedings; provided, that adequate reserves with respect thereto are maintained on the books of the Borrower or its Subsidiaries, as the case may be, to the extent required by GAAP;

(b) landlords', carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 60 days or that are being contested in good faith by appropriate proceedings;

(c) (i) pledges, deposits or statutory trusts in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) Liens incurred in the ordinary course of business securing liability for reimbursement or indemnification obligations of insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Subsidiaries in respect of such obligations;

(d) deposits and other Liens to secure the performance of bids, government, trade and other similar contracts (other than for borrowed money), leases, subleases, statutory or regulatory obligations, surety, judgment and appeal bonds, performance bonds and other obligations of a like nature and liabilities to insurance carriers incurred in the ordinary course of business;

(e) (i) Liens and encumbrances shown as exceptions in any title insurance policies insuring any mortgages, and (ii) easements, zoning restrictions, rights-of-way, leases, licenses, covenants, conditions, restrictions and other similar encumbrances, in each case with respect to Real Property, incurred in the ordinary course of business that, in the aggregate, do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(f) Liens (i) in existence on the Petition Date listed on Schedule 7.3(f) and (ii) securing Indebtedness permitted by Section (c)(ii);

(g) (i) Liens securing Indebtedness of the Borrower or any of its Subsidiaries incurred pursuant to Sections (b), (d), (f), (g), (k), and (l); provided, that (A) [reserved], (B) in the case of any such Liens securing Indebtedness incurred pursuant to Section (k), such Liens do not encumber any Property other than cash paid to any such insurance company in respect of such insurance, (C) [reserved], (D) in the case of Liens securing Guarantee Obligations pursuant to Section (d), the underlying obligations are secured by a Lien permitted to be incurred pursuant to this Agreement and (ii) any extension, refinancing, renewal or replacement of the Liens described in clause (i) of this Section 7.3(g) in whole or in part; provided, that such extension, renewal or replacement shall be limited to all or a part of the property which secured (or was permitted to secure) the Lien so extended, renewed or replaced (plus improvements on such property, if any) and (E) in the case of any such Liens securing Indebtedness pursuant to Section (f), such Indebtedness may only be secured by the Collateral on a junior basis with the Liens securing the Obligations, and no such Liens shall apply to any other Property of the Borrower or any of its Subsidiaries that is not Collateral;

(h) Liens created pursuant to the Loan Documents or any other Lien securing all or a portion of the Obligations;

(i) Liens arising from judgments in circumstances not constituting an Event of Default under Section 8.1(h);

(j) (i) Liens on Property of Non-Guarantor Subsidiaries securing Indebtedness or other obligations not prohibited by this Agreement to be incurred by such Non-Guarantor Subsidiaries, in each case in the ordinary course of business and not exceeding $1,000,000 and (ii) Liens securing Indebtedness or other obligations of the Borrower or any of its Subsidiaries in favor of any Loan Party;

(k) receipt of progress payments and advances from customers in the ordinary course of business to the extent same creates a Lien on the related inventory and proceeds thereof;

(l) Liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods;

(m) Liens arising out of consignment or similar arrangements for the sale by the Borrower and its Subsidiaries of goods through third parties in the ordinary course of business or otherwise consistent with past practice;

(n) Liens deemed to exist in connection with Investments permitted by Section 7.7(b) that constitute repurchase obligations;

(o) Liens upon specific items of inventory, equipment or other goods and proceeds of the Borrower or any of its Subsidiaries arising in the ordinary course of business securing such Person's obligations in respect of bankers' acceptances and letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory, equipment or other goods;

(p) Liens securing Hedge Agreements of the Borrower and its Subsidiaries in an aggregate amount not to exceed $1,000,000 at any time outstanding entered into in the ordinary course of business for their respective operating requirements or of hedging interest rate or currency exposure, and not for speculative purposes;

(q) any interest or title of a lessor under any leases or subleases entered into by the Borrower or any of its Subsidiaries in the ordinary course of business and any financing statement filed in connection with any such lease;

(r) (i) Liens that are contractual rights of set-off (A) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness in the ordinary course of business, (B) relating to pooled deposit or sweep accounts of the Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Subsidiaries or (C) relating to purchase orders and other agreements entered into with distributors, clients, customers, vendors or suppliers of the Borrower or any of its Subsidiaries in the ordinary course of business, (ii) other Liens securing cash management obligations in the ordinary course of business and (iii) Liens encumbering reasonable and customary initial deposits and margin deposits in respect of, and similar Liens attaching to, commodity trading accounts and other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(s) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(t) Liens on Capital Stock existing on the Petition Date in joint ventures and other non-wholly owned entities securing obligations of such joint venture or entity and options, put and call arrangements, rights of first refusal and similar rights relating to Capital Stock in joint ventures and other non-wholly owned entities;

(u) Liens securing obligations incurred in the ordinary course of business in respect of trade-related letters of credit permitted under Section 7.2 and covering the goods (or the documents of title in respect of such goods) financed by such letters of credit and the proceeds and products thereof;

(v) other Liens with respect to obligations the principal amount of which do not exceed $1,000,000, at any time outstanding;

(w) non-exclusive licenses, sublicenses, and cross-licenses of Intellectual Property granted by the Borrower or any of its Subsidiaries in the ordinary course of business consistent with past practice, which do not interfere in any material respect with the conduct of the business of the Borrower or such Subsidiary;

(x) Liens arising from precautionary UCC financing statement filings (or other similar filings in non-U.S. jurisdictions) regarding leases, subleases, licenses or consignments, in each case, entered into by the Borrower or any of its Subsidiaries;

(y) (i) zoning or similar laws or rights reserved to or vested in any Governmental Authority to control or regulate the use of any real property and (ii) Liens in favor of the United States of America for amounts paid by the Borrower or any of its Subsidiaries as progress payments under government contracts entered into by them (provided, that no such Lien described in this clause (ii) shall encumber any Collateral);

(z) Liens on cash deposits in respect of Indebtedness permitted under Section (p); provided, that the amount of any such deposit does not exceed 103% of the amount of the Indebtedness such cash deposits secures; and

(aa) Liens on inventory or equipment of the Borrower or any Subsidiary granted in the ordinary course of business to the Borrower's or such Subsidiary's (as applicable) distributor, vendor, supplier, client or customer at which such inventory or equipment is located.

7.4 Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of any of its Property or business, except that:

(a) (i) any Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, the Borrower as long as such merger, amalgamation or consolidation does not adversely affect the Liens in favor of the Collateral Agent securing the Obligations or the priority thereof (provided, that the Borrower shall be the continuing or surviving Person) or (ii) any Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any Subsidiary Guarantor (provided, that (A) such Subsidiary Guarantor shall be the continuing or surviving Person and (B) if any Debtor is a party to such merger, amalgamation, consolidation or liquidation, the surviving Person shall be a Debtor);

(b) any Non-Guarantor Subsidiary may be merged or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary that is a Subsidiary; provided, that if any Non-

Guarantor Subsidiary that is a Debtor is a party to such merger, consolidation or liquidation, the surviving Person shall be a Debtor;

(c) any Subsidiary may Dispose of all or substantially all of its assets upon voluntary liquidation (or otherwise) to any Loan Party; provided, that if any Debtor is the transferor, the transferee shall be a Debtor;

(d) any Non-Guarantor Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding-up or otherwise) to any other Non-Guarantor Subsidiary that is a Subsidiary and a Debtor

(e) Dispositions expressly permitted by Section 7.5 (other than Section 7.5(c)) may be consummated;

(f) any Investment expressly permitted by Section 7.7) may be structured as a merger, consolidation or amalgamation;

(g) any merger, consolidation or amalgamation, or liquidation, winding up or dissolution, or Disposition of Property or business with respect to any Debtor pursuant to any order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders; provided that de minimis Dispositions without further order of the Bankruptcy Court shall be permitted so long as the proceeds thereof are applied in accordance with Section 2.12(b); and

(h) any immaterial Subsidiary may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interest of the Borrower and is not disadvantageous to the Lenders, (ii) to the extent such Subsidiary is a Loan Party, any assets of such Subsidiary shall be transferred to a Loan Party after giving effect to such liquidation or dissolution and (iii) to the extent such Subsidiary is a Loan Party, any business of such Subsidiary not otherwise discontinued (if the Borrower determines in good faith that such discontinuation is in the best interest of the Borrower and is not disadvantageous to the Lenders) shall be transferred to, or otherwise conducted by, a Loan Party after giving effect to such liquidation or dissolution.

7.5 Dispositions of Property. Dispose of any of its owned Property (including receivables) whether now owned or hereafter acquired, or issue or sell any shares of Capital Stock (other than directors' qualifying shares) to any Person, except:

(a) (i) the Disposition of surplus, obsolete, damaged or worn out Property (including scrap and byproducts) in the ordinary course of business, Dispositions of Property no longer used or useful or economically practicable to maintain in the conduct of the business of the Borrower and other Subsidiaries in the ordinary course and Dispositions of Property necessary in order to comply with applicable Requirements of Law or licensure requirements (as determined by the Borrower in good faith), (ii) the sale of defaulted receivables in the ordinary course of business, (iii) abandonment or cancellation in the ordinary course of business of any Intellectual Property not material to the Business and determined by the management of the Borrower to be no longer useful or necessary in the operation of the Business (unless it is not possible to maintain such Intellectual Property as a matter of applicable law) and (iv) sales, leases or other dispositions of inventory determined by the management of the Borrower to be no longer useful or necessary in the operation of the Business in the ordinary course of business;

(b) (i) the sale of inventory in the ordinary course of business, (ii) the non-exclusive licensing, sublicensing or cross-licensing of Intellectual Property in the ordinary course of business

consistent with past practice, which do not interfere in any material respect with the conduct of the business of the Borrower or such Subsidiary, and (iii) the contemporaneous exchange, in the ordinary course of business, of Property for Property of a like kind, to the extent that the Property received in such exchange is of a Fair Market Value equivalent to the Fair Market Value of the Property exchanged (provided, that after giving effect to such exchange, the Fair Market Value of the Property of any Loan Party so exchanged that is subject to Liens in favor of the Collateral Agent under the Security Documents or an order of the Bankruptcy Court is not materially reduced);

(c) Dispositions permitted by Section 7.4 (other than Section 7.4(e));

(d) the sale or issuance of any Subsidiary's Capital Stock to any Loan Party;

(e) any Recovery Event; provided, that the requirements of Section 2.12(b) are complied with in connection therewith;

(f) the leasing, licensing, occupying pursuant to occupancy agreements or sub-leasing of Real Property that would not materially interfere with the use in the ordinary course of such Property by the Borrower or its Subsidiaries;

(g) the sale or discount, in each case without recourse and in the ordinary course of business, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof consistent with customary industry practice (and not as part of any bulk sale or financing of receivables);

(h) (i) transfers of condemned Property as a result of the exercise of "eminent domain" or other similar policies to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and (ii) transfers of properties that have been subject to a casualty to the respective insurer of such Property as part of an insurance settlement;

(i) the transfer of Property (i) by the Borrower or any Subsidiary Guarantor to any other Loan Party or (ii) from a Non-Guarantor Subsidiary to (A) any Loan Party; provided, that the portion (if any) of such Disposition made for more than Fair Market Value shall constitute an Investment and comply with Section 7.7 or (B) any other Non-Guarantor Subsidiary;

(j) the Disposition of cash and Cash Equivalents (or the foreign equivalent of Cash Equivalents) in the ordinary course of business;

(k) to the extent constituting Dispositions, (i) Liens expressly permitted by Section 7.3 (other than by reference to Section 7.5 or any clause thereof), (ii) Restricted Payments expressly permitted by Section 7.6 (other than by reference to Section 7.5 or any clause thereof) and (iii) Investments expressly permitted by Section 7.7 (other than by reference to Section 7.5 or any clause thereof);

(l) Dispositions of Investments in joint ventures and other non-wholly owned entities to the extent required by, or made pursuant to, customary buy/sell arrangements in effect on the Petition Date between the joint venture parties set forth in joint venture arrangements, shareholder agreements and similar binding arrangements in effect on the Petition Date, in each case enforceable after giving effect to applicable Bankruptcy Law; provided that the requirements of Section 2.12(b), to the extent applicable, are complied with in connection therewith;

(m) the unwinding of Hedge Agreements permitted hereunder pursuant to their terms;

(n) the sale of services, or the termination of any other contracts, in each case in the ordinary course of business;

(o) sales, transfers or other Disposition of assets with respect to any Debtor pursuant to any order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders, permitting de minimis asset dispositions without further order of the Bankruptcy Court, so long as the proceeds thereof are applied in accordance with Section 2.12(b);

(p) Dispositions of Property in the ordinary course of business to the extent that (i)(A) such Property is exchanged for credit against the purchase price of similar replacement Property or (B) the proceeds of such Disposition are applied to the purchase price of such replacement Property and (ii) to the extent such Property constituted Collateral, such replacement Property constitutes Collateral as well;

(q) any Disposition of Property in the ordinary course of business that represents a surrender or waiver of an immaterial contract right or settlement, surrender or release of a contract or tort claim; and

(r) Dispositions of Property between or among the Borrower and/or Subsidiaries that are Debtors as a substantially concurrent interim Disposition in connection with a Disposition otherwise expressly permitted pursuant to clauses (a) through (aa) above.

It is further understood and agreed that, notwithstanding anything in this Agreement to the contrary (i) to the extent any equity interests of any Loan Party are permitted to be Disposed of under this Section 7.5, such Disposition shall be of no less than all of the Capital Stock of any such Loan Party, and (ii) each of the Borrower and its Subsidiaries shall not sell, assign, convey, transfer or otherwise Dispose of its Intellectual Property to any Affiliate, Subsidiary or other Person, nor shall it permit any of its Intellectual Property (whether now owned or hereafter acquired) to be owned, held or licensed by any Affiliate, Subsidiary or any other Person, except (A) as exists on the Closing Date, and (B) the non-exclusive licensing, sublicensing or cross-licensing of Intellectual Property in the ordinary course of business consistent with past practice, which do not interfere in any material respect with the conduct of the business of the Borrower or such Subsidiary.

7.6 Restricted Payments. Directly or indirectly, declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of the Borrower or any of its Subsidiaries, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or Property or in obligations of the Borrower or such Subsidiary (collectively, "Restricted Payments"), except that:

(a) (i) any Subsidiary may make Restricted Payments to any Loan Party (provided that any Subsidiary that is a Debtor may only make Restricted Payments to Subsidiaries that are Loan Parties and Debtors) and (ii) Non-Guarantor Subsidiaries may make Restricted Payments to other Non-Guarantor Subsidiaries;

(b) to the extent constituting Restricted Payments, the Borrower and its Subsidiaries may enter into and consummate transactions expressly permitted (other than by reference to Section 7.6 or any clause thereof) by any provision of Sections 7.4, 7.5, 7.7 and 7.9 (other than Section 7.9(b)(vi), (vii) or (ix); and

(c) Prepayments and payments of other Indebtedness set forth in the Approved Budget (subject to the Permitted Variance) or the Orders.

7.7 Investments. Make any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or all or substantially all of the assets constituting an ongoing business from, or make any other similar investment in, any other Person (all of the foregoing, "Investments"), except:

(a) (i) extensions of trade credit in the ordinary course of business, (ii) loans, advances and promotions made to distributors, customers, vendors and suppliers in the ordinary course of business or in accordance with market practices, (iii) purchases and acquisitions of inventory, supplies, materials and equipment, purchases of contract rights, accounts and chattel paper, purchases of put and call foreign exchange options to the extent necessary to hedge foreign exchange exposures or foreign exchange spot and forward contracts, or purchases of notes receivable, in each case in the ordinary course of business, to the extent such purchases and acquisitions constitute Investments, (iv) Investments among the Borrower and its Subsidiaries in connection with the sale of inventory and parts in the ordinary course of business and (v) purchases and acquisitions of Intellectual Property or purchases of licenses of Intellectual Property, in each case, in the ordinary course of business, to the extent constituting Investments;

(b) Investments in Cash Equivalents (or the foreign equivalent of Cash Equivalents) and Investments that were Cash Equivalents (or the foreign equivalent of Cash Equivalents) when made;

(c) Investments arising in connection with (i) the incurrence of Indebtedness permitted by Section 7.2 (other than by reference to Section 7.7 or any clause thereof) to the extent arising as a result of Indebtedness among the Borrower or any of its Subsidiaries and Guarantee Obligations permitted by Section 7.2 (other than by reference to Section 7.7 or any clause thereof) and payments made in respect of such Guarantee Obligations, (ii) the forgiveness or conversion to equity of any Indebtedness permitted by Section 7.2 (other than by reference to Section 7.7 or any clause thereof) and (iii) guarantees by the Borrower or any of its Subsidiaries of leases (other than Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(d) loans and advances to employees, consultants or directors of any Parent Company, the Borrower or any of its Subsidiaries in the ordinary course of business in an aggregate amount (for the Borrower and all of its Subsidiaries) not to exceed $1,000,000 (excluding (for purposes of such cap) tuition advances, travel and entertainment expenses, but including relocation advances) at any one time outstanding;

(e) Investments (i) (other than those relating to the incurrence of Indebtedness permitted by Section 7.7(c)) by the Borrower or any of its Subsidiaries in the Borrower or any Person that, prior to such Investment, is a Loan Party (or is a Subsidiary that becomes a Loan Party in connection with such Investment); provided that any Debtor may not make an Investment in a non-Debtor pursuant to this subclause (i), (ii) [reserved], (iii) comprised solely of equity purchases or contributions by the Borrower or any of its Subsidiaries in any other Subsidiary made for tax purposes, so long as, prior to such Investment, the Borrower provides to the Administrative Agent evidence reasonably acceptable to the Administrative Agent (at the direction of Required Lenders) and the Required Lenders that, after giving pro forma effect to such Investments, the granting, perfection, validity and priority of the security interest of the Secured Parties in the Collateral is not impaired in any material respect by such Investment, and (iv) existing on the Petition Date in any Non-Guarantor Subsidiary;

(f) Investments to the extent provided for in any Approved Budget;

(g) Investments (including debt obligations) received in the ordinary course of business by the Borrower or any of its Subsidiaries in connection with (w) the bankruptcy or reorganization of suppliers, vendors, distributors, clients, customers and other Persons, (x) settlement of delinquent obligations of, and other disputes with, suppliers, vendors, distributors, clients, customers and other Persons arising in the ordinary course of business, (y) endorsements for collection or deposit and (z) customary trade arrangements with suppliers, vendors, distributors, clients and customers, including consisting of Capital Stock of clients and customers issued to the Borrower or any Subsidiary in consideration for goods provided and/or services rendered;

(h) Investments by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary; provided, that this Section 7.7(h) shall not permit Investments made by any Non-Guarantor Subsidiary that is a Debtor in any non-Debtor;

(i) Investments in existence on, or pursuant to legally binding written commitments in existence on, the Petition Date and listed on Schedule 7.7 and, in each case, any extensions, renewals or replacements thereof, so long as the amount of any Investment made pursuant to this clause (i) is not increased (other than pursuant to such legally binding commitments);

(j) Investments of the Borrower or any of its Subsidiaries under Hedge Agreements permitted hereunder;

(k) to the extent constituting Investments, transactions expressly permitted (other than by reference to this Section 7.7 or any clause thereof) under Sections 7.4, 7.5, 7.6 and 7.8;

(l) Investments arising directly out of the receipt by the Borrower or any of its Subsidiaries of non-cash consideration for any sale of assets permitted under Section 7.5 (other than by reference to Section 7.7 or any clause thereof);

(m) Investments resulting from pledges and deposits referred to in Sections 7.3(c) and (d);

(n) [reserved];

(o) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers;

(p) Investments in an aggregate amount not to exceed $1,000,000; provided, that Investments made by any Loan Party pursuant to this clause (p) shall not be in the form of Intellectual Property (or of Capital Stock of Subsidiaries owning Intellectual Property);

(q) advances of payroll payments to employees, or fee payments to directors, in the ordinary course of business; provided, that Investments made pursuant to this Section 7.7(q) shall not, in the aggregate, exceed $1,000,000 in any fiscal year and shall in any event be consistent with the Approved Budget;

(r) Investments constituting loans or advances in lieu of Restricted Payments permitted pursuant to Section 7.6;

(s) the Borrower or any of its Subsidiaries may make Investments in prepaid expenses, negotiable instruments held for collection and lease and utility and worker's compensation deposits provided to third parties in the ordinary course of business and consistent with the Approved Budget (subject to the Permitted Variance); and

(t) Investments in (i) [reserved] and (ii) any other Investment available to highly compensated employees under any "excess 401-(k) plan" of the Borrower (or any of its Domestic Subsidiaries, as applicable), in each case to the extent necessary to permit the Borrower (or such Domestic Subsidiary, as applicable) to satisfy its obligations under such "excess 401-(k) plan" for highly compensated employees; provided, however, (i) that the aggregate amount of such purchases and other Investments under this Section 7.7(t) does not exceed the amounts set forth in such section and (ii) such Investments made pursuant this Section 7.7(t) are consistent with the Approved Budget.

It is further understood and agreed that for purposes of determining the value of any Investment outstanding for purposes of this Section 7.7, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired less any returns on such Investment (not to exceed the original amount invested).

It is further understood and agreed that, notwithstanding anything in this Agreement to the contrary, each of the Borrower and its Subsidiaries shall not make any Investment of Intellectual Property in any Affiliate or Subsidiary, nor shall it permit any of its Intellectual Property (whether now owned or hereafter acquired) to be owned, held or licensed by any Affiliate or Subsidiary, except (A) as exists on the Closing Date and (B) the non-exclusive licensing, sublicensing or cross-licensing of Intellectual Property in the ordinary course of business consistent with past practice, which do not interfere in any material respect with the conduct of the business of the Borrower or such Subsidiary.

7.8 Prepayments, Etc. of Indebtedness; Amendments. (a) Make any Prepetition Payments other than (i) as permitted by the Orders, (ii) as permitted by any Approved Bankruptcy Court Order and consistent with the Approved Budget, (iii) [reserved], or (iv) as permitted by any other order of the Bankruptcy Court in amounts reasonably satisfactory to the Required Lenders, but in the case of clauses (i) and (ii) in amounts not in excess of the amounts set forth for such payments in the Approved Budget (subject to the Permitted Variance), or (b) amend or modify the documentation in respect of any Prepetition Indebtedness.

7.9 Transactions with Affiliates. Enter into any transaction or series of transactions, including any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate thereof (other than among Loan Parties or among non-Loan Parties) involving aggregate payments or consideration in excess of $500,000 unless such transaction is (a) otherwise not prohibited under this Agreement and (b) upon terms materially no less favorable when taken as a whole to the Borrower or such Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; provided with respect to any such transaction involving aggregate payments or consideration in excess of $750,000, the Borrower shall deliver to the Administrative Agent a letter from a nationally recognized investment banking firm stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view. Notwithstanding the foregoing, the Borrower and its Subsidiaries may:

(i) make any Restricted Payment permitted pursuant to Section 7.6 (other than by reference to Section 7.9 or any clause thereof) or any Investment permitted pursuant to Section 7.7;

(ii) perform their obligations pursuant to the Loan Documents;

(iii) enter into transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business subject to compliance with Section 7.9(b);

(iv) without being subject to the terms of this Section 7.9, enter into any transaction with any Person which is an Affiliate of the Borrower only by reason of such Person and Holdings or the Borrower, as applicable, having common directors;

(v) enter into any transaction among the Borrower and its Subsidiaries in the ordinary course of business consistent with past practice that is not otherwise prohibited by this Agreement;

(vi) enter into the transactions allowed pursuant to Section 10.6;

(vii) enter into transactions set forth on Schedule 7.9;

(viii) enter into any compensation or employee benefit arrangements with an officer, director, manager, employee or consultant of the Borrower or any of its Subsidiaries in the ordinary course of business and not otherwise prohibited by the terms of this Agreement;

(ix) enter into any transaction in which the Borrower or any Subsidiary, as the case may be, delivers to the Administrative Agent a letter from a nationally recognized investment banking firm stating that such transaction is fair to the Borrower or such Subsidiary from a financial point of view and meets the requirements of Sections 7.9(a) and (b);

(x) enter into transactions with customers, clients, suppliers, or purchasers or sellers of goods or services that are Affiliates, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Subsidiaries, as determined in good faith by the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(xi) engage in any transaction in the ordinary course of business between the Borrower or a Subsidiary and its own employee stock option plan that is approved by the Borrower or such Subsidiary in good faith.

For the avoidance of doubt, this Section 7.9 shall not restrict or otherwise apply to employment, benefits, compensation, bonus, retention and severance arrangements with, and payments of compensation or benefits (including customary fees, expenses and indemnities) to or for the benefit of, current or former employees, consultants, officers or directors of the Borrower or any of its Subsidiaries in the ordinary course of business.

For purposes of this Section 7.9, any transaction with any Affiliate shall be deemed to have satisfied the standard set forth in clause (b) of the first sentence hereof if such transaction is approved by a majority of the Disinterested Directors of the Board of Directors of the Borrower or such Subsidiary, as applicable.

7.10 Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by the Borrower or any of its Subsidiaries of real or personal Property which is to be sold or transferred by the Borrower or any of its Subsidiaries (a) to such Person or (b) to any other Person to

whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of the Borrower or any of its Subsidiaries.

7.11 Changes in Fiscal Periods. Permit the fiscal year of the Borrower to end on a day other than December 31.

7.12 Negative Pledge Clauses. Enter into any agreement that prohibits or limits the ability of any Loan Party to create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Subsidiary Guarantor, its obligations under the Guarantee and Collateral Agreement, other than:

(a) this Agreement or any other Loan Documents, or any other agreement entered into pursuant to any of the foregoing;

(b) any agreements governing Indebtedness and/or other obligations secured by a Lien permitted by this Agreement (in which case, any prohibition or limitation shall only be effective against the assets subject to such Liens permitted by this Agreement);

(c) non-exclusive Intellectual Property licenses entered into in the ordinary course of business consistent with past practice, which do not interfere in any material respect with the conduct of the business of the Borrower or such Subsidiary, pursuant to which such Loan Party is the licensee of the relevant Intellectual Property (in which case, any prohibition or limitation shall relate only to the assets subject to the applicable license);

(d) Contractual Obligations incurred in the ordinary course of business which (i) limit Liens on the assets that are the subject of the applicable Contractual Obligation or (ii) contain customary provisions restricting the assignment, transfer or pledge of such agreements;

(e) any agreements regarding Indebtedness or other obligations of any Non-Guarantor Subsidiary not prohibited under Section 7.2 (in which case, any prohibition or limitation shall only be effective against the assets of such Non-Guarantor Subsidiary and its Subsidiaries);

(f) prohibitions and limitations in effect on the Petition Date (i) under the Prepetition Notes Indenture, or (ii) listed on Schedule 7.12 hereof;

(g) customary provisions contained in joint venture agreements, shareholder agreements and other similar agreements applicable to joint ventures and other non-wholly owned entities not prohibited by this Agreement;

(h) customary provisions restricting the subletting, assignment, pledge or other transfer of any lease governing a leasehold interest;

(i) customary restrictions and conditions contained in any agreement relating to any Disposition of Property, leases, subleases, licenses, sublicenses, and cross licenses not prohibited hereunder;

(j) any agreement in effect at the time any Person becomes a Subsidiary of the Borrower or is merged with or into the Borrower or a Subsidiary of the Borrower, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary of the Borrower or a party to such merger;

(k) restrictions imposed by applicable law or regulation or license requirements;

(l) restrictions in any agreements or instruments relating to any Indebtedness permitted to be incurred by this Agreement (i) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially more restrictive on the Subsidiaries than the encumbrances contained in this Agreement (as determined in good faith by the Borrower) or (ii) if such encumbrances and restrictions are customary for similar financings in light of prevailing market conditions at the time of incurrence thereof (as determined in good faith by the Borrower) and the Borrower determines in good faith that such encumbrances and restrictions would not reasonably be expected to materially impair the Borrower's ability to create and maintain the Liens on the Collateral pursuant to the Security Documents;

(m) restrictions in respect of Indebtedness secured by Liens permitted by Sections 7.3(g) and 7.3(v) relating solely to the assets or proceeds thereof secured by such Indebtedness;

(n) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(o) restrictions arising in connection with cash or other deposits not prohibited hereunder and limited to such cash or other deposit;

(p) restrictions and conditions that arise in connection with any Dispositions permitted by Section 7.5; provided, however, that such restrictions and conditions shall apply only to the property subject to such Disposition; and

(q) the foregoing shall not apply to any restrictions or conditions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or other obligations referred to in clauses (a) through (r) above, provided, that the restrictions and conditions contained in such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in good faith judgment of the Borrower no more restrictive than those restrictions and conditions in effect immediately prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing under the applicable contract, instrument or other obligation.

7.13 Clauses Restricting Subsidiary Distributions. Enter into any consensual encumbrance or restriction on the ability of any Subsidiary to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any of its Subsidiaries or (b) make Investments in the Borrower or any of its Subsidiaries, except for such encumbrances or restrictions existing under or by reason of or consisting of:

(i) this Agreement or any other Loan Documents, or any other agreement entered into pursuant to any of the foregoing;

(ii) provisions limiting the Disposition of assets or property in asset sale agreements, stock sale agreements and other similar agreements, which limitation is in each case applicable only to the assets or interests the subject of such agreements but which may include customary restrictions in respect of a Subsidiary in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Subsidiary;

(iii) customary net worth provisions contained in Real Property leases entered into by the Borrower and its Subsidiaries, so long as the Borrower has determined in good faith that such

net worth provisions would not reasonably be expected to impair the ability of the Borrower to meet its ongoing payment obligations hereunder or, in the case of any Subsidiary Guarantor, its obligations under the Guarantee and Collateral Agreement;

(iv) agreements related to Indebtedness in effect on the Petition Date;

(v) Contractual Obligations incurred in the ordinary course of business which include customary provisions restricting the assignment, transfer or pledge thereof;

(vi) customary provisions contained in joint venture agreements, shareholder agreements and other similar agreements applicable to joint ventures and other non-wholly owned entities not prohibited by this Agreement;

(vii) customary provisions restricting the subletting or assignment of any lease governing a leasehold interest;

(viii) any agreement in effect at the time any Person becomes a Subsidiary or is merged with or into the Borrower or any Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary or a party to such merger;

(ix) encumbrances or restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(x) encumbrances or restrictions imposed by applicable law, regulation or customary license requirements;

(xi) restrictions and conditions contained in the Prepetition Notes Indenture;

(xii) any agreement in effect on the Petition Date and described on Schedule 7.13;

(xiii) restrictions or conditions imposed by any obligations secured by Liens permitted pursuant to Section 7.3 (other than obligations in respect of Indebtedness), if such restrictions or conditions apply only to the property or assets securing such obligations and such encumbrances and restrictions are customary for similar obligations in light of prevailing market conditions at the time of incurrence thereof (as determined in good faith by the Borrower) and the Borrower determines in good faith that such encumbrances and restrictions would not reasonably be expected to materially impair the Borrower's ability to pay the Obligations when due;

(xiv) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase or other agreement to which the Borrower or any of its Subsidiaries is a party entered into in the ordinary course of business; provided, that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Subsidiary that are the subject of such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Subsidiary or the assets or property of any other Subsidiary; and

(xv) the foregoing shall not apply to any restrictions or conditions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or other obligations referred to in clauses (i) through (xviii) above, provided, that the restrictions and conditions contained in such amendments, modifications, restatements, renewals, increases, supplements, refundings,

replacements or refinancings are, in good faith judgment of the Borrower no more restrictive than those restrictions and conditions in effect immediately prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing under the applicable contract, instrument or other obligation.

7.14 Limitation on Hedge Agreements. Enter into any Hedge Agreement other than Hedge Agreements entered into in the ordinary course of business, and not for speculative purposes.

7.15 [Reserved].

7.16 Additional Bankruptcy Matters. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, without the Required Lenders' prior written consent, do any of the following:

(a) assert, join, investigate, support or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents or the Restructuring Support Agreement or any Definitive Documents against any of the Agents or Lenders;

(b) subject to the terms of the Orders, and subject to Section VIII, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agents or the Lenders with respect to the Collateral following the occurrence of an Event of Default; provided, that any Loan Party may contest or dispute whether an Event of Default has occurred in accordance with the terms of the Orders; or

(c) except as expressly provided or permitted hereunder (including, without limitation, to the extent authorized pursuant to any order of the Bankruptcy Court complying with the terms of this Agreement) or, with the prior consent of the Required Lenders (and, if applicable, the Administrative Agent), as provided pursuant to an Approved Bankruptcy Court Order, make any payment or distribution to any non-Debtor affiliate or insider unless such payment or distribution is on arm's length terms, consistent with past practice and in the ordinary course of business for the applicable Loan Party or Subsidiary.

7.17 Budget Variance Covenant. Commencing with the delivery of the Budget Variance Report for the Test Period ending on March 28, 2025, and as of each subsequent Budget Variance Test Date, for the most recently ended Test Period, permit actual aggregate disbursements for such Test Period (excluding professional fees and expenses) to be greater than 120% of the forecasted aggregate disbursements for such Test Period (excluding professional fees and expenses) in the applicable Approved Budget (the "Permitted Variance").

To the extent that any Test Period encompasses a period that is covered in more than one Approved Budget, the applicable weeks from each applicable Approved Budget shall be utilized in making the calculations pursuant to this Section 7.17.

7.18 [Reserved].

7.19 Subrogation. Permit any of its Subsidiaries to assert any right of subrogation or contribution against any other Debtors until the payment in full in cash of all the Obligations (other than contingent indemnity obligations with respect to then unasserted claims).

SECTION VIII. EVENTS OF DEFAULT

8.1 Events of Default. If any of the following events shall occur and be continuing:

(a) The Borrower shall fail to pay (i) any principal of any Loan when due in accordance with the terms hereof or (ii) any other amounts due pursuant to the Orders, any interest owed by it on any Loan, or any other amount payable by it hereunder or under any other Loan Document, in the case of this clause (ii), within five Business Days after any such interest or other amount becomes due in accordance with the terms of the Orders, hereof or thereof, as applicable;

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate or other document furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall in either case prove to have been inaccurate in any material respect (or if qualified by materiality, in any respect) and such inaccuracy is adverse to the Lenders on or as of the date made or deemed made or furnished;

(c) The Borrower or any Subsidiary Guarantor shall default in the observance or performance of any agreement contained in Section 6.4(a) (solely with respect to maintaining the existence of the Borrower), Section 6.17, or Section 7;

(d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section 8.1), and such default shall continue unremedied (i) for a period of two (2) Business Days if such breach relates to the terms or provisions of Section 6.1(d) or (e), (ii) for a period of two (2) Business Days after such Loan Party receives from the Administrative Agent (at the direction of Required Lenders) or the Required Lenders notice of the existence of such default if such breach relates to the terms or provisions of Section 6.19, (iii) for a period of six (6) Business Days if such breach relates to the terms or provisions of Section 6.7(a), (iv) for a period of ten (10) days if such breach relates to the terms or provisions of Section 6.10, or (v) for a period of thirty (30) days;

(e) Any of the Borrowers' Subsidiaries that is not a Debtor shall:

(i) default in making any payment of any principal of any Indebtedness for Borrowed Money (excluding Prepetition Indebtedness) on the scheduled or original due date with respect thereto beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness for Borrowed Money was created;

(ii) default in making any payment of any interest on any such Indebtedness for Borrowed Money (excluding Prepetition Indebtedness) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness for Borrowed Money was created; or

(iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness for Borrowed Money (excluding Prepetition Indebtedness) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event of default shall occur, the effect of which payment or other default or other event of default is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness for Borrowed Money to become due prior to its stated maturity or to become subject to a mandatory offer to purchase by the obligor thereunder;

provided, that:

(A) a default, event or condition described in this paragraph shall not at any time constitute an Event of Default unless, at such time, one or more defaults or events of default of the type described in this paragraph shall have occurred and be continuing with respect to Indebtedness for Borrowed Money (excluding Prepetition Indebtedness) the outstanding principal amount of which individually exceeds $1,000,000, and in the case of Indebtedness for Borrowed Money of the types described in clauses (i) and (ii) of the definition thereof, with respect to such Indebtedness which exceeds such amount either individually or in the aggregate; and

(B) this paragraph (e) shall not apply to secured Indebtedness that becomes due as a result of the sale, transfer, destruction or other disposition of the Property or assets securing such Indebtedness for Borrowed Money if such sale, transfer, destruction or other disposition is not prohibited hereunder and under the documents providing for such Indebtedness;

(f) (i) any direct or indirect material Subsidiary of the Borrower that is not a Debtor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any material Subsidiary of the Borrower or any of its Subsidiaries that is not a Debtor shall make a general assignment for the benefit of its creditors;

(ii) there shall be commenced against any material Subsidiary of the Borrower or any of its Subsidiaries that is not a Debtor any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days;

(iii) there shall be commenced against any material Subsidiary of the Borrower or any of its Subsidiaries that is not a Debtor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against substantially all of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof;

(iv) any material Subsidiary of the Borrower or any of its Subsidiaries that is not a Debtor shall consent to or approve of, or acquiesce in, any of the acts set forth in clause (i), (ii), or (iii) above; or

(v) any material Subsidiary of the Borrower or any of its Subsidiaries that is not a Debtor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(g) (i) the Borrower or any of its Subsidiaries shall incur any liability in connection with any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan;

(ii) a failure to meet the minimum funding standards (as defined in Section 302(a) of ERISA), whether or not waived, shall exist with respect to any Single Employer Plan or any Lien in favor of the PBGC or a Lien shall arise on the assets of the Borrower or any of its Subsidiaries;

(iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is reasonably likely to result in the termination of such Single Employer Plan for purposes of Title IV of ERISA;

(iv) any Single Employer Plan shall terminate in a distress termination under Section 4041(c) of ERISA or in an involuntary termination by the PBGC under Section 4042 of ERISA;

(v) any Loan Party or any other Commonly Controlled Entity shall, or is reasonably likely to, incur any liability as a result of a withdrawal from, or the Insolvency of, a Multiemployer Plan;

(vi) any Foreign Plan Event occurs; or

(vii) any other event or condition shall occur or exist with respect to a Plan;

and in each case in clauses (i) through (vii) above, which event or condition, together with all other such events or conditions, if any, would reasonably be expected to result in any liability of the Borrower or any of its Subsidiaries that would reasonably be expected to have a Material Adverse Effect;

(h) One or more final judgments or decrees shall be entered against the Borrower or any of its Subsidiaries (which is not subject to the automatic stay) pursuant to which the Borrower and any such Subsidiaries taken as a whole has a liability (not paid or fully covered by third-party insurance or effective indemnity) of $1,000,000 or more (net of any amounts which are covered by insurance or an effective indemnity), and all such judgments or decrees shall not have been vacated, discharged, dismissed, stayed or bonded within 60 days from the entry thereof;

(i) Subject to Schedule 6.10, any limitations expressly set forth herein and the exceptions set forth in the applicable Security Documents:

(i) the Orders or any of the Security Documents shall cease, for any reason (other than by reason of the express release thereof in accordance with the terms thereof or hereof) to be in full force and effect or shall be asserted in writing by the Borrower or any Subsidiary Guarantor not to be a legal, valid and binding obligation of any party thereto;

(ii) any security interest purported to be created by the Orders or any Security Document with respect to any material portion of the Collateral of the Loan Parties on a consolidated basis shall cease to be, or shall be asserted in writing by any Loan Party not to be, a valid and perfected security interest (having the priority required by this Agreement, the Orders or the relevant Security Document) in the securities, assets or properties covered thereby, except to the extent that (x) any such loss of perfection or priority results from limitations of foreign laws, rules and regulations as they apply to pledges of Capital Stock in Foreign Subsidiaries or the application thereof, or from the failure of the Collateral Agent in accordance with the Security Documents to maintain possession of certificates actually delivered to it representing securities pledged under the Guarantee and Collateral Agreement or otherwise or to file UCC continuation

statements or (y) such loss is covered by a lender's title insurance policy and the Administrative Agent (at the direction of Required Lenders) shall be reasonably satisfied with the credit of such insurer; or

(iii) the Guarantee Obligations pursuant to the Orders and the Security Documents by any Loan Party of any of the Obligations shall cease to be in full force and effect (other than in accordance with the terms hereof or thereof), or such Guarantee Obligations shall be asserted in writing by any Loan Party not to be in effect or not to be legal, valid and binding obligations; or

(j) (iv) [Reserved].

(k) (i) The Borrower shall cease to own, directly or indirectly, 100% of the Capital Stock of each of its Subsidiaries; or

(ii) for any reason whatsoever, any "person" or "group" (within the meaning of Rule 13d-5 of the Exchange Act as in effect on the Closing Date, but excluding (x) any employee benefit plan of such person and its subsidiaries, and (y) any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan shall become the "beneficial owner" (within the meaning of Rule 13d-3 and 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, of more than 50% of the then outstanding voting securities having ordinary voting power of the Borrower;)

(l) there occurs any of the following:

(i) the entry of an order dismissing any of the Cases or converting any of the Cases to a case under chapter 7 of the Bankruptcy Code that is not stayed, vacated, or withdrawn five (5) days from entry, or any filing by any Loan Party (or any Subsidiary thereof) of a motion or other pleading seeking entry of such an order;

(ii) a trustee, a responsible officer or an examiner having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Bankruptcy Code section 1104 (other than a fee examiner), or any similar person is appointed or elected in the any of the Cases, any Loan Party (or any Subsidiary thereof) applies for, consents to, or fails to contest in, any such appointment, or the Bankruptcy Court shall have entered an order that is not stayed, vacated, or withdrawn three (3) calendar days from entry providing for such appointment, in each case without the prior written consent of the Required Lenders in their sole discretion;

(iii) the entry of an order that is not stayed, vacated, or withdrawn five (5) calendar days from entry or the filing by any Loan Party (or any Subsidiary thereof) of an application, motion or other pleading seeking entry of an order staying, reversing, amending, supplementing, vacating or otherwise modifying the Interim Order (other than the Final Order) or the Final Order, or any of the Borrower or any of its Subsidiaries shall apply for authority to do so (unless substantially concurrently with the entry of such order the DIP Facility will be repaid in full and the Commitments will be terminated), without the prior written consent of the Required Lenders, or the Interim Order or Final Order, as applicable, shall cease to be in full force and effect;

(iv) (A) the entry of an order that is not stayed, vacated, or withdrawn five (5) calendar days from entry in any of the Cases denying or terminating use of cash collateral by the Loan Parties that are Debtors; or (B) any other event that terminates the Loan Parties' right to use cash collateral.

(v) the entry of an order that is not stayed, vacated, or withdrawn five (5) calendar days from entry in any of the Cases granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed against any assets (other than with respect to proceeds of insurance policies) of the Debtors having an aggregate value of $500,000 or to permit other actions that would have a material adverse effect on the Debtors or their estates;

(vi) any of the Loan Parties or any of their Subsidiaries shall commence, join in, assist, support or otherwise participate as an adverse party in any suit or other proceeding against the Administrative Agent, Collateral Agent or the Lenders (in each case, in their capacities as such) (other than to enforce the Loan Documents or to argue the occurrence of a Default or Event of Default);

(vii) the entry of an order that is not stayed, vacated, or withdrawn five (5) days from entry in the Cases charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the commencement of any other actions by the Loan Parties, that challenges the rights and remedies of the Agents or the Lenders under the Loan Documents or the Orders or that is inconsistent with the Loan Documents;

(viii) the entry of an order in any of the Cases (other than the Orders) granting authority to use cash collateral (other than with the prior written consent of the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders) or to obtain financing under Section 364 of the Bankruptcy Code (other than the DIP Facility or any other Indebtedness permitted pursuant to Section 7.2 or the proceeds of which will be used to repay the DIP Facility in full and terminate the Commitments);

(ix) without the written consent of the Administrative Agent (solely with respect to the treatment of the Agents) and the Required Lenders, the entry of an order that is not stayed, vacated, or withdrawn five (5) days from entry in any of the Cases granting adequate protection to any person (which, for the avoidance of doubt, shall not apply to any payments made pursuant to any Order or any First Day Order consistent with the Restructuring Support Agreement or otherwise reasonably acceptable to the Required Lenders);

(x) the filing or support of any pleading by any Loan Party (or any of its Subsidiaries) seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (ix) above or which could otherwise be reasonably expected to result in the occurrence of an Event of Default;

(xi) the making of any Prepetition Payments other than (A) as permitted by the Orders, (B) as permitted by any orders of the Bankruptcy Court reasonably satisfactory to the Required Lenders and consistent with the Approved Budget or (C) as permitted by any other order of the Bankruptcy Court in amounts reasonably satisfactory to the Required Lenders, but in the case of clauses (A) and (B) in amounts not in excess of the amounts set forth for such payments in the Approved Budget (subject to the Permitted Variance);

(xii) an order of the Bankruptcy Court granting, other than in respect of this Agreement and the Carve-Out or pursuant to the Orders, any superpriority administrative expense claim in the Cases pursuant to Section 364(c)(1) of the Bankruptcy Code pari passu with or senior to the claims of the Administrative Agent and the Lenders, or the filing by any Loan Party (or any of its Subsidiaries) of a motion or application seeking entry of such an order;

(xiii) the Final Order is not entered within 35 days of the Petition Date;

(xiv) other than with respect to the Carve-Out and the Liens permitted to have such priority hereunder and under the other Loan Documents and the Orders, any Loan Party shall create or incur, or the Bankruptcy Court enter an order granting, any Lien which is pari passu with or senior to any Liens under the Loan Documents;

(xv) noncompliance by any Loan Party or any of its Subsidiaries with the terms of the Interim Order or the Final Order;

(xvi) the commencement of, or support of, any Loan Party to any action against any member of the Ad Hoc Committee unless such action is in connection with the enforcement of the Loan Documents, the Restructuring Support Agreement or any Definitive Documents;

(xvii) the filing of a motion, pleading or proceeding by any of the Borrower or any of its Subsidiaries that is not withdrawn within one (1) day which could reasonably be expected to result in a material impairment of the rights or interests of the Lenders in their capacities as such;

(xviii) the filing of a Chapter 11 Plan that is not an Acceptable Plan of Reorganization that is not withdrawn within one (1) day;

(xix) any Loan Party (or any of its Subsidiaries) shall file a motion, without the Required Lenders' written consent, seeking authority to sell all or substantially all of its assets in a transaction that is not approved by the Required Lenders;

(xx) any Loan Document shall cease to be effective or shall be contested by the Borrower or any of its Subsidiaries unless such action is in connection with the enforcement of the Loan Documents;

(xxi) the filing of or public announcement relating to any plan, disclosure statement or any material document in the Cases without adequate notice to the Ad Hoc Committee Advisors at least 5 Business Days prior to such filing or announcement (or, if impracticable, as soon as practicable prior to such filing or announcement);

(xxii) the termination of the Restructuring Support Agreement or any other restructuring support agreement to which the Ad Hoc Committee is a party; *provided* that the foregoing shall not constitute an Event of Default to the extent the Company terminates the Restructuring Support Agreement as to a Non-Supporting Senior Noteholder so long as the Consenting Senior Noteholders (excluding any Non-Supporting Senior Noteholders as to which the Restructuring Support Agreement has been terminated) continue to hold or control at least two-thirds in principal amount of the then outstanding principal amounts of Senior Notes; or

(xxiii) the reduction or termination of the time period during which the Debtors may exclusively file a Chapter 11 Plan and/or solicit votes to accept such plan;

then, and in any such event, at the direction of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable. Except as expressly provided above in this Section

8.1 or otherwise in any Loan Document, presentment, demand and protest of any kind are hereby expressly waived by the Borrower.

Notwithstanding anything to the contrary herein, the enforcement of Liens or remedies with respect to the Collateral and the exercise of all other remedies provided for in this Agreement and the other Loan Documents, shall be subject to the provisions (including notice and timing) set forth in the Interim Order (and, when entered, the Final Order).

SECTION IX. THE AGENTS

9.1 Appointment.

(a) Each Lender hereby irrevocably designates and appoints each Agent as the agent of such Lender under the Loan Documents; and each such Lender irrevocably authorizes each such Agent, in such capacity, to take such action on its behalf under the provisions of the applicable Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of the applicable Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Agents shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary, principal-agency, or trustee relationship with the other Agent, any Lender or any other Secured Party (regardless of whether a Default or Event of Default has occurred and is continuing), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agents and the duties of the Agents shall be mechanical and administrative in nature. All references to Administrative Agent in this Article IX shall, where applicable, be read as including a reference to the Collateral Agent.

(b) The provisions of this Section 9 are solely for the benefit of the Agents and the Lenders, and the Loan Parties shall have no rights as a third-party beneficiary of any of such provisions. In performing its functions and duties hereunder, each Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of fiduciary, agency or trust with or for the Borrower, the other Loan Parties, or any of their respective Subsidiaries. It is understood and agreed that the use of the term "agent" or "Agent" herein or in any other Loan Document (or any other similar term) with reference to any 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 a representative relationship between independent contracting parties. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to (i) execute any and all documents (including releases and the Security Documents (which Security Documents shall contain indemnity and expense reimbursement provisions for the benefit of the Agents party thereto that are no more onerous to the Lenders than the provisions contained in the Security Documents as of the Closing Date and shall be binding on the Lenders)) with respect to the Collateral and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary), which negotiation, enforcement or settlement will be binding upon each Lender.

9.2 Delegation of Duties. Each Agent may execute any of its duties under the applicable Loan Documents by or through any of its branches, agents, sub-agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither Agent shall be responsible for the negligence or misconduct of any agents, sub-agents or attorneys in fact selected by

it with reasonable care. Each Agent and any such agent, sub-agent or attorney-in-fact may perform any and all of its duties by or through their respective Related Parties (including their affiliates, agents, sub-agents, designees, employees or attorneys-in-fact). The exculpatory and indemnification provisions of this Section shall apply to any such agent, sub-agent or attorney-in-fact and to the Related Parties of each Agent and any such agent, sub-agent or attorney-in-fact, and shall apply to their respective activities in connection with the syndication of the DIP Facility as well as activities as Agent.

9.3 Exculpatory Provisions.

Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys in fact or Affiliates shall be (a) liable for (i) any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) (and such consent or request and such action or action not taken pursuant thereto shall be binding upon all the Lenders) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment (which shall not include any action taken or omitted to be taken in accordance with clause (i), for which such Agent shall have no liability), or (b) responsible in any manner for or have any duty to ascertain or inquire into (i) any recitals, statements, representations or warranties made in or in connection with this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document, (ii) the contents of any certificate, report, statement or other document delivered, referred to, provided for, or delivered hereunder or thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, the use of proceeds of the Loans, or the occurrence of any Default or Event of Default, (iv) the execution, validity, enforceability, effectiveness, genuineness, collectability or sufficiency of any Loan Document or any other agreement, instrument or document, or the creation, preservation, perfection, maintenance or continuation of perfection, or priority of any Lien created or purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, (vi) whether the Collateral exists, is owned by the Borrower, another Loan Party or any of their Subsidiaries or Affiliates, is cared for, protected, or insured or has been encumbered, or meets the eligibility criteria applicable in respect thereof, (vii) the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations or (viii) the satisfaction of any condition set forth in Section 5 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent. No Agent shall be under any duty or obligation to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

No Agent nor any of its Related Parties shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of their Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Related Parties in any capacity.

Nothing in this Agreement or any other Loan Document shall require any Agent or its Related Parties to expend or risk their own funds or otherwise incur any financial liability in the performance of any duties or in the exercise of any rights or powers hereunder.

No Agent shall be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or any other Loan Document, in each case, arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; pandemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications

service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

For the avoidance of doubt, and without limiting the other protections set forth in this Section 9, with respect to any determination, designation, or judgment to be made by any Agent herein or in the other Loan Document, such Agent shall be entitled to request that the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) make or confirm such determination, designation, or judgment.

No Agent be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law. If either Agent requests instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, such Agent shall be entitled to refrain from such act or taking such action unless and until such Agent shall have received instructions from the Required Lenders (or such other number or percentage of Lenders); and such Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against either Agent as a result of such Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary).

Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary, principal-agency, trustee relationship or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or under any Loan Document that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided for herein or in the other Loan Document); provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, (i) may expose such Agent to liability or that is contrary to any Loan Document or applicable law, (ii) may create any obligation not expressly set forth in the Loan Document or (iii) may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law or it shall first have been indemnified to its satisfaction by the Lenders against any and all liability and expense (other than liability and expense arising from its own gross negligence or willful misconduct) that may be incurred by it by reason of taking, continuing to take or omitting to take any such action, and (c) except as expressly set forth in the Loan Document, no Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower, any of its Affiliates, or any of the Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent and/or Collateral Agent or any of its Affiliates in any capacity.

9.4 Reliance by the Agents. The Agents shall be entitled to rely, not incur any liability for relying and shall be fully protected in relying, upon any instrument, writing, resolution, notice, request, consent, certificate, affidavit, letter, e-mail, telecopy, telex or teletype message, other writing, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons or by acting upon any representation or warranty made or deemed to be made hereunder or under any other Loan Document and upon advice and statements of legal counsel (including counsel to the Loan Parties), independent accountants and other experts selected by the Agents 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. Each Agent may also rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper

Person, and shall not incur any liability for relying thereon. Each Agent shall be fully justified in failing or refusing to take any action under the applicable Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under the applicable Loan Documents in accordance with a request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans. In determining compliance with any conditions hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Agents may presume that such condition is satisfactory to such Lender unless the Agents shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may deem and treat the Lenders and participants specified in the Register and Participant Register, respectively, with respect to any amount owing hereunder as the owner thereof for all purposes unless the Administrative Agent is satisfied that such amount shall have been assigned in accordance with Section 10.06 and the relevant Register or Participant Register has not yet been updated to reflect the same.

Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such direction, advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) and such certifications as it deems appropriate, provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may (i) expose such Agent to liability or that is contrary to any Loan Document or applicable Law or (ii) be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency, reorganization, or relief of debtors; provided, further, that if such Agent so requests, it shall first be indemnified to its satisfaction (including reasonable advances as may be requested by such Agent) by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such directed action; provided, further, that such Agent may seek clarification or further direction prior to taking any such directed action and may refrain from acting until such clarification or further direction has been provided. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Document in accordance with a request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans and/or Notes. Each Agent may also consult with and rely upon advice and statements of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith to be necessary).

9.5 Notice of Default. Neither Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that an Agent receives such a notice, such Agent shall give notice thereof to the Lenders. The Agents shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary).

9.6 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents,

attorneys in fact, Related Parties or Affiliates have made any representations or warranties to it and that no act by any Agent or any such Person hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, Property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any 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 analysis, appraisals and decisions in taking or not taking action under the applicable Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, Property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agents hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, assets, operations, properties, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of such Agent, its Related Parties or any of their respective officers, directors, employees, agents, attorneys in fact or Affiliates.

9.7 Indemnification. The Lenders severally agree to indemnify each Agent, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment in full of the Loans) that may be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Commitments, the Loans, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct; provided, further, that no action taken by any Agent in accordance with the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) shall be deemed to constitute gross negligence or willful misconduct for purposes hereof. The agreements in this Section 9.7 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Term Loans, the expiration or termination of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Collateral Agent, or any Lender. All amounts due under this Section 9.7 shall be payable on demand therefor. Notwithstanding anything to the contrary set forth herein, no Agent shall be required to take, or to omit to take, any action hereunder or under the Loan Documents unless, upon demand, such Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to such Agent, any other Secured Party) against all liabilities, costs and expenses that, by reason of such action or omission, may be imposed on, incurred by or asserted against such Agent or any of its directors, officers, employees and agents. In the case of any investigation, litigation or proceeding giving rise to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time occur (including at any time following the payment of the Loans), this Section 9.7 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including attorneys' fees) incurred by such Agent in

connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice rendered in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower or the other Loan Parties; provided that such reimbursement by the Lenders shall not affect the Borrower's or the other Loan Parties' continuing reimbursement obligations with respect thereto. If The indemnity provided to each Agent under this Section 9.7 shall also apply to each Agent's respective Affiliates, directors, officers, members, controlling persons, employees, trustees, investment advisors, agents, sub-agents, representatives, counsel and other advisors and successors.

9.8 Agent in Its Individual Capacity. Each Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent hereunder and without any duty to account therefor to the Lenders. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under the applicable Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

9.9 Successor Agents.

(a) Any Agent may resign upon 30 days' notice to the Lenders and the other Agent, effective upon appointment of a successor Agent, or in accordance with Section 9.9(b) below. Upon receipt of any such notice of resignation, the Required Lenders shall appoint a successor agent for the Lenders, whereupon such successor agent shall succeed to the rights, powers and duties of such retiring Agent, and the retiring Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such retiring Agent or any of the parties to this Agreement or any Lenders. If no successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders appoint a successor Administrative Agent and/or Collateral Agent, as the case may be. After any retiring Agent's resignation as Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

(b) If no successor Agent has been appointed pursuant to clause (a) above by the 30th day after the date such notice of resignation was given by the retiring Agent, such Agent's resignation shall become effective and all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, and the Required Lenders shall thereafter perform all the duties of such Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Agent in accordance with Section 9.9(a) above, as applicable.

(c) Any resignation by the Administrative Agent pursuant to this Section 9.9 shall also constitute its resignation as the Collateral Agent. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Collateral Agent and (ii) the retiring Collateral Agent shall be discharged from all of their respective duties and obligations hereunder and under the other Loan Documents.

(d) Upon the acceptance of a successor's appointment as Agent hereunder, 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 Loan Documents (if not already discharged therefrom as provided above in

this Section) and the retiring (or retired) Agent under this Agreement shall promptly (i) transfer to such successor Agent all sums, Capital Stock and other items of Collateral held by it hereunder or under the Security Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under this Agreement and the other Loan Documents and (ii) execute and deliver to such successor Agent or otherwise authorize the filing of such amendments to financing statements to the extent the applicable Loan Parties cannot otherwise do so, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the security interests created under the Security Documents, whereupon such retiring or removed Agent shall be discharged from its duties and obligations under this Agreement, the Security Documents and the other Loan Documents.

(e) Upon a resignation of an Agent pursuant to this Section 9.9, such Agent shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Section 9 (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of such Agent for all of its actions and inactions while serving as Agent, including with respect to such actions taken in accordance with Section 9.9(d).

9.10 Certain Collateral Matters.

(a) Each Lender authorizes and directs the Collateral Agent to enter into or join (x) the Security Documents for the benefit of the Lenders and the other Secured Parties and (y) any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to the Security Documents in connection with the incurrence by any Loan Party of Indebtedness pursuant to this Agreement, as applicable or to permit such Indebtedness to be secured by a valid, perfected lien.

(b) Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Required Lenders in accordance with the provisions of this Agreement or the Security Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time prior to an Event of Default, to take any action with respect to any Collateral or Security Documents to which it is a party, which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents.

(c) The Agents are hereby irrevocably authorized and directed by each of the Lenders to effect any release of Liens or Guarantee Obligations contemplated by Section 10.15. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.10(c).

(d) No Agent shall have any obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9 or in any of the Security Documents, it being understood and agreed that in respect of this Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral and that the Collateral Agent shall have no duty or liability whatsoever to any Person, except to the extent

of its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). The Collateral Agent shall have its own independent right to demand payment of the amounts payable by the Loan Parties under this Section, irrespective of any discharge of the Borrower's or other Loan Parties' obligations to pay those amounts to the Lenders resulting from failure by them to take appropriate steps in insolvency proceedings affecting the Borrower or other Loan Parties to preserve their entitlement to be paid those amounts.

(e) The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law; provided, that the Obligations of any regulated Lender may not be credit bid if such regulated Lender cannot comply with such applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the equity interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase); provided, that none of the Secured Parties shall be allowed to credit bid any of the Obligations independently and all such credit bids shall have to be submitted through, and administered by, the Administrative Agent (at the direction of the Required Lenders), as set forth herein. In connection with any such bid, (i) each Agent shall be authorized but, for the avoidance of doubt, not obligated (regardless of direction from Required Lenders or any other number of Lenders) to (x) form one or more acquisition vehicles to make a bid and (y) adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by any Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.1 of this Agreement) and (ii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.11 Agents May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, to the maximum extent permitted by applicable law, each Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether either Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file a single proof of claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file

such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Sections 2.9 and 10.5) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agents and, if either Agent shall consent to the making of such payments directly to the Lenders, to pay to such Agent any amount due for the reasonable compensation, expenses, disbursements and advances of such Agent and its agents and counsel, and any other amounts due to such Agent under Sections 2.9 and 10.5.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize any Agent to vote in respect of the claim of any Lender or in any such proceeding.

9.12 Survival. The agreements in this Section 9 shall survive the resignation, removal or replacement of the Agents, any assignment of rights by, or the replacement of, a Lender, the repayment, satisfaction or discharge of any or all Obligations under this or any other Loan Document, and the termination of this Agreement or any other Loan Document.

9.13 Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee and Collateral Agreement or to take any other enforcement action hereunder or under any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof.

9.14 [Reserved].

9.15 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the

Administrative Agent pending its return or repayment as contemplated below in this Section 9.2 and held in trust for the benefit of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender or Secured Party, agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Secured Party shall (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.2(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.2(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.2(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts,

against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments), the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.6 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any

reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (*provided* that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; *provided* that this Section 9.2 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; *provided, further*, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9 shall survive the resignation or replacement of the Administrative Agent and/or Collateral Agent, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

SECTION X. MISCELLANEOUS

10.1 Amendments and Waivers. No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agents and the Lenders under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (a) of this Section 10.1, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(a) Except to the extent otherwise expressly set forth in this Agreement or the applicable Loan Documents, neither this Agreement, nor any other Loan Document, nor any terms, conditions or other provisions hereof or thereof may be amended, supplemented, modified, or waived except in accordance with the provisions of this Section 10.1. In the case of (i) this Agreement, the Borrower, the Administrative Agent and the Required Lenders and (ii) any other Loan Document, the

Agents that are party thereto (at the direction of Required Lenders), and the Loan Party or Loan Parties that are parties thereto, may, from time to time, (i) enter into written amendments, supplements or modifications hereto or to any other Loan Document for the purpose of adding, deleting or otherwise modifying any term, condition or other provision of this Agreement or any other Loan Document or changing in any manner the rights or obligations of the Agents (provided that the Collateral Agent shall be party to any document making such changes applicable to it) or the Lenders or of the Loan Parties or their Subsidiaries hereunder or thereunder or (ii) waive, on such terms and conditions as the Required Lenders may specify in such instrument, any of the requirements of this Agreement or any other Loan Document or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall:

(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan, extend the scheduled date of any payment in respect of any Loan, reduce the stated rate of any interest, fee or premium payable hereunder (except in connection with an election permitting any interest accruing at the Default Rate to be paid in kind (which election shall be effective with the consent of the Required Lenders)) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the written consent of each Lender directly and adversely affected thereby, which such consent of each Lender directly and adversely affected thereby shall be sufficient to effect such waiver without regard for Required Lender consent;

(ii) amend, modify or waive any provision this Section 10.1 without the written consent of each Lender;

(iii) (A) reduce any percentage specified in the definition of "Required Lenders" or change any other provision in this Agreement or any other Loan Document specifying the number or percentage of Lenders required to amend, modify or waive any rights hereunder or thereunder or to make any determination or grant any consent hereunder or thereunder, (B) permit the assignment or transfer by the Borrower of any of its rights or obligations under this Agreement or the other Loan Documents or (C) release all or substantially all of the Collateral or release all or substantially all of the value of the Guarantees provided by the Subsidiary Guarantors under the Guarantee and Collateral Agreement, in each case, without the written consent of each Lender;

(iv) amend, modify or waive any provision of clause (a) or (b) of Section 2.18 hereof or Section 6.6 of the Guarantee and Collateral Agreement, or amend, modify or waive any similar provision in this Agreement or any other Loan Document in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender;

(v) amend, modify or waive the priority of the security interest of the Collateral Agent or the Secured Parties in the Collateral, or subordinate the Obligations or the Liens securing the Obligations, without the written consent of each Lender;

(vi) amend or modify the Superpriority Claim status of the Lenders or Agents under the Orders or under any Loan Document without the written consent of each such Lender or Agent (solely with respect to the treatment of the Agents); or

(vii) amend, modify or waive (A) any provisions of Section 2.25(d) or (B) any of the rights or duties of any Agent under this Agreement or any other Loan Document, in each case, without the written consent of such Agent;

Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders at the time thereof, the Agents and all future Lenders. In the case of any waiver, the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing unless limited by the terms of such waiver; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (as provided in the definition of "Required Lenders") except that the Commitment of such Lender may not be increased or extended without its consent.

(b) [Reserved].

(c) Furthermore, notwithstanding the foregoing, if following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an ambiguity, mistake, omission, defect, or inconsistency, in each case, in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to this Agreement or any other Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

10.2 Notices; Electronic Communications.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered or posted to the Platform, or three Business Days after being deposited in the mail, postage prepaid, hand delivered or, in the case of telecopy notice, when sent (except in the case of a telecopy notice not given during normal business hours (New York time) for the recipient, which shall be deemed to have been given at the opening of business on the next Business Day for the recipient), addressed as follows in the case of the Borrower or the Agents, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such Person or at such other address as may be hereafter notified by the respective parties hereto:

The Borrower: Cutera, Inc.
3240 Bayshore Boulevard
Brisbane, California 94005
Attention: Stephana Patton, Chief Legal Officer
Email: spatton@cutera.com

With a copy (which shall not constitute notice) to:	Ropes & Gray, LLP 1211 Avenue of the Americas New York, NY 10036-8704 Attention: Jennifer Harris Natasha S. Hwangpo Telephone: 1 212 596 9915 Email: Jennifer.Harris@ropesgray.com Natasha.Hwangpo@ropesgray.com
Agents:	Wilmington Savings Fund Society, FSB, as Administrative Agent and Collateral Agent 500 Delaware Avenue, 11th Floor Wilmington, Delaware 19801 Attn: Patrick Healy Anita Woolery Email: PHealy@wsfsbank.com AWoolery@wsfsbank.com Telephone: 302.888.7580
With a copy (which shall not constitute notice) to:	McDermott Will & Emery LLP One Vanderbilt Avenue New York, New York 10017-3852 Attn: Jonathan Levine Email: jlevine@mwe.com Telephone: 212.547.5400

provided, that any notice, request or demand to or upon the Agents, the Lenders or the Borrower shall not be effective until received.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by posting to the Platform or by any electronic communications pursuant to procedures approved by the Administrative Agent; provided, that the foregoing shall not apply to notices pursuant to Section 2 to a Lender that has notified the Administrative Agent that it is incapable of receiving notices under such Section 2 by electronic communication. Any Agent, Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website (including the Platform) shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notices may be sent by electronic transmission and that the foregoing notice may be sent to such email address.

(c) The Borrower, each Agent and each Lender hereby acknowledges that (i) the Borrower and/or the Administrative Agent will make available to the Lenders materials, notices, demands, communications, documents and/or information provided by or on behalf of the Borrower or its Affiliates hereunder and under any other Loan Document or the transactions contemplated therein (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive information other than information that is publicly available, or not material with respect to the Borrower or its Subsidiaries, or their respective securities, for purposes of the United States federal and state securities laws (collectively, "Public Information"). The Borrower hereby agrees that it will identify that portion of the Borrower Materials that is Public Information and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public Information (although it may be sensitive and proprietary) (provided, however, that to the extent such Borrower Materials constitute Confidential Information, they shall be treated as set forth in Section 10.14); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information"; provided, that there is no requirement that the Borrower identify any such information as "PUBLIC.". Notwithstanding the foregoing, the following Borrower Materials shall be marked or deemed marked "PUBLIC", unless the Borrower notifies the Administrative Agent promptly that any such document contains Material Non-Public Information: (1) the Loan Documents and (2) notification of changes in the terms of the Loan Documents.

(d) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent, the Collateral Agent or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind, including without limitation, direct or indirect, special, incidental, punitive or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or an Agent Party's transmission of Borrower Materials through the Internet (including the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party.

(e) Each of the Borrower and the Administrative Agent may change its address, e-mail address, telecopier or telephone number for notices and other communications hereunder by notice to such other Person. Each Lender may change its address, e-mail address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name,

telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirement of Law, including United States federal securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain information other than Public Information.

(f) The Administrative Agent, Collateral Agent and the Lenders shall be entitled to rely and act upon any notices believed in good faith by the Administrative Agent or the Collateral Agent to be given by or on behalf of the Borrower or any other Person even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.3 No Waiver; Cumulative Remedies.

(a) No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.1 for the benefit of all the Lenders and the Collateral Agent for the benefit of the Secured Parties; provided, however, that the foregoing shall not prohibit (i) each Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Section 10.7(b) (subject to the terms of Section 10.7(a)), or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent, Collateral Agent and any Lender (if permitted under the terms hereof), may exercise certain remedies under this Agreement consistent with the Loan Documents only in accordance with the Interim Order or Final Order, as applicable, including Paragraph 18 thereof.

10.4 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

10.5 Payment of Expenses; Indemnification. Except with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim, the Borrower agrees:

(a) (A) to pay or reimburse each Agent and the Ad Hoc Committee Advisors (plus one firm of special regulatory counsel and one firm of local counsel per material jurisdiction to the Ad Hoc Committee as may reasonably be necessary) for all of its reasonable and documented out-of-pocket costs and expenses incurred in connection with the development, preparation, execution and delivery of this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith and any amendment, supplement or modification hereto or thereto, and, as to the Agents only, the administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements and other charges of McDermott Will & Emery LLP, as counsel to the Agents (plus one firm of special regulatory counsel and one firm of local counsel to the Agents per material jurisdiction as may be reasonably necessary) and the reasonable fees and expenses of any agent, sub-agent or attorney-in-fact appointed by any Agent;

(b) to pay or reimburse the Ad Hoc Committee Advisors and each Agent for all their reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights under this Agreement, the other Loan Documents and any such other documents referred to in Section 10.5(a) above (including all such costs and expenses incurred in connection with any legal proceeding, including any proceeding under any Debtor Relief Law or in connection with any workout or restructuring), including the documented fees and disbursements of (i) McDermott Will & Emery LLP, as counsel to the Agents, any local counsel to the Agents and, if necessary, a single firm of special regulatory counsel for the Agents and the reasonable fees and expenses of any agent, sub-agent or attorney-in-fact appointed by any Agent and (ii) the Ad Hoc Committee Advisors and, if necessary, a single firm of special regulatory counsel and a single firm of local counsel per material jurisdiction to the Lenders as may reasonably be necessary; and

(c) to pay, indemnify or reimburse each Lender, each Agent and their respective Affiliates, and their respective partners that are natural persons, members that are natural persons, officers, directors, employees, trustees, advisors, agents, sub-agents, attorneys-in-fact and controlling Persons (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against any and all other liabilities, obligations, losses, damages, penalties, costs, expenses or disbursements arising out of any actions, judgments or suits of any kind or nature whatsoever, arising out of or in connection with any claim, action or proceeding (any of the foregoing, a "Proceeding") relating to or otherwise with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents referred to in Section 10.5(a) above and the transactions contemplated hereby and thereby, including any of the foregoing relating to the use of proceeds of the Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Borrower, any of its Subsidiaries or any of the Properties and the reasonable fees and disbursements and other charges of legal counsel in connection with claims, actions or proceedings by any Indemnitee against the Borrower hereunder (all the foregoing in this clause (c), collectively, the "Indemnified Liabilities");

provided, that, the Borrower shall not have any obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities have resulted from (i) the gross negligence or willful misconduct of such Indemnitee or its Related Persons as determined by a court of competent jurisdiction in a final non-appealable decision (or settlement tantamount thereto) or (ii) disputes solely among Indemnitees or their Related Persons and not arising from any act or omission by the Borrower or any of its Subsidiaries (it being understood that this paragraph shall not apply to the indemnification of an Agent in a suit involving an Agent, in each case, in its capacity as such, unless such

suit has resulted from the gross negligence or willful misconduct of such Agent as determined by a court of competent jurisdiction in a final non-appealable decision (or settlement tantamount thereto); provided, further, that no action taken by any Agent in accordance with the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) shall be deemed to constitute gross negligence or willful misconduct for purposes hereof)) or (iii) any settlement of any Proceeding effected without the Borrower's consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with the Borrower's written consent or if there is a judgment by a court of competent jurisdiction in any such Proceeding, the Borrower shall indemnify and hold harmless each Indemnitee from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with the other provisions of this Section 10.5.

No Indemnitee referred to above shall be liable for any damages arising from the use by unintended recipients of any information or other material distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

For purposes hereof, a "Related Person" of an Indemnitee means (i) if the Indemnitee is any Agent or any of its Affiliates or their respective partners that are natural persons, members that are natural persons, officers, directors, employees, agents and controlling Persons, any of such Agent and its Affiliates and their respective officers, directors, employees, agents and controlling Persons; provided, that solely for purposes of Section 9, references to each Agent's Related Persons shall also include such Agent's trustees and advisors, and (ii) if the Indemnitee is any Lender or any of its Affiliates or their respective partners that are natural persons, members that are natural persons, officers, directors, employees, agents and controlling Persons, any of such Lender and its Affiliates and their respective officers, directors, employees, agents and controlling Persons. All amounts due under this Section 10.5 shall be payable promptly after receipt of a reasonably detailed invoice therefor. Statements payable by the Borrower pursuant to this Section 10.5 shall be submitted to the Borrower at the address thereof set forth in Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent.

The agreements in this Section 10.5 shall survive repayment of the Obligations.

10.6 Successors and Assigns; Participations and Assignments.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) subject to Section 2.24, no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.6.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may, in compliance with applicable law, assign (other than to any Disqualified Institution or a natural person) to one or more assignees (each, an "Assignee"), all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(1) the Borrower (not to be unreasonably withheld or delayed); provided, that no consent of the Borrower shall be required for an assignment (x) to a Lender, an Affiliate of a Lender, or an Approved Fund, or (y) if an Event of Default has occurred

and is continuing, to any other Person; provided, further, that a consent under this clause (1) shall be deemed given if the Borrower shall not have objected in writing to a proposed assignment within five (5) Business Days after receipt by it of a written notice thereof from the Administrative Agent; and

(2) the Administrative Agent; provided, that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Subject to Section 2.24, assignments shall be subject to the following additional conditions:

(1) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of (I) the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or (II) if earlier, the "trade date" (if any) specified in such Assignment and Assumption) shall not be less than $1,000,000 unless the Borrower and the Administrative Agent otherwise consent; provided, that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each assigning Lender and its Affiliates or Approved Funds, if any;

(2) the parties to each assignment shall execute and deliver to the Administrative Agent (I) an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent and the Borrower (or, at the Borrower's request, manually) together with (II) a processing and recordation fee of $3,500 to be paid by either the applicable assignor or Assignee (which fee may be waived or reduced in the sole discretion of the Administrative Agent); provided, that only one such fee shall be payable in the case of contemporaneous assignments to or by two or more related Approved Funds; and

(3) the Assignee, if not a Lender prior to such assignment, shall deliver to the Administrative Agent an administrative questionnaire and all applicable tax forms.

For the purposes hereof, "Approved Fund" means any Person that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (I) a Lender, (II) an Affiliate of a Lender, (III) an entity or an Affiliate of an entity that administers or manages a Lender or (IV) an entity or an Affiliate of an entity that is the investment advisor to a Lender. Notwithstanding the foregoing, no Lender shall be permitted to make assignments under this Agreement to any Disqualified Institutions without the written consent of the Borrower.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) below, from and after the effective date specified in each Assignment and Assumption, the Assignee thereunder shall be a party hereto and, to the extent of the Loans and Commitments assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and

obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be subject to the obligations under and entitled to the benefits of Sections 2.20, 2.21, 10.5 and 10.14). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section 10.6 (and will be required to comply therewith), other than any sale to a Disqualified Institution, which shall be null and void.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the applicable Lenders, and the applicable Commitments of, and principal amount (and stated interest) of the applicable Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error and the Borrower, the Administrative Agent, the Collateral Agent and the applicable Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The parties intend that any interest in or with respect to the Loans under this Agreement be treated as being issued and maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and any regulations thereunder (and any successor provisions), including without limitation under United States Treasury Regulations Section 5f.103-1(c) and Proposed Regulations Section 1.163-5 (and any successor provisions), and the provisions of this Agreement shall be construed in a manner that gives effect to such intent.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Assignee (except as contemplated by Section 2.24), the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder) and all applicable tax forms, the processing and recordation fee referred to in paragraph (b) of this Section 10.6 (unless waived by the Administrative Agent) and any written consent to such assignment required by paragraph (b) of this Section 10.6, the Administrative Agent shall accept such Assignment and Assumption and promptly record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of or notice to any Person, in compliance with applicable law, sell participations (other than to any Disqualified Institution in accordance with the last sentence of this paragraph or a natural person) to one or more banks or other entities (a "Participant"), in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided, that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, Collateral Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly and adversely affected thereby or requires the consent of each lender, in each case pursuant to the proviso to Section 10.1(a), and (2) directly and adversely affects such

Participant. Subject to paragraph (c)(ii) of this Section 10.6, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.20 and 2.21 (if such Participant agrees to have related obligations thereunder (it being understood that the documentation required under Section 2.20 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section 10.6. Notwithstanding the foregoing, no Lender shall be permitted to sell participations under this Agreement to any Disqualified Institutions without the written consent of the Borrower.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.20 or 2.21 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent to such greater amounts. No Participant shall be entitled to the benefits of Section 2.20 unless such Participant complies with Section 2.20(e), (g) or (j), as (and to the extent) applicable, as if such Participant were a Lender (it being understood that the documentation required under Section 2.20 shall be delivered to the participating Lender).

(iii) Each Lender that sells a participation, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury Regulations issued thereunder on which it enters the name and addresses of each Participant, and the principal amounts (and stated interest) of each Participant's interest in the Commitments, Loans or other obligations under this Agreement (individually and collectively, the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under the Code or Treasury Regulations, including without limitation Section 5f.103-1(c) of the United States Treasury Regulations, or is otherwise required thereunder. Unless otherwise required by the IRS, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the IRS. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (it its capacity as such) shall have no responsibility for maintaining any Participant Register.

(d) Any Lender may, without the consent of or notice to the Administrative Agent or the Borrower, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority, and this Section 10.6 shall not apply to any such pledge or assignment of a security interest; provided, that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) None of the Borrower, any of its Subsidiaries or any Affiliate of the foregoing may acquire by assignment, participation or otherwise any right to or interest in any of the Commitments or Loans hereunder (and any attempted acquisition shall be null and void).

(j) [Reserved].

(k) Notwithstanding anything to the contrary contained herein, the replacement of any Lender pursuant to Section 2.24 shall be deemed an assignment pursuant to Section 10.6(b) and shall be valid and in full force and effect for all purposes under this Agreement.

(l) Any assignor of a Loan or Commitment or seller of a participation hereunder shall be entitled to rely conclusively on a representation of the Assignee Lender or purchaser of such participation in the relevant Assignment and Assumption or participation agreement, as applicable, that such Assignee or purchaser is not a Disqualified Institution. None of the Agents shall have any responsibility or liability for monitoring the list or identities of, or enforcing provisions relating to, Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

10.7 Adjustments; Set off.

(a) Except to the extent that this Agreement provides for payments to be allocated to a particular Lender, if any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff, pursuant to events or proceedings of the nature referred to in Section 8.1(f), or otherwise) in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Obligations, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Obligations, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that (i) if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest and (ii) the provisions of this Section 10.7 shall not be construed to apply to any payment made by any Loan Party pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or Commitments to any Assignee or participant.

(b) Subject to the Orders and the last paragraph of Section VII, in addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) after the expiration of any cure or grace periods, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any Affiliate, branch or agency thereof to or for

the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

10.8 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or electronic (i.e., "pdf" or "tiff") transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

10.9 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10 Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Agents and the Lenders with respect to the subject matter hereof and thereof.

10.11 GOVERNING LAW. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

10.12 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to the exclusive general jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have, or abstains from jurisdiction, the Supreme Court of the State of New York for the County of New York (the "New York Supreme Court"), and the United States District Court for the Southern District of New York (the "Federal District Court" and, together with the New York Supreme Court, the "New York Courts"), and appellate courts from any of them; provided, that nothing in this Agreement shall be deemed or operate to preclude (i) any Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations (in which case any party shall be entitled to assert any claim or defense, including any claim or defense that this Section 10.12 would otherwise require to be asserted in a legal action or proceeding in a New York Court), or to enforce a judgment or other court order in favor of the Administrative Agent or the Collateral Agent, (ii) any party from bringing any legal action or proceeding in any jurisdiction for the recognition and enforcement of any judgment and (iii) if all such New York Courts decline jurisdiction

over any Person, or decline (or in the case of the Federal District Court, lack) jurisdiction over any subject matter of such action or proceeding, a legal action or proceeding may be brought with respect thereto in another court having jurisdiction;

(b) consents that any such action or proceeding may be brought in the New York Courts and appellate courts from either of them, and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to it at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 10.12 any special, exemplary, punitive or consequential damages (provided, that such waiver shall not limit the indemnification obligations of the Loan Parties to the extent such special, exemplary, punitive or consequential damages are included in any third party claim with respect to which the applicable Indemnitee is entitled to indemnification under Section 10.5).

10.13 Acknowledgments. The Borrower hereby acknowledges on behalf of itself and each Loan Party that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither the Agents nor any Lender has any fiduciary relationship with or duty to the Borrower or any other Loan Party arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and Lenders, on the one hand, and the Borrower and Loan Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor;

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower, Loan Parties and the Lenders;

(d) no advisory or agency relationship between it and any Agent or Lender (in their capacities as such) is intended to be or has been created in respect of any of the transactions contemplated hereby or in any other Loan Document;

(e) the Agents and the Lenders, on the one hand, and the Borrower and other Loan Parties, on the other hand, have an arms-length business relationship;

(f) the Borrower and each Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;

(g) each of the Agents and the Lenders is engaged in a broad range of transactions that may involve interests that differ from the interests of the Borrower and other Loan Parties and none of the Agents or the Lenders has any obligation to disclose such interests and transactions to the Borrower or any other Loan Party by virtue of any advisory or agency relationship; and

(h) none of the Agents or the Lenders (in their capacities as such) has advised the Borrower or Loan Parties as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction (including the validity, enforceability, perfection or avoidability of any aspect of any of the transactions contemplated hereby under applicable law, including the Bankruptcy Code or any consents needed in connection therewith), and none of the Agents or the Lenders (in their capacities as such) shall have any responsibility or liability to the Borrower or any Loan Party with respect thereto and the Borrower and each Loan Party has consulted with its own advisors regarding the foregoing to the extent it has deemed appropriate.

To the fullest extent permitted by law, the Borrower and each Loan Party hereby waives and releases any claims that it may have against the Agents and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby or in any other Loan Document.

10.14 Confidentiality. Each of the Agents and the Lenders agree to treat any and all information, regardless of the medium or form of communication, that is disclosed, provided or furnished, directly or indirectly, by or on behalf of the Borrower or any of its Affiliates in connection with this Agreement or the transactions contemplated hereby (including any potential amendments, modifications or waivers, or any request therefor), whether furnished before or after the Closing Date ("Confidential Information"), as strictly confidential and not to use Confidential Information for any purpose other than evaluating the Transactions and negotiating, making available and administering this Agreement, the Loan Documents and the transactions contemplated hereby and thereby (the "Agreed Purposes"). Without limiting the foregoing, each Agent and each Lender agrees to treat any and all Confidential Information with adequate means to preserve its confidentiality, and each Agent and each Lender agrees not to disclose Confidential Information, at any time, in any manner whatsoever, directly or indirectly, to any other Person whomsoever, except:

(1) to each such Person and its and its Affiliates' controlling persons, partners that are natural persons, members that are natural persons, directors, officers, employees, counsel, advisors, trustees, agents (including accountants, legal counsel and other advisors), including any numbering, administration or settlement service providers and in each case, and their Affiliates (collectively, the "Representatives"), to the extent necessary to permit such Representatives to assist in connection with the Agreed Purposes (it being understood that the Representatives to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential);

(2) to any pledgee referred to in Section 10.6(d) and prospective Lenders and participants in connection with secondary trading of the DIP Facility and Commitments and Loans hereunder (excluding any Disqualified Institution), in each case who are informed of the confidential nature of the information and agree to observe and be bound by standard confidentiality terms at least as favorable to the Borrower and its Affiliates as those contained in this Section 10.14;

(3) to any party or prospective party (or their advisors) to this Agreement (including, for the avoidance of doubt, Assignees and prospective Assignees, participants or prospective participants) or any swap, derivative or similar transaction under which payments are made by

reference to the Borrower and the Obligations, this Agreement or payments hereunder, in each case who are informed of the confidential nature of the information and agree to observe and be bound by standard confidentiality terms at least as favorable to the Borrower and its Affiliates as those contained in this Section 10.14;

(4) upon the request or demand of any Governmental Authority having or purporting to have jurisdiction over it;

(5) in response to any order of any Governmental Authority or as may otherwise be required pursuant to any Requirement of Law (including to the extent required by applicable laws or regulations, pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law, rule or regulation or compulsory legal process or by any subpoena or similar legal process), provided, that in the case of clauses (4) and (5), the disclosing Agent or Lender, as applicable, agrees, to the extent practicable and not prohibited by applicable Requirement of Law or process, to notify the Borrower prior to such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority);

(6) to the extent reasonably required or necessary, in connection with any litigation or similar proceeding relating to the DIP Facility, including to the Bankruptcy Court in connection with the approval of the Transactions or any other transactions related hereto and thereto;

(7) information that has been publicly disclosed or becomes publicly available or is received by such Person from a third party other than by reason of improper disclosure by such Person or any of its Affiliates or any related parties thereto other than in breach of this Section 10.14;

(8) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or in connection with examinations or audits of such Lender or to market data collectors, similar service providers to the lending industry, and service providers to the Agents and Lenders in connection with the administration and management of this Agreement, the other Loan Documents and the Commitments;

(9) in connection with the exercise of any remedy under the Loan Documents or any suit, action or proceeding relating to the enforcement of its rights hereunder or thereunder; provided, that the recipient is informed of the confidential nature of the information;

(10) to the extent the Borrower has consented to such disclosure in writing;

(11) to any other party to this Agreement or any of its Affiliates;

(12) to the extent that such information is received from a third party that is not, to such Agent or Lender's knowledge, subject to contractual or fiduciary confidentiality obligations owing to the Borrower and its Affiliates and their related parties;

(13) to the extent that such information is already in the possession of the Agent or Lender prior to any duty or other undertaking of confidentiality or independently developed by such Agent or Lender without use of the Confidential Information;

(14) for purposes of establishing a "due diligence" defense; or

(15) by the Administrative Agent to the extent reasonably required or necessary to obtain a CUSIP for any Loans or Commitment hereunder, to the CUSIP Service Bureau.

Each Agent and each Lender acknowledges that (i) Confidential Information includes information that is not otherwise publicly available and that such non-public information may constitute confidential business information which is proprietary to the Borrower and/or its Affiliates and (ii) the Borrower has advised the Agents and the Lenders that it is relying on the Confidential Information for its success and would not disclose the Confidential Information to the Agents and the Lenders without the confidentiality provisions of this Agreement. All information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering, this Agreement will be syndicate-level information, which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender represents to the Borrower and the Administrative Agent that it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including federal and state securities laws. Notwithstanding any other provision of this Agreement, any other Loan Document or any Assignment and Assumption, the provisions of this Section 10.14 shall survive with respect to each Agent and Lender until the second anniversary of such Agent or Lender ceasing to be an Agent or a Lender, respectively.

Any Person required to maintain the confidentiality of Confidential Information as provided in this Section 10.14 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord its own confidential information. Notwithstanding the foregoing, (i) Confidential Information shall not include, with respect to any Person, information available to it or its Affiliates on a non-confidential basis from a source other than the Borrower, (ii) each Agent shall not be responsible for compliance with this Section 10.14 by any Person (other than its officers, directors or employees), (iii) in no event shall any Lender or any Agent be obligated or required to return any materials furnished by the Borrower or any of its Subsidiaries and (iv) each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the facilities, market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the other Loan Documents.

10.15 Release of Collateral and Guarantee Obligations.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Disposition of Property permitted by the Loan Documents (including by way of merger and including any assets transferred to a Subsidiary that is not a Loan Party in a transaction permitted by this Agreement) or any Loan Party becoming an Excluded Subsidiary (other than pursuant to clause (a) of the definition thereof) or ceasing to be a Subsidiary (as used in this Section 10.15, "ceasing to be a Subsidiary" with respect to any Loan Party shall mean that no Loan Party or Affiliate thereof shall have retained any direct or indirect equity interests in such Person), all Liens and Guarantees on such assets or all assets of such Excluded Subsidiary or former Subsidiary shall automatically terminate and the Collateral Agent shall (without notice to, or vote or consent of, any Lender being required) execute and deliver all releases reasonably necessary or desirable requested by Borrower in writing (i) to evidence the release of Liens created in any Collateral being Disposed of in such Disposition (including any assets of any Loan Party that becomes an Excluded Subsidiary) or of

such Excluded Subsidiary or former Subsidiary, as applicable, (ii) to provide notices of the termination of the assignment of any Property for which an assignment had been made pursuant to any of the Loan Documents which is being Disposed of in such Disposition or of such Excluded Subsidiary or former Subsidiary, as applicable, and (iii) to release the Guarantee and any other obligations under any Loan Document of any Person being Disposed of in such Disposition or which becomes an Excluded Subsidiary or former Subsidiary, as applicable; provided, that at the request of any Agent, the Borrower shall deliver a certificate of a Responsible Officer to the applicable Agent certifying that the Disposition is permitted by the Loan Documents. Any representation, warranty or covenant contained in any Loan Document relating to any such Property so Disposed of (other than Property Disposed of to the Borrower or any of its Subsidiaries) or of a Loan Party which becomes an Excluded Subsidiary or former Subsidiary, as applicable, shall no longer be deemed to be repeated once such Property is so Disposed of. In addition, upon the reasonable request of the Borrower in connection with (A) any Lien of the type permitted by Section 7.3(g) on Excluded Collateral to secure Indebtedness to be incurred pursuant to Section (b) (or pursuant to Section (c) or (f) if such Indebtedness is of the type that is contemplated by Section (b)) if the holder of such Lien so requires, (B) any Lien of the type permitted by Sections 7.3(p) to the extent the obligations giving rise to such permitted Lien prohibit (or require the release of) the security interest of the Collateral Agent thereon, or (C) the ownership of joint ventures or other entities qualifying under clause (ii) of the definition of Excluded Equity Securities, the Collateral Agent shall execute and deliver all releases necessary or desirable requested by Borrower in writing to evidence that no Liens exist on such Excluded Collateral under the Loan Documents.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than any contingent or indemnification obligations not then due) have been paid in full and all Commitments have terminated or expired, upon the request of the Borrower, all Liens and Guarantee Obligations under any Loan Documents shall automatically terminate and the Collateral Agent shall (without notice to, or vote or consent of, any Lender being required) take such actions as shall be required to release its security interest in all Collateral, and to release all Guarantee Obligations under any Loan Document, whether or not on the date of such release there may be contingent or indemnification obligations not then due. Any such release of Guarantee Obligations shall be deemed subject to the provision that such Guarantee Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Subsidiary Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Subsidiary Guarantor or any substantial part of its Property, or otherwise, all as though such payment had not been made.

10.16 [Reserved].

10.17 WAIVERS OF JURY TRIAL. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND FOR ANY COUNTERCLAIM THEREIN.**

10.18 USA PATRIOT ACT. The Administrative Agent and each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Publ. 107 56 (signed into law October 26, 2001)) (the "USA Patriot Act"), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of such

Loan Parties and other information that will allow the Administrative Agent or such Lender to identify the Loan Parties in accordance with the USA Patriot Act, and the Borrower agrees to provide such information from time to time to any Lender or Agent reasonably promptly upon request from such Lender or Agent.

10.19 Orders Control. To the extent that any specific provision of the Loan Documents is inconsistent with any of the provisions of this Agreement, this Agreement shall control. To the extent that any specific provision hereof or in any other Loan Document is inconsistent with any of the Orders, the Interim Order or Final Order (as applicable) shall control.

10.20 Interest Rate Limitation. Notwithstanding anything in this Agreement to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section 10.20 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

10.21 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Administrative Agent.

10.22 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other notices of borrowing, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to

accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.24 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

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IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

CUTERA, INC.,
as the Borrower

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Administrative Agent and Collateral Agent

By: _____
Name:
Title:

[_____],
as a Lender

By: _____
Name:
Title:

Annex 2

Approved Budget

Cutera, Inc
13 Week Forecast
$ in 000s

Subject to Change

	Week 1 Feb-25 2/28/25	Filing Week 2 Mar-25 3/7/25	Week 3 Mar-25 3/14/25	Week 4 Mar-25 3/21/25	Week 5 Mar-25 3/28/25	Week 6 Apr-25 4/4/25	Week 7 Apr-25 4/11/25	Week 8 Apr-25 4/18/25	Week 9 Apr-25 4/25/25	Week 10 May-25 5/2/25	Week 11 May-25 5/9/25	Week 12 May-25 5/16/25	Week 13 May-25 5/23/25	13 Week Total
Collections														
Collections	$ 1,296	$ 1,276	$ 1,347	$ 1,923	$ 2,400	$ 2,024	$ 1,853	$ 1,789	$ 1,697	$ 1,517	$ 1,362	$ 1,273	$ 1,193	$ 20,951
Cash Outflows														
Operating Disbursements:														
Payroll & Benefits	$ (1,655)	$ (80)	$ (129)	$ (2,554)	$ (155)	$ (1,500)	$ (129)	$ (1,900)	$ (1,369)	$ -	$ (1,500)	$ (129)	$ (2,096)	$ (13,198)
Facilities & Insurance	(2,283)	(6)	(69)	-	(7)	(387)	(28)	(69)	-	(502)	(25)	(776)	-	(4,154)
All Other Payables	(3,605)	(1,922)	(2,200)	(2,156)	(1,892)	(2,808)	(1,284)	(1,674)	(1,667)	(1,985)	(1,673)	(1,624)	(1,686)	(26,177)
Total	$ (7,543)	$ (2,008)	$ (2,399)	$ (4,710)	$ (2,054)	$ (4,695)	$ (1,442)	$ (3,644)	$ (3,036)	$ (2,487)	$ (3,198)	$ (2,530)	$ (3,783)	$ (43,528)
Net Operating Cash Flow	**$ (6,248)**	**$ (732)**	**$ (1,052)**	**$ (2,787)**	**$ 346**	**$ (2,671)**	**$ 412**	**$ (1,855)**	**$ (1,338)**	**$ (970)**	**$ (1,836)**	**$ (1,257)**	**$ (2,590)**	**$ (22,577)**
Debt-Service:														
DIP Interest	-	-	-	-	-	-	-	-	-	(473)	-	-	-	(473)
Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (473)	$ -	$ -	$ -	$ (473)
Non-Operating Disbursements:														
Professional Fees	$ (875)	$ (3,231)	$ (547)	$ (522)	$ (572)	$ (372)	$ (1,172)	$ (722)	$ (1,247)	$ (5,972)	$ -	$ -	$ -	$ (15,232)
Utility Deposits	-	(39)	-	-	-	-	-	-	-	-	-	39	-	-
Total	$ (875)	$ (3,270)	$ (547)	$ (522)	$ (572)	$ (372)	$ (1,172)	$ (722)	$ (1,247)	$ (5,972)	$ -	$ 39	$ -	$ (15,232)
Net Cash Flow	**$ (7,123)**	**$ (4,002)**	**$ (1,599)**	**$ (3,309)**	**$ (226)**	**$ (3,042)**	**$ (760)**	**$ (2,577)**	**$ (2,585)**	**$ (7,415)**	**$ (1,836)**	**$ (1,218)**	**$ (2,590)**	**$ (38,282)**
Beginning Domestic Book Cash	$ 16,233	$ 9,110	$ 20,108	$ 18,509	$ 15,200	$ 24,974	$ 21,931	$ 21,171	$ 18,594	$ 16,009	$ 48,594	$ 46,758	$ 45,541	$ 16,233
(+/-) Net Cash Flow	(7,123)	(4,002)	(1,599)	(3,309)	(226)	(3,042)	(760)	(2,577)	(2,585)	(7,415)	(1,836)	(1,218)	(2,590)	(38,282)
(+) DIP / Exit Financing / ERO	-	15,000	-	-	10,000	-	-	-	-	40,000	-	-	-	65,000
Ending Domestic Book Cash	**$ 9,110**	**$ 20,108**	**$ 18,509**	**$ 15,200**	**$ 24,974**	**$ 21,931**	**$ 21,171**	**$ 18,594**	**$ 16,009**	**$ 48,594**	**$ 46,758**	**$ 45,541**	**$ 42,951**	**$ 42,951**

EXHIBIT D

New Corporate Governance Term Sheet

CUTERA, INC.[1]
and/or certain of its direct or indirect subsidiaries
(collectively, the "***Company***")

Corporate Governance and Liquidity Terms of Reorganized Common Equity Issued in Connection with the Restructuring of the Company

Equity Interests:

- The equity securities to be issued pursuant to the plan of reorganization (the "***Reorganized Common Equity***") will consist of shares of common stock of the Company. All holders of Reorganized Common Equity will be entitled to one vote per share.

Board of Directors:

- As of the date of the consummation of the restructuring of the Company (the "***Effective Date***"), the board of directors of the Company (the "***Board***") will have five (5) members. The Board will be selected as follows:
  - CEO Director: The Chief Executive Officer will be a member of the Board.
  - Ad Hoc Committee Directors: The members of the Ad Hoc Committee of Consenting Senior Noteholders (the "***Ad Hoc Committee Members***") will, so long as the Ad Hoc Committee Members continue to hold at least 75% of the Reorganized Common Equity held by the Ad Hoc Committee Members on the Effective Date, have the right to designate the remaining four (4) members of the Board (the "***Ad Hoc Committee Directors***"). The Ad Hoc Committee Directors will be nominated by a Board Nominating Committee ("***Nominating Committee***"), consisting of each Ad Hoc Committee Member holding at least 10% of the Reorganized Common Equity, and will be appointed by the affirmative approval of holders of a majority of the outstanding shares of Reorganized Common Equity collectively held by all of the Ad Hoc Committee Members (the "***Ad Hoc Committee Member Majority***"). Following the Effective Date, any vacancy on the Board (other than with respect to the CEO Director) will be filled by the Ad Hoc Committee Member Majority from candidate(s) selected by the Nominating Committee; provided, that, in the event that the Ad Hoc Committee Members cease to collectively hold at least 75% of the Reorganized Common Equity held by the Ad Hoc Committee Members on the Effective Date, any such vacancy will be filled by the vote of the holders of a majority of all of the Reorganized Common Equity from candidate(s) selected by a Board Nominating Committee consisting of shareholders holding at least 10% of the Reorganized Common Equity.
- Each holder of shares of Reorganized Common Equity will enter into a New Shareholders Agreement (the "***New Shareholders Agreement***") agreeing to elect the Board as set forth above.
- The initial directors will be appointed as of the Effective Date and will serve until their successors are duly elected or appointed in accordance with the New Shareholders Agreement and applicable law.

[1] This term sheet presumes the restructured Company will be a Delaware corporation.

- To the extent the Ad Hoc Committee Members are entitled to designate a Board member but do not exercise their right to designate a director, such seat will remain vacant until the Ad Hoc Committee Members appoint such director.
- On the Effective Date, at least two (2) Board members (not including the CEO) must be individuals with experience related to the Company's business, unless otherwise determined by the Required Consenting Senior Noteholders (as defined in the Restructuring Support Agreement).
- The Chairperson will initially be selected by the Ad Hoc Committee Members and, if the Ad Hoc Committee Members cease to collectively hold at least 75% of the Reorganized Common Equity held by the Ad Hoc Committee Members on the Effective Date, any successor Chairperson will be selected by a majority vote of the Board.
- The Board appointment rights will not be transferable by the Ad Hoc Committee Members.
- Any Director that is an employee of a member of the Ad Hoc Committee or such member's Affiliates shall not receive compensation for serving on the Board; provided, that, all Directors will be reimbursed for out-of-pocket expenses and will have the benefit of customary indemnification, exculpation and D&O insurance coverage.

Board Observers:

- Each Ad Hoc Committee Member will be entitled to one (1) non-voting observer, who will be entitled to attend all meetings of the Board and to receive notice of all Board meetings and all written materials provided to the Board, subject to customary exceptions (including the Board's ability to exclude such observers from meetings at the Board's reasonable discretion), and on the terms and conditions set forth in the New Shareholders Agreement. Each Ad Hoc Committee Member, for so long as it holds any Reorganized Common Equity, will also be entitled to receive a package summarizing matters to be considered by the Board and Board meeting minutes, subject to customary exceptions, including confidentiality restrictions and privilege limitations.

Board Committees:

- The Board will establish the following committees: an audit committee, a compensation committee and a nominating and governance committee.

Board Voting:

- Each director will have one vote with respect to each matter to be decided upon by the Board. The Board and its committees will act by the affirmative vote of a majority of the directors present at a meeting or by unanimous written consent. Any quorum of the Board must include a majority of the Directors then-in-office; provided that quorum shall be subject to customary reduction for subsequent noticed meetings.

Board Process:

- The Board will meet at least quarterly and as often as necessary to conduct the business and affairs of the Company, and will provide reasonable notice and information to all directors in advance of each meeting. Board meetings may be called by any of the Chairperson, the CEO or any two other Board members acting together.

Subsidiary Boards:

- Unless otherwise determined by the Board in accordance with applicable law, any boards of directors (or equivalent governing body) of each wholly-owned

subsidiary of the Company and each committee thereof will be comprised of the then-serving directors on the Board, management representatives and/or other individuals as required by local law, if applicable.

Shareholder Approvals:

- All matters submitted to a vote of the shareholders of the Company will require the affirmative approval of holders of a majority of the outstanding shares of Reorganized Common Equity.
- The New Shareholders Agreement will provide that the Company will not take, or permit any of its subsidiaries to take, any of the following actions without either (i) the approval of at least 2/3 of the directors of the Board (provided this clause (i) will only apply if the Ad Hoc Committee Members cease to collectively hold at least 50% of the Reorganized Common Equity held by the Ad Hoc Committee Members on the Effective Date), or (ii) the prior written consent of the holders of Reorganized Common Equity who collectively hold more than a majority of all of the Reorganized Common Equity, subject to customary exceptions:
  - Other than in connection with (i) an ABL facility or (ii) an emergency funding that is approved by at least 2/3 of the directors on the Board (provided, that the Company shall exercise reasonable efforts to provide to all holders of Reorganized Common Equity prior written notice of such emergency funding), incurrence of any indebtedness for borrowed money (x) in the first twelve (12) months following the Effective Date and (y) following the 12-month anniversary of the Effective Date, in excess of $10,000,000;
  - An initial public offering of the Company or the taking of any action to cause the Company to become a public company;
  - Other than sales of inventory in the ordinary course of business, entry into any merger, acquisition, divestiture or other strategic transaction (including any joint venture) (x) in the first twelve (12) months following the Effective Date, having a value in excess of $5,000,000 and (y) following the 12-month anniversary of the Effective Date, having a value in excess of $10,000,000;
  - Any amendment to the New Shareholders Agreement or any organizational documents of the Company (other than ministerial amendments); provided that any amendment that would have a disproportionate and materially adverse impact on any holder or group of holders of Reorganized Common Equity relative to the other holders of Reorganized Common Equity (without regard to any effect resulting from (i) the specific tax or economic position or any other individual circumstances of any such holder, or (ii) the differences in the respective percentages of ownership of shares of Reorganized Common Equity of the holders) will require the consent of the holder or group of holders so adversely affected; and
  - Entry into any agreement or commitment to any of the foregoing.

Related Party Transactions:

- Related Party Transactions (as defined below) involving aggregate payments or other consideration in excess of $1,000,000 per annum will require the approval of a majority of the directors of the Board that are disinterested with

respect to such Related Party Transaction.

- A "***Related Party Transaction***" means any agreement between the Company, on the one hand, and a Related Party, on the other hand, other than (i) any dividends or distributions made to the shareholders on a pro rata basis, (ii) any open market trading or investing activities with respect to securities and financial instruments in the ordinary course of business, (iii) employment arrangements approved by a majority of the Board, (iv) payment of any fees incurred or reimbursements made in connection with service as a member of the Board or any board of directors or similar governing body of any subsidiary of the Company, (v) repayment of indebtedness of the Company, (vi) any modifications to the exit facilities, (vii) refinancing transactions on arms'-length terms, and (viii) any acquisition of additional securities pursuant to pre-emptive rights set forth in the New Shareholders Agreement.
- A "***Related Party***" means (i) any holder of 5% or greater of the voting power of the Reorganized Common Equity (a "***Significant Holder***"), or (ii) an affiliate (including any portfolio company) of any Significant Holder.

Information/Access Rights:

- The Company will deliver to each shareholder (who is an institutional holder and is not a competitor of the Company) (i) quarterly unaudited financial statements, within a customary time period following the end of each fiscal quarter, and (ii) annual audited financial statements, within a customary time period following the end of each fiscal year. The Company will also deliver to each Ad Hoc Committee Member for so long as they hold any of the Reorganized Common Equity and each Significant Holder a comprehensive operating budget forecasting the Company's revenues, expenses and cash position on a quarter-to-quarter basis for such fiscal year, and will use reasonable best efforts to deliver such budget within thirty (30) days after the beginning of each fiscal year. The Company will host a quarterly conference call between representatives of senior management of the Company and all shareholders to discuss the financial condition of the Company. Following delivery of the financial information described above and at any other times not to exceed two times per fiscal year, in the event of a material development that was not addressed on the most recent Board call or the most recent quarterly shareholder call, the Company will host a conference call between representatives of senior management of the Company and the Ad Hoc Committee Members at their request upon reasonable advance notice and such that it will not disrupt or otherwise unreasonably burden Company operations.
- The Company will grant to each Ad Hoc Committee Member for so long as they hold any of the Reorganized Common Equity and any Significant Holder access to Company facilities and personnel during normal business hours, with reasonable advance notice and such that it will not disrupt or otherwise unreasonably burden Company operations; provided, that such access will be at the applicable requesting holder's expense.

Pre-Emptive Rights:

- Pursuant to the New Shareholders Agreement, subject to customary exceptions (including, but not limited to, the issuance of incentive equity to employees), each holder of Reorganized Common Equity will be entitled to participate in future equity financings (including issuances of any convertible securities), on a pro rata basis, based on the number of shares of Reorganized

Common Equity owned by such holder relative to the total number of outstanding shares of Reorganized Common Equity.

- Each holder of Reorganized Common Equity will also have the right to participate on a pro rata basis in any future debt financings in which any holder of Reorganized Common Equity or an affiliate thereof is a lender, subject to customary exclusions, including, but not limited to, for any broadly marketed and syndicated debt financings.

Transfers; Co-Sale Rights; Drag-Along Rights:

- Transfers: Holders of shares of Reorganized Common Equity will be subject to customary limitations on transferability, including (i) prohibitions on transfers to competitors, (ii) transfers to third parties that are not currently stockholders will only be permitted with the consent of the Board, such consent not to be unreasonably delayed or withheld, (iii) transfers must be in compliance with applicable securities laws, and (iv) other customary transfer conditions to be set forth in the New Shareholders Agreement. Any transferee of shares of Reorganized Common Equity will be required to execute a joinder to the New Shareholders Agreement.
- Tag-Along Rights: Holders of shares of Reorganized Common Equity will have customary tag-along rights (subject to customary exceptions) in connection with any transfer or series of transfers of shares by a shareholder or group of shareholders of Reorganized Common Equity representing at least 30% of the outstanding Reorganized Common Equity.
- Drag-Along Rights: A shareholder or group of shareholders of the Company representing more than 50% of the total number of outstanding shares of Reorganized Common Equity will have customary drag-along rights (subject to customary exceptions).
- Competitors: Except in the case of a drag-along transaction or other transaction approved by the Board, no holder of Reorganized Common Equity may transfer their equity interests to a competitor of the Company.
- Repurchase Rights: The Company will have customary repurchase rights with respect to equity held by departed employees or other service providers.

Registration Rights:

- The New Shareholders Agreement will provide that the shareholders will enter into a customary registration rights agreement in connection with any initial public offering of the Company, providing for customary registration rights (including demand registration rights and piggyback registration rights).

Confidentiality:

- The New Shareholders Agreement will provide that the shareholders will keep confidential and not disclose or use any information received from or relating to the Company or any of its subsidiaries, except as required by law or with the consent of the Company.

Corporate Opportunities:

- The New Shareholders Agreement will include a customary waiver of corporate business opportunities in favor of the Significant Holders and their respective affiliates and any designated directors.

EXHIBIT E

Exit Facility Term Sheet

CUTERA, INC.

EXIT FACILITY

SUMMARY OF TERMS AND CONDITIONS

*This summary of principal terms and conditions (this "**Term Sheet**") provides an outline of a proposed financing and does not purport to summarize all the terms, conditions, representations, warranties and other provisions with respect to the transactions referred to herein, which shall be set forth in the final Exit Facility Documentation (as defined below). [This Term Sheet is intended to be a summary outline of the material terms of such financing, and is for discussion purposes only, is non-binding, and is neither an expressed nor implied offer with regard to any financing, to arrange, provide or purchase any loans in connection with the transactions contemplated hereby or to arrange, provide or assist in arranging or providing the potential financing described herein. Any agreement to provide the Exit Facility (as defined below) or any other financing arrangement will be subject to the execution and delivery of definitive documentation satisfactory to the Exit Agent (as defined below) (solely with respect to its rights and obligations thereunder) and the Required Lenders (as defined below), each acting in its sole discretion.]*

*Capitalized terms used herein but not defined have the respective meanings ascribed to such terms in the Restructuring Support Agreement (the "**Restructuring Support Agreement**") to which this Exit Facility Term Sheet is attached.*

PARTIES

Borrower:	Cutera, Inc., a Delaware corporation, or any successors thereto, by merger, consolidation, or otherwise, as reorganized on or after the Plan Effective Date (the "**Borrower**").
Guarantors:	The obligations of the Borrower under the Exit Facility (as defined below) (the "**Obligations**") will be unconditionally guaranteed, jointly and severally, by (a) a newly formed holding company that will directly or indirectly hold 100% of the equity interests of the Borrower ("**Holdings**"), (b) each direct or indirect parent of the Borrower that is a subsidiary of Holdings, and (c) each direct and indirect subsidiary of the Borrower now existing or subsequently acquired or organized (the persons described in this clause (c), the "**Subsidiary Guarantors**") (the persons described in the immediately foregoing clauses (a), (b) and (c), collectively, the "**Guarantors**" and the Guarantors, together with the Borrower, collectively, the "**Credit Parties**"); *provided* that Excluded Subsidiaries (to be defined in a manner consistent with the Documentation Principles, and in any event to include foreign subsidiaries and bona fide joint ventures) will not be required to become Guarantors; *provided, further* that any foreign subsidiary that individually accounts for more than 10% of the consolidated assets or consolidated revenue of the Borrower and its subsidiaries, in each case determined as of the most recent fiscal quarter, shall be required to become a Guarantor under the Exit Facility unless such obligation is waived by the Required Lenders).

Exit Facility Lenders:	Each holder of the DIP Term Loans and funds and affiliates thereof set forth on Schedule 1 hereto (together with their permitted assignees, the "**Exit Facility Lenders**").
Exit Agent:	Wilmington Savings Fund Society, FSB, or another institution selected by the Required Lenders and reasonably acceptable to the Borrower, will act as administrative agent and collateral agent (in such capacities, the "**Exit Agent**").

DESCRIPTION OF EXIT FACILITY

Exit Facility: A 5-year senior secured first lien term loan facility (the "**Exit Facility**" and the loans thereunder, the "**Exit Loans**"), consisting of:

(i) Exit term loans in an aggregate outstanding principal amount equal to the principal amount of the DIP Term Loans outstanding under the DIP Documents on the Plan Effective Date (including (A) the amount of any upfront payment payable pursuant to the DIP Documents and (B) the amount of any repayment premium payable pursuant to the DIP Documents upon the repayment of the DIP Term Loans on such date, but excluding (x) accrued and unpaid interest as of such date, (y) Restructuring Expenses and fees and expenses payable to the agent under the DIP Documents, including fees and expenses of counsel, and (z) indemnification obligations solely to the extent due and payable as of the Plan Effective Date in cash on the Plan Effective Date, which amounts in the foregoing clauses (x) through (z), for the avoidance of doubt, shall be paid in full in cash on the Plan Effective Date), which Exit Loans shall be funded on a cashless basis by rolling over such amounts outstanding under the DIP Documents (the Exit Loans described in this clause (i), the "**Rollover Term Loans**" and the term loan facility consisting of such loans, the "**Rollover Term Loan Facility**"); and

(ii) New money term loans in an aggregate principal amount equal to $10,000,000 (the Exit Loans described in this clause (ii), the "**New Money Term Loans**", the term loan facility consisting of such loans, the "**New Money Facility**", and the commitments of each Exit Facility Lender to make such term loans, the "**New Money Commitments**"), which shall be funded in a single draw on the Plan Effective Date.

If a New Money Term Loan is not fungible for U.S. federal income tax purposes with any portion of the Exit Loans, such New Money Term Loan will trade separately under a separate CUSIP or other identifying number from any portion of the Rollover Loans, and any other New Money Term Loan, with which such New Money Term Loan is not

fungible.

Amortization:	Annual amortization of the Exit Loans (including, for the avoidance of doubt, the Rollover Term Loans and the New Money Term Loans), payable in equal quarterly installments beginning on the last day of the first full fiscal quarter ending after the second anniversary of the Closing Date (as defined below) shall be required in an aggregate annual amount equal to 1.00% *per annum* of the original principal amount of the Exit Loans, with the balance payable on the Maturity Date.
Maturity:	The Exit Facility shall mature on the fifth (5th) anniversary of the Closing Date (the "**Maturity Date**").
Use of Proceeds:	The proceeds of (a) the Rollover Term Loans will be used to consummate the cashless rollover of the outstanding principal amount under the DIP Facility (as set forth under the heading "Exit Facility" above) and (b) the New Money Term Loans will be used to make payments and distributions under the Plan and for general corporate purposes not otherwise prohibited by the Exit Facility Documentation. Once repaid, Exit Loans may not be reborrowed.

CERTAIN PAYMENT PROVISIONS

Interest Rates:	The Exit Loans comprising each borrowing shall bear interest at a rate equal to, as elected by the Borrower in its sole discretion, (i) Term SOFR (to be defined in a manner consistent with the Documentation Principles and which shall not be less than 1.00% *per annum*) *plus* 7.50% *per annum*, payable in cash at the end of each interest period and on the Maturity Date, or (ii) Base Rate (to be defined in a manner consistent with the Documentation Principles and which shall not be less than 2.00% *per annum*) *plus* 6.50% *per annum*, payable in cash in arrears on a quarterly basis and on the Maturity Date; *provided* that the Borrower may, at its election, pay interest in kind by capitalizing and adding to the principal amount of the Exit Loans on each interest payment date through the first anniversary of the Closing Date.
Default Interest:	At any time when an event of default exists and is continuing, all outstanding amounts shall bear interest, to the fullest extent permitted by law, at a rate of (a) 2.00% *per annum* above the rate then applicable to such borrowings or (b) in the case of fees, 2.00% *per annum* in excess of the rate otherwise applicable to Exit Loans maintained as Base Rate loans from time to time.
Upfront Payment:	The Borrower shall pay to the Exit Facility Lenders holding New Money Commitments an upfront payment in an amount equal to 5.50% of such New Money Commitments, payable in kind (by capitalizing and adding such amount to the principal amount of the

New Money Loans) upon the funding of such New Money Loans (the "**Upfront Payment**"). For the avoidance of doubt, the Upfront Payment shall not be payable on the Rollover Term Loans.

Exit Agent Fees: To be set forth in a separate fee letter agreement between the Exit Agent and the Borrower.

Optional Prepayments: The Borrower may, upon notice requirements to be mutually agreed consistent with the Documentation Principles, prepay the Exit Loans, in whole or in part, in minimum amounts to be agreed (subject to the prepayment premium set forth under the heading "Call Protection" below).

Call Protection: Any voluntary or actual payment, prepayment, repayment or required mandatory prepayment of Exit Loans and any acceleration of the Exit Loans, including as a result of any Credit Party filing for bankruptcy or becoming subject to any other insolvency proceeding, shall be subject to (a) the make-whole premium (calculated in a customary fashion based upon the sum of (a) all of the interest that would have accrued or been payable on the principal amount of the Exit Loans being repaid, prepaid, or accelerated on such date from such date to, but excluding, the third anniversary of the Closing Date plus (b) the prepayment premium as of the third anniversary of the Closing Date multiplied by the principal amount of the Exit Loans being repaid, prepaid, or accelerated on such date, the sum of such discounted by the then-applicable U.S. Treasury rate plus 50 basis points basis to the date of such repayment, prepayment or acceleration) or (b) a prepayment premium (expressed as a percentage of the outstanding principal amount of the Exit Loans that are being paid, prepaid, repaid, or accelerated, as applicable) as set forth opposite the relevant period from the Closing Date. The Exit Facility will reflect maximum enforceability of call protection provisions in the event of a bankruptcy or insolvency proceeding, including customary "Momentive" protections with respect to payment of the prepayment premiums.

Year	Prepayment Premium
Years 1-3:	Make-whole premium
Year 4:	1.00%
Thereafter:	No premium

Mandatory Prepayments:	The Borrower shall cause an amount no less than each amount calculated pursuant to the terms below to be offered to prepay the Exit Loans, in each case, with carve-outs and exceptions consistent with the Documentation Principles (as defined below): (i) 100% of the net cash proceeds of any incurrence by the Borrower and/or any of its subsidiaries of indebtedness (other than debt otherwise permitted under the Exit Facility Documentation (other than certain permitted refinancing debt)); and (ii) 100% of the net cash proceeds in excess of an amount to be mutually agreed in any single transaction or series of related transactions in respect of any Disposition (to be defined in a manner consistent with Documentation Principles) of assets of the Borrower and its subsidiaries or from any Casualty Event (to be defined in a manner consistent with the Documentation Principles) (other than certain Dispositions to be mutually agreed), subject to the right of the Borrower and its subsidiaries to reinvest (or commit to reinvest) in assets on terms and conditions consistent with the Documentation Principles Additionally, the Exit Facility Documentation will include the right of individual Exit Facility Lenders to decline mandatory prepayments with proceeds referred to in clauses (i) and (ii) above (but in the case of clause (i) above, solely to the extent not representing a refinancing of the Exit Loans), in which case, such proceeds shall be available to the Borrower and its subsidiaries for any usages not prohibited by the Exit Facility Documentation.

COLLATERAL

Collateral:	The Obligations will be secured by a valid and perfected first priority security interest in and lien on substantially all tangible and intangible, real and personal property of the Credit Parties (collectively, the "**Collateral**"); it being expressly understood and agreed that the Collateral will not include certain excluded property to be mutually agreed.

CONDITIONS

Conditions Precedent to Closing:	The availability of the Rollover Term Loans on the Closing Date through the cashless rollover of the principal amount DIP Term Loans into the Rollover Term Loans (as set forth under the heading "Exit Facility" above) and the borrowing of the New Money Term Loans shall be conditioned solely upon the conditions set forth on **Annex I** hereto (the date of satisfaction or waiver of such conditions, the "**Closing Date**").

DOCUMENTATION

Exit Facility Documentation:	The definitive financing documentation for the Exit Facility (the "**Exit Facility Documentation**") shall (the items set forth in clauses (i) through (iii) below, the "**Documentation Principles**"): (i) be in form and substance based on the DIP Documents (with such modifications as are necessary to reflect the nature of the Exit Facility); (ii) contain the terms and conditions set forth in this Exit Facility Term Sheet and such other terms as the Borrower and the Required Lenders may mutually agree, taking into account the operational requirements of the Borrower and its subsidiaries; and (iii) contain the conditions to the effectiveness of the Exit Facility Documentation and funding (or deemed funding) of the Exit Facility on the Closing Date set forth on **Annex I** hereto.
Representations and Warranties:	The Exit Facility Documentation shall contain representations and warranties (subject to exceptions and qualifications) customary and usual for financings of this type consistent with the Documentation Principles.
Affirmative Covenants:	The Exit Facility Documentation shall contain affirmative covenants (subject to exceptions and qualifications) customary and usual for financings of this type consistent with the Documentation Principles, which shall include in any event delivery of audited annual and unaudited quarterly financial statements within 120 days and 60 days respectively, in each case following the end of the respective fiscal year or fiscal quarter, and in the case of audited annual financial statements, without a "going concern" or like qualification or exception and without any material qualification or exception as to the scope of such audit.
Financial Covenant:	None.
Minimum Liquidity Covenant:	The Borrower shall not permit Liquidity as of the last day of each month to be less than $10,000,000. "**Liquidity**" shall mean, as of any date, an amount equal to the sum of (a) all unrestricted Cash and Cash Equivalents (in each case to be defined in a manner consistent with the Documentation Principles) of the Borrower and its subsidiaries as determined in accordance with GAAP, (b) all Cash and Cash Equivalents of the Borrower and its subsidiaries restricted in favor of the Exit Facility and (c) any amounts available to be borrowed under the terms of any ABL Facility (as defined below).

Negative Covenants:	The Exit Facility Documentation shall contain negative covenants (including thresholds, qualifications and exceptions to be mutually agreed) customary and usual for financings of this type consistent with the Documentation Principles, it being understood that (i) the negative covenants shall permit the Credit Parties to incur a revolving asset-based loan facility (the "**ABL Facility**") in an amount to be agreed secured by a lien senior in priority to the liens securing the Exit Facility on borrowing base assets that customarily secure such facilities on a senior basis and by a lien junior in priority to the liens securing the Exit Facility on other assets and property that customarily secure such facilities on a junior basis, subject to an intercreditor agreement acceptable to the Required Lenders, and (ii) all subsidiaries of Holdings shall be restricted subsidiaries and the Borrower shall not be permitted to designate unrestricted subsidiaries.
Events of Default:	The Exit Facility Documentation shall contain events of default (including thresholds, qualifications, exceptions and grace periods) customary and usual for financings of this type and consistent with the Documentation Principles.
Indemnification and Expenses:	Usual and customary for financings of this type and consistent with the Documentation Principles; to include all reasonable and documented out-of-pocket fees and expenses of the advisors to the Exit Facility Lenders and the Exit Agent incurred in connection with (i) the Chapter 11 Cases and implementation of the Plan and Restructuring Transactions, (ii) the preparation, negotiation and execution of the Exit Facility Documentation, (iii) the funding of the Exit Facility, (iv) the creation, perfection and protection of the liens securing the Exit Facility and (v) the ongoing administration or enforcement of the Exit Facility Documentation (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto), including, for the avoidance of doubt, the reasonable and documented fees and expenses of (x) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to the Exit Facility Lenders, Porter & Hedges LLP, as co-counsel to the Exit Facility Lenders, and Centerview Partners, LLC, as financial advisor to the Exit Facility Lenders, and such other local or special counsel as deemed necessary by the Exit Facility Lenders, and (y) McDermott, Will & Emery LLP, as counsel to the Exit Agent.
Assignments and Participations:	Usual and customary for financings of this type and consistent with the Documentation Principles.
Amendments:	Usual and customary for financings of this type and consistent with the Documentation Principles, with amendments to the Exit Facility Documentation requiring the consent of Exit Facility Lenders holding greater than 50% of the outstanding Exit Loans under the Exit Facility (the "**Required Lenders**"), except for amendments

	customarily requiring approval by all affected lenders.
Governing Law and Submission to Jurisdiction:	New York.
Other Provisions:	The Exit Facility Documentation shall include customary provisions regarding increased costs, illegality, tax indemnities, waiver of trial by jury and other similar provisions.
Counsel to Exit Facility Lenders:	Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Annex I

Conditions Precedent to Closing

The effectiveness of the Exit Facility Documentation and the funding (or deemed funding) of the Exit Loans shall be subject to the satisfaction (or waiver by the Required Lenders) of solely the following conditions:

1. Credit Agreement; Guarantee and Collateral Agreement and other Security Documents. The Exit Agent shall have received (i) the Credit Agreement, executed and delivered by Holdings and the Borrower, (ii) the Guarantee and Collateral Agreement, executed and delivered by Holdings, the Borrower and each Subsidiary Guarantor party thereto, and (iii) such other security and collateral documents as are required to provide the Exit Agent with a first priority security interest (subject to exceptions and qualifications reasonably acceptable to the Exit Facility Lenders) in the Collateral.

2. Representations and Warranties. Each of the representations and warranties made by any Credit Party in or pursuant to any of the Exit Facility Documentation shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or a material adverse effect) on the Closing Date.

3. Borrowing Notice. The Exit Agent shall have received a written borrowing request from the Borrower with respect to the New Money Term Loans in accordance with the terms of the Exit Facility Documentation.

4. Fees. (i) The Borrower shall have paid all fees and premiums due and payable under the Restructuring Support Agreement, the DIP Documents and the Plan, including all Restructuring Expenses and the fees and expenses of the DIP Agent, and (ii) the Exit Agent (A) shall have received all fees and premiums due and payable on or prior to the Closing Date in respect of the Exit Facility and (B) to the extent invoiced at least three (3) Business Days prior to the Closing Date (or such later date as the Borrower may reasonably agree), shall have been reimbursed for all reasonable and documented out-of-pocket expenses (including the reasonable fees, charges and disbursements of (i) McDermott, Will & Emery LLP, counsel to the Exit Agent, and (ii) such other foreign or special counsel required to be reimbursed or paid by the Borrower under the Exit Facility Documentation.

5. Legal Opinion. The Exit Agent and each Lender shall have received a customary legal opinion of Ropes & Gray LLP, counsel to the Credit Parties, dated as of the Closing Date, addressed to the Exit Agent and the Exit Facility Lenders, and in form and substance reasonably satisfactory to the Exit Agent and the Required Lenders.

6. No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

7. Closing Certificate. The Exit Agent shall have received a certificate of the Borrower, dated as of the Closing Date, confirming that the conditions precedent set forth in clauses 2, 6 and 15 have been satisfied.

8. Secretary / Director Certificates. Such certificates of good standing (to the extent such concept exists) from the applicable secretary of state or registrar of the state of organization or jurisdiction of incorporation of each Credit Party, certificates of resolutions or board resolutions or other action, incumbency certificates and/or other certificates of responsible officers of each Credit Party as the Exit Agent may reasonably require evidencing the identity, authority and capacity of each responsible officer

thereof authorized to act as a responsible officer in connection with the Exit Facility Documentation to which such Credit Party is a party or is to be a party on the Closing Date.

9. USA Patriot Act; Proceeds of Crime Act; Beneficial Ownership Certification. The Exit Agent and the Exit Facility Lenders shall have received from the Borrower and each of the Credit Parties, at least 2 Business Days prior to the Closing Date, (A) all documentation and other information reasonably requested by the Exit Agent or any Exit Facility Lender no less than 7 calendar days prior to the Closing Date that the Exit Agent or any such Lender reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act and (B) a beneficial ownership certification in relation to the Borrower and each subsidiary that qualifies as a "legal entity customer" under the beneficial ownership regulation.

10. Filings. There shall have been delivered to the Exit Agent in proper form for filing (x) each Uniform Commercial Code financing statement, each intellectual property security agreement to be filed with the U.S. Patent and Trademark Office and the U.S. Copyright Office, and each other filing, in each case as required by the Guarantee and Collateral Agreement and the other Exit Facility Documentation in order to create in favor of the Exit Agent, for the benefit of the Exit Facility Lenders, a first priority perfected lien on the Collateral described therein.

11. Pledged Stock; Stock Powers. The Exit Agent shall have received the certificates, if any, representing the shares of Equity Interests held by a Credit Party pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power or share transfer instrument for each such certificate executed in blank by a duly authorized officer/director of the pledgor thereof.

12. Solvency Certificate. The Exit Agent shall have received a solvency certificate signed by the chief financial officer on behalf of the Borrower after giving effect to the Restructuring Transactions or, at the Borrower's option, a solvency opinion from an independent investment bank or valuation firm of nationally recognized standing.

13. Plan Effective Date; Confirmation Order. (i) All conditions precedent to the confirmation and effectiveness of the Plan, as set forth in the Plan, shall have been satisfied or waived in accordance with the terms thereof, (ii) the Borrower shall have delivered (email being sufficient) to the Exit Agent and the Exit Facility Lenders a digital/electronic copy of the docketed Confirmation Order and (iii) the Plan Effective Date shall have occurred (or occur contemporaneously with the Closing Date).

14. Equity Rights Offering. The Equity Rights Offering shall have been consummated on terms consistent in all respects with the Restructuring Support Agreement, the Equity Rights Offering Procedures and the Plan, and the Borrower shall have received gross proceeds in an amount no less than $35,000,000 from such Equity Rights Offering.

15. Material Adverse Effect. Since the Disclosure Statement Date, there shall not have occurred any event, change, occurrence or circumstance that, individually or in the aggregate, has had or could reasonably be expected to have a material adverse effect, other than as a result of the Chapter 11 Cases or any event, circumstance or condition leading up to, related to or resulting from the Chapter 11 Cases.

16. Approvals. The Borrower and the other Credit Parties shall have received all approvals, consents, licenses and permits required in connection with the Exit Facility, which approvals, consents, licenses and permits remain in full force and effect.

17. Financial Statements. The Exit Agent and the Lenders shall have received (i) audited consolidated balance sheets, income statements and statements of cash flow of Cutera, Inc. and its subsidiaries for the fiscal year ended December 31, 2024, (ii) unaudited consolidated balance sheets, income statements and statements of cash flow of Cutera, Inc. and its subsidiaries for each subsequent fiscal quarter (other than fiscal year end) ended at least 45 days before the Closing Date and (iii) copies of satisfactory interim unaudited financial statements for each month ended since the last audited financial statements for which financial statements are available and will include each month ended at least 30 days before the Closing Date.

18. Lien Searches. The Exit Agent shall have received the results of a recent lien search in each of the jurisdictions in which Uniform Commercial Code will be made to evidence or perfect security interests required to be evidenced or perfected, and such search shall reveal no liens on any of the assets of the Credit Parties, except for Liens permitted by the Exit Facility Documentation or liens to be discharged on or prior to the Closing Date.

19. No Litigation. Other than as disclosed prior to Closing Date, there shall not be any litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding pending or known by a Credit Party to be threatened against any Credit Party drawing into question any transaction contemplated by the Exit Facility Documentation, or that could reasonably be expected to have a material adverse effect on the Credit Parties and their subsidiaries, taken as a whole.

20. Restructuring Support Agreement. The Restructuring Support Agreement shall not have terminated with respect to the Consenting Senior Noteholders, and there shall be no defaults or termination rights thereunder that would permit the Required Consenting Senior Noteholders to terminate the Restructuring Support Agreement on such date or after the giving of notice, the lapse of time, or both, and such default has not been otherwise waived in accordance with the Restructuring Support Agreement; *provided* that this condition precedent shall not fail to have been satisfied to the extent the Company Parties terminate the Restructuring Support Agreement as to a Non-Supporting Senior Noteholder so long as the Consenting Senior Noteholders (excluding such Non-Supporting Senior Noteholder as to which the Restructuring Support Agreement has been terminated) continue to hold or control at least two-thirds in principal amount of the then outstanding principal amounts of Senior Notes.

21. Payment of DIP Obligations. The Borrower shall have paid in full in cash the outstanding obligations under the DIP Documents (other than amounts satisfied through the issuance of the Rollover Term Loans).

22. Business Plan. The Borrower shall have delivered a long-term business plan to the Exit Agent, which business plan shall be in form and substance acceptable to the Required Lenders.

Schedule 1 – New Money Commitments

EXHIBIT F

Provision for Transfer Agreement

The undersigned ("**Transferee**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of March 4, 2025 (the "**Agreement**"),[1] by and among the Company Parties and the Consenting Senior Noteholders, including the transferor to the Transferee of any Company Claims/Interests (each such transferor, a "**Transferor**"), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a "Consenting Senior Noteholder" under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

_____

Name:
Title:
Address:
E-mail address(es):

Aggregate Amounts Beneficially Owned or Managed on Account of:	
2026 Senior Notes	
2028 Senior Notes	
2029 Senior Notes	
Equity Interests	
DIP Commitments	
DIP Loans	
Exit Facility New Money Commitments	
Other Claims (identify / describe type), including other Disclosable Economic Interests in relation to the Company Party (including participation interests, hedges, swaps, and derivatives)	

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.