SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

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

FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **June 10, 2020 (June 4, 2020)**

ACACIA RESEARCH CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**001-37721**	**95-4405754**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

4 Park Plaza, Suite 550 **Irvine, California** (Address of principal executive offices)	**92614** (Zip Code)

(Registrant's telephone number, including area code): (949) 480-8300

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

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value $0.001 per share	ACTG	The NASDAQ Capital Market, LLC

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

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

Item 1.01. Entry into a Material Definitive Agreement.

Transaction Agreement

On June 4, 2020, Acacia Research Corporation, a Delaware corporation (the "Company"), entered into a Transaction Agreement (the "Transaction Agreement") with LF Equity Income Fund, a sub-fund of LF Investment Fund, acting by its authorized corporate director, Link Fund Solutions Limited ("Seller"), to acquire a portfolio of securities ("Sale Securities") of 19 public and private life sciences companies (each, a "Portfolio Company") by the Company for a total consideration of £223.9 million (the "Purchase Price") (the "Portfolio Transaction"). The Company and Seller had first entered into a confidential undertaking on April 3, 2020, allowing for, among other things, a review of the Sale Securities.

The purchase and sale of the Sale Securities of certain private Portfolio Companies are subject to rights of first refusal, tag-along rights and other similar rights held by other securityholders of such private Portfolio Companies. If such rights are not exercised with respect to any Sale Securities of a private Portfolio Company, the Company will acquire such Sale Securities on the terms described in the Transaction Agreement. In the event that securityholders of a private Portfolio Company exercise their right of first refusal or tag-along rights or similar rights with respect to the Sale Securities, the Company will not purchase those Sale Securities and the Purchase Price will be adjusted accordingly. The parties agree to use commercially reasonable efforts to cause the sale of all Sale Securities to be consummated by November 30, 2020; provided, that, either party may extend by up to one month by providing written notice to the other party.

The obligation of the Company to complete each purchase of Sale Securities at the Offer Price is subject to certain closing conditions, including (1) the absence of any legal restriction that prevents the transfer of the applicable Sale Securities, (2) the Seller having obtained any required waivers or consents from securityholders of such Portfolio Company, (3) the accuracy of Seller's representations and warranties contained in the Transaction Agreement (generally subject to qualifications as to materiality), (4) Seller's performance of its covenants and obligations under the Transaction Agreement in all material respects, and (5) the Transaction Agreement not having been validly terminated in accordance with its terms.

The foregoing summary of the Transaction Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Transaction Agreement, which is attached as Exhibit 2.1 to this Current Report on Form 8-K and incorporated by reference herein.

Issuance of June 2020 Notes

As previously reported, on November 18, 2019, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with Starboard Value LP (the "Designee" or "Starboard Value") and the Buyers (as defined in the Purchase Agreement), pursuant to which, among other things, the Company and Starboard Value would designate suitable investments or acquisitions as "Approved Investments" and Starboard Value would elect to purchase and allocate among one or more of its affiliates senior secured notes in one or more Additional Closings. In connection with the Portfolio Transaction, the Company and Starboard Value designated the Portfolio Transaction as an Approved Investment (as defined under the Purchase Agreement) and issued to Starboard $115 million principal amount of its Senior Secured Notes (the "June 2020 Notes"). In connection with such issuance, the Company and Starboard Value entered into a Supplemental Agreement on June 4, 2020 to, among other things, agree to the following:

Preferred Stock Dividend Waiver

In connection with the Portfolio Transaction and the issuance of the June 2020 Notes, $35 million from the previously-disclosed escrow account (the "Escrow Account") was released and used to fund a portion of the Purchase Price. Pursuant to the Supplemental Agreement, the Company and Starboard agreed that, so long as at least $35 million (or such lesser amount equal to the Stated Value of outstanding Series A Convertible Preferred Stock, par value $0.001 per share (the "Preferred Shares") of the Company) is redeposited into the Escrow Account, provided no Triggering Event (as defined in the Certificate of Designations for the Preferred Shares), or event that with the

passage of time and/or giving of notice would constitute a Triggering Event, has occurred and is continuing, Starboard Value, on behalf of the funds holding the Preferred Shares, shall waive all dividends accruing on the Preferred Shares in excess of 3.00% per annum. Pursuant to the terms of the Preferred Shares, dividends would otherwise accrue on the Preferred Shares at a rate of 8.00% per annum following an Approved Investment. The Company expects to fund the Escrow Account with proceeds from the sale of the assets acquired in the Portfolio Transaction.

June 2020 Notes Redemption

Pursuant to the Supplemental Agreement, the Company shall redeem $80 million principal amount of the June 2020 Notes by September 30, 2020 and the remaining $35 million principal amount of the June 2020 Notes by December 31, 2020 (the "Final Note Redemption Date") at par, plus accrued and unpaid interest and late fees, if any. In addition, the terms of the June 2020 Notes waive the requirement for the Company to comply with the ratio of Consolidated Total Debt to EBITDA covenant (the "Financial Covenant") for the test periods ending June 30, 2020 and September 30, 2020. The Company is required to redeem the June 2020 Notes by the Financial Note Redemption Date, which would otherwise be the next testing date for the Financial Covenant.

Series B Warrant Cash Exercise

Pursuant to the Supplemental Agreement, in consideration for permitting the Company to redeem the June 2020 Notes prior to November 15, 2027 (the "Maturity Date"), the Company and Starboard Value amended the terms of the previously issued Series B Warrants of the Company (the "Series B Warrants") to permit the payment of the exercise price of $3.65 through the payment of cash rather than through cancellation of notes issued pursuant to the Purchase Agreement at any time until the Series B Warrant Expiration Date of November 15, 2027. 31,506,849 of the Series B Warrants are subject to this adjustment with the remaining balance 68,493,151 Series B Warrants continuing with their original terms.

Optional Redemption of Preferred Shares

Pursuant to the Supplemental Agreement, in further consideration for permitting the Company to redeem the June 2020 Notes prior to the Maturity Date, Starboard and the Company agreed that, (i) in addition to the terms of the Preferred Shares, Starboard has the right to redeem the Preferred Shares at any time (i) between May 15, 2021 and August 15, 2021 and (ii) between May 15, 2022 and August 15, 2022 if less than $50 million principal amount of notes issued under the Purchase Agreement remain outstanding between the applicable notice date for redemption and the related redemption date at 115% of the stated value of the Preferred Shares being redeemed plus accrued and unpaid dividends and late charges, if any. In addition, the Supplemental Agreement provides that the Company has the right to redeem the Preferred Shares at any time between May 15, 2022 and August 15, 2022 if less than $50 million principal amount of notes issued under the Purchase Agreement remain outstanding between the applicable notice date for redemption and the related redemption date at 115% of the stated value of the Preferred Shares being redeemed plus accrued and unpaid dividends and late charges, if any.

Maximum Amount of Notes Issuable under the Purchase Agreement

Pursuant to the Supplemental Agreement, Starboard and the Company agreed that the maximum amount of notes that may be issued pursuant to the Purchase Agreement shall be $365,000,000 plus the principal amount of June 2020 Notes that have been redeemed, but in no case may more than $365,000,000 in notes issued pursuant to the Purchase Agreement be outstanding at any one time.

The Supplemental Agreement and the revised Form of Note is attached hereto as Exhibit 10.1 and is incorporated herein by reference. The foregoing description of the Supplemental Agreement is not complete and is subject to and qualified in its entirety by reference to the full text thereof set forth in Exhibit 10.1.

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

The information set forth under Item 1.01 regarding the issuance of the June 2020 Notes is incorporated by reference into this Item 2.03.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Item 1.01 regarding the terms of the Supplemental Agreement is incorporated by reference into this Item 3.03.

Item 8.01 Other Events

Press Release

On June 5, 2020, the Company issued a press release announcing the execution of the Transaction Agreement. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit No.	Description of Exhibit
2.1	Transaction Agreement, dated as of June 4, 2020, between LF Equity Income Fund and Acacia Research Corporation.
4.1	Form of Note (incorporated by reference to Exhibit 10.1).
10.1	Supplemental Agreement, dated as of June 4, 2020, between Starboard Value, L.P. and Acacia Research Corporation.
99.1	Press Release of Acacia Research Corporation, dated June 5, 2020.

SIGNATURES

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

Dated: June 10, 2020

ACACIA RESEARCH CORPORATION

By: /s/ Clifford Press
Name: Clifford Press
Title: Chief Executive Officer

TRANSACTION AGREEMENT

relating to the sale and purchase of the Portfolio

Dated 4 JUNE 2020

LF EQUITY INCOME FUND

and

ACACIA RESEARCH CORPORATION

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THIS TRANSACTION AGREEMENT (this "Agreement") is made on 4 June 2020

BETWEEN:

(1) ***LF EQUITY INCOME FUND***, a sub-fund of LF Investment Fund, an investment company with variable capital incorporated with limited liability in England and Wales under registered number IC001010, acting by its authorised corporate director, Link Fund Solutions Limited (registered in England and Wales under number 01146888) whose registered office is at 6th Floor, 65 Gresham Street, London EC2V 7NQ, United Kingdom (the "Seller"); and

(2) ***ACACIA RESEARCH CORPORATION***, a Delaware corporation whose principal executive office is at 4 Park Plaza, Suite 550, Irvine, California 92614, U.S.A. (the "Purchaser"),

(each, a "Party" and together, the "Parties").

RECITALS:

(A) **WHEREAS**, the Seller owns (or is the beneficial owner of) the Portfolio.

(B) **WHEREAS**, the Seller and the Purchaser have entered into the Undertaking Letter Agreement.

(C) **WHEREAS**, the Parties wish to enter into this Agreement to further document the terms and mechanics to give effect to the Seller's wish to sell, and the Purchaser's wish to purchase, the Portfolio (other than the Excluded Sale Securities, if any) on the terms of and subject to the conditions set out in this Agreement.

NOW, THEREFORE, THE PARTIES AGREE as follows:

1. Interpretation

1.1 In this Agreement:

"4d Pharma"	means 4d Pharma Plc, a private limited company (registered in England and Wales under number 08840579) whose registered office is at 9 Bond Court, Leeds, LS1 2JZ, United Kingdom;
"Act"	means the Companies Act 2006;
"Adjusted Consideration"	means, in relation to each of the Sale Securities in the Price Adjustable Portfolio Companies, the product of (x) the number of relevant Signing Sale Securities and (y) the relevant Adjusted Price(s) per Sale Security;
"Adjusted Price per Sale Security"	means, in relation to each of the Price Adjustable Portfolio Companies, such other price per Sale Security as is determined in accordance with the terms of the relevant Portfolio Agreements of the relevant Portfolio Company and Clause 6 of this Agreement;

"Affiliate"	means, in relation to a person, each and any subsidiary or holding company of that person, each and any subsidiary of a holding company of that person and each person or entity Controlling, Controlled by or under common Control with such person;
"Aggregate True Up Value"	means, as of 5:00 p.m. on the Longstop Date, in relation to the Sale Securities transferred to the Purchaser at any Relevant Completions on or prior to such time, an amount equal to the sum, in the aggregate, of the True Up Value payable in respect of such Sale Securities;
"Aggregate Relevant Completion Amount"	means, in relation to the Sale Securities transferred to the Purchaser at any Relevant Completions on or prior to the Longstop Date, an amount equal to the sum, in the aggregate, of the Relevant Completion Amounts paid to the Seller in respect of such Sale Securities;
"Agreed Rate"	means four per cent. (4%) above the HSBC Bank plc base rate from time to time;
"AMO Pharma"	means AMO Pharma Limited, a private limited company (registered in England and Wales under number 09431909) whose registered office is at Burnham House Splash Lane, Wyton, Huntingdon, Cambridgeshire, PE28 2AF, United Kingdom;
"Ancillary Transfer Documents"	means all notices (including Transfer Notices), Deeds of Adherence, legal opinions, amendments, waivers and modifications required pursuant to the terms of any of the Portfolio Agreements to permit the sale, assignment and transfer of any Sale Securities to the Purchaser;
"Arix Bioscience"	means Arix Bioscience Plc, a public limited company (registered in England and Wales under number 09777975) whose registered office is at 20 Berkeley Square, London, W1J 6EQ, United Kingdom;
"Authority"	means any competent governmental, administrative, supervisory, regulatory, judicial, determinative, disciplinary, enforcement or tax-raising body, authority, agency, board, department, court or tribunal of any jurisdiction (including any Tax Authority) and whether supranational, national, regional or local;
"Business Day"	means any day (other than a Saturday, Sunday or a public holiday) on which banks are open in London for a full range of business;
"Competition Laws"	means all laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolisation or lessening of competition through merger or acquisition or restraint of trade;

"Compulsory Sale"	means, in respect of each Portfolio Company, a sale of Sale Securities by the Seller to any third party (other than the Purchaser or the Purchaser's Nominee) or such Portfolio Company: (i) pursuant to applicable rights of pre-emption, first offer, drag-along, tag-along or any other compulsory sale process provided for in such Portfolio Company's Portfolio Agreements and which, in accordance with the terms of such Portfolio Company's Portfolio Agreements, are triggered by and apply to the proposed sale of Signing Sale Securities to the Purchaser; (ii) pursuant to a scheme of arrangement under Part 26 of the Act which has become effective or a legally binding squeeze-out notice pursuant to section 979 of the Act; or (iii) otherwise where the Purchaser and the Seller have agreed in writing that such sale should be effected;
"Compulsory Sale Provisions"	means, in respect of each Portfolio Company, (i) any rights of pre-emption, first offer or any other compulsory sale process provided for in such Portfolio Company's Portfolio Agreements and which, in accordance with the terms of such Portfolio Company's Portfolio Agreements, are triggered by and apply to the proposed sale of Signing Sale Securities to the Purchaser; or (ii) a scheme of arrangement under Part 26 of the Act which has become effective or a legally binding squeeze-out notice pursuant to section 979 of the Act; or (iii) otherwise where the Purchaser and the Seller have agreed in writing that such offer should be accepted and/or effected;
"Concert Parties"	means persons acting in concert (as defined in the Takeover Code) with the Purchaser;
"Conditions"	has the meaning given in Clause 5.2;
"Control"	means, with respect to any person, the power to direct or cause the direction of the management and policies of such person, whether through the ownership of shares, by contract or otherwise, and the terms "Controlled by" and "under common Control with" shall be construed accordingly;
"Data Room"	means the Project Oak virtual data room operated and maintained by Intralinks as at 22 May 2020, a copy of the contents of which at 22 May 2020 is contained in the agreed form USB;
"Deed of Adherence"	means any deed of adherence, accession agreement or similar document required by the terms of a Portfolio Agreement to be entered into by the Purchaser as a condition to the transfer of any Sale Securities to the Purchaser;
"Depositary"	means Northern Trust Global Services Limited;
"Disclosing Party"	has the meaning given in Clause 11.1(a);
"Encumbrance"	means any claim, charge (fixed or floating), mortgage, security, pledge, lien, option, equity, power of sale, hypothecation, trust, right of set off or other third party right or interest (legal or equitable), including any reservation or retention of title, right of pre-emption, right of first refusal, assignment by way of security or any other security interest of any kind, howsoever created or arising or any other agreement or arrangement having a similar effect;

"Escrow Account"	means the escrow account or accounts held and maintained by the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement for the purposes of administering payment of the Escrow Amount as set out in Clauses 4.5, 4.6, 4.7 and 4.9;
"Escrow Agent"	means First State Trust Company;
"Escrow Agreement"	means the escrow agreement entered into on or prior to the date hereof among the Seller, the Purchaser and the Escrow Agent for the purposes of the Escrow Amount;
"Escrow Amount"	means £223,874,110.00, being an amount (in pound sterling) equal to the sum, in the aggregate, of the Initial Consideration for all of the Portfolio Companies;
"Excluded Sale Securities"	means, in relation to each Portfolio Company, those Sale Securities that: (i) the Purchaser shall not purchase from the Seller pursuant to Clause 6 of this Agreement; or (ii) have been purchased or agreed to be purchased by another party pursuant to a Compulsory Sale;
"Final Acceptance Date"	has the meaning given in Clause 3.4;
"Final Completion"	means the Relevant Completion at which the last of the Sale Securities are acquired by the Purchaser (provided that if any time there are any Sale Securities in respect of which a Relevant Completion has not occurred, and subsequently pursuant to Clause 6 or any Compulsory Sale all those Sale Securities become Excluded Sale Securities, then Final Completion shall be the date five (5) Business Days after such Sale Securities have become Excluded Sale Securities);
"Final Consideration"	has the meaning given in Clause 4.1;
"Final Unconditional Date"	has the meaning given in Clause 7.1;
"First Completion Payment Notice"	has the meaning given in Clause 7.3(c);
"FSMA"	means the Financial Services and Markets Act 2000;
"Gross Up Amount"	has the meaning given in Clause 4.14;
"HSR Act"	means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time;
"Initial Consideration"	means, in relation to each of the Sale Securities, the amount listed against the name of the relevant Portfolio Company in the column titled "*Initial Consideration*" of **Schedule 1** hereto, being the product of (x) the number of relevant Signing Sale Securities and (y) the relevant Initial Price(s) per Sale Security;

"Initial Price per Sale Security"	means, in relation to each type of Signing Sale Security in each Portfolio Company, the amount listed against the name of the relevant Portfolio Company and type of Signing Sale Security in the column titled "*Initial Price per Sale Security*" of **Schedule 1** hereto;
"Longstop Date"	means 30 November 2020 or such later date as the Seller and the Purchaser may agree in writing; provided, that a Party shall be entitled to extend the Longstop Date by up to one (1) month at its sole discretion by giving written notice to the other Party no later than two (2) Business Days prior to the original Longstop Date; and provided, further, that a Party may not extend the Longstop Date if such Party is then in breach of its material obligations under this Agreement;
"Losses"	means all demands, claims, action, proceedings, damages, payments, fines, penalties, losses, reasonably and properly incurred costs (including legal costs), expenses (including Tax) and other liabilities actually incurred by a person;
"Malin J1"	means Malin J1 Limited, a private limited company (registered in Jersey under number 116835) whose registered office is at PO Box 264, Forum 4, Grenville Street, St Helier, E4 8TQ, Jersey;
"Market Abuse Regulation"	means the Market Abuse Regulation (EU 596/2014) and its implementing legislation;
"Maximum True Up Amount"	means an amount equal to the True Up Amount that would be payable if all of the Sale Securities, the True Up Value for which is less than the Initial Consideration (or, as applicable, Adjusted Consideration), became Unacquired Sale Securities, disregarding the Sale Securities of Portfolio Companies which become Excluded Sale Securities or are to be transferred at the Relevant Completion or which have been transferred at any prior Relevant Completion;
"Nominee"	means any wholly-owned subsidiary of the Purchaser and, subject to Clause **2.2**, any such person as the Purchaser shall nominate with the prior written approval of the Seller (in its sole discretion); provided, that the Purchaser shall procure that such person satisfies any reasonable KYC requirements of the Seller; and provided, further, that any Nominee nominated by the Purchaser to purchase any Sale Securities in Arix Bioscience shall not be a Concert Party of the Purchaser;
"Non-Transferable Portfolio Companies"	means those Private Portfolio Companies set out in Part A Section 2 of **Schedule 1**;
"Notice of Acceptance"	has the meaning given in Clause 3.3;

"Novabiotics"	means Novabiotics Limited, a private limited company (registered in Scotland under number SC272344) whose registered office is at Unit 3 Silverburn Crescent, Bridge Of Don Industrial Estate, Aberdeen, AB23 8EW, United Kingdom;
"Novabiotics IA"	means the Investment Agreement, between Novabiotics Limited, the Manager (Deborah O'Neil), the Investor Group (CF Woodford Equity Income Fund, Omnis Income & Growth Fund, Woodford Patient Capital Trust Plc), Scottish Enterprise, the Existing Shareholders (individuals, companies, trusts, funds), dated 22 February 2017;
"Offer"	has the meaning given in Clause 3.1;
"Open Orphan"	means Open Orphan Plc, a private limited company (registered in England and Wales under number 07514939) whose registered office is at Queen Mary Bioenterprises Innovation Centre, 42, New Road, London, E1 2AX, United Kingdom;
"Overpricing Amount"	has the meaning given in Clause 4.2(b);
"Overpricing Pro Rata Amount"	has the meaning given in Clause 4.2(b);
"Oxford Nanopore"	means Oxford Nanopore Technologies Limited, a private limited company (registered in England and Wales under number 05386273) whose registered office is at Gosling Building Edmund Halley Road, Oxford Science Park, Oxford, Oxfordshire, OX4 4DQ, United Kingdom;
"Permitted Encumbrance"	means any rights of pre-emption, right of first refusal, right of first offer, drag-along, tag-along or other compulsory sale process provided for in or otherwise arising under the Portfolio Agreements of each of the Portfolio Companies or by operation of law (including applicable securities laws) in the ordinary course of trading;
"Portfolio"	means all Signing Sale Securities set out in **Schedule 1** hereto;
"Portfolio Agreements"	means, in respect of each Portfolio Company, those documents listed against the name of such Portfolio Company in the column titled "*Portfolio Agreements*" of **Schedule 2** hereto, in each case as may be amended, restated, replaced, supplemented or otherwise modified from time to time after the date hereof in accordance with their terms;
"Portfolio Companies"	means those entities listed as such in **Schedule 1** hereto and each, a "Portfolio Company";
"Pre-Completion Notice"	has the meaning given in Clause 7.2;
"Price Adjustable Portfolio Companies"	means AMO Pharma, Malin J1, Oxford Nanopore and Novabiotics;

"Price per Sale Security"	means the Initial Price per Sale Security or the Adjusted Price per Sale Security, as the context requires;
"Private Portfolio Companies"	means those Portfolio Companies set out in Part A of **Schedule 1** and each, a "Private Portfolio Company";
"Private Portfolio Company Proposed Completion Date"	has the meaning given in Clause 7.2(b);
"Proposed Completion Date"	means the Private Portfolio Company Proposed Completion Date or the Public Portfolio Company Proposed Completion Date, as the context requires;
"Pro Rata Portion"	means, in relation to each Public Portfolio Company, a fraction (x) the numerator of which is the Initial Consideration for such Public Portfolio Company's Sale Securities and (y) the denominator of which is the aggregate Initial Consideration for all of the Public Portfolio Companies' Sale Securities;
"Public Portfolio Companies"	means those Portfolio Companies set out in Part B of **Schedule 1** and each, a "Public Portfolio Company";
"Public Portfolio Company Proposed Completion Date"	has the meaning given in Clause 7.2(c);
"Purchaser's Group"	means the Purchaser and any undertaking which is, on or at any time after the date of this Agreement, a subsidiary or subsidiary undertaking or parent undertaking of the Purchaser or a subsidiary or undertaking of a parent undertaking of the Purchaser;
"Purchaser's UK Solicitors"	means Herbert Smith Freehills LLP of Exchange House, Primrose Street, London, EC2A 2EG;
"Purchaser's Warranties"	means the warranties made by or on behalf of the Purchaser in this Agreement and "Purchaser's Warranty" shall be construed accordingly;
"Regulated Entity"	means Arix Capital Management Limited, a private limited company (registered in England and Wales under number 08111748) whose registered office is at Sophia House, 28 Cathedral Road, Cardiff, CF11 9LJ, United Kingdom;
"Relevant Completion"	means each completion at which Sale Securities are transferred to the Purchaser;
"Relevant Completion Amount"	has the meaning given in Clause 4.5(a);
"Relevant Completion Date"	has the meaning given in Clause 7.4;

"Remaining Escrow Amount"	means, as at each Relevant Completion, an amount equal to (x) the Escrow Amount less (y) all amounts paid, in the aggregate, by the Escrow Agent to the Seller and the Purchaser (as applicable) in accordance with Clause 4.5 at any prior Relevant Completion, to the Purchaser in accordance with Clause 4.6 or in accordance with Clause 4.7 on the True Up Payment Date;
"Representatives"	means, in relation to any person, the directors, officers and employees of such person;
"Roadmap"	has the meaning given in Clause 6.1;
"ROFR Securities"	has the meaning given in Clause 6.3(b);
"Sale Securities"	means, in relation to each Portfolio Company, the Signing Sale Securities *less* any Excluded Sale Securities;
"Securities Act"	means the U.S. Securities Act of 1933, as amended;
"Seller's Group"	means: (a) members of the Seller's corporate group (including the Seller's Affiliates from time to time); (b) entities controlled by members of the Seller's corporate group; (c) any trustee or manager or beneficiary or shareholder or partner or investor or unit holder or other participant in or of the Seller; (d) any directors or employees of the Seller or a member of its corporate group or any trust or carried interest or similar partnership in which they or any of them participate; or (e) a nominee or custodian for any of the above;
"Seller's Solicitors"	means Debevoise & Plimpton LLP of 65 Gresham Street, London, EC2V 7NQ;
"Seller's Warranties"	means the warranties made by or on behalf of the Seller in this Agreement and "Seller's Warranty" shall be construed accordingly; and
"Signing Non-Transferable Sale Securities"	means the Signing Sale Securities in each of the Non-Transferable Portfolio Companies;
"Signing Sale Securities"	means, in relation to each Portfolio Company, those securities listed against the name of such Portfolio Company in the column titled "*Signing Sale Securities*" of **Schedule 1**;

"Surplus Escrow Amount"	means any amount of the Escrow Amount that is left in the Escrow Account after payment of any True Up Amount to be paid to the Seller pursuant to Clause 4.7(a)(i) from the Remaining Escrow Amount;
"Surviving Provisions"	has the meaning given in Clause 5.8;
"Tag-Along Securities"	has the meaning given in Clause 6.3(a);
"Takeover Code"	means the City Code on Takeovers and Mergers;
"Takeover Code Portfolio Companies"	means 4d Pharma Plc, Arix Bioscience Plc, Induction Healthcare Group Plc, Mereo Biopharma Group Plc, Midatech Pharma Plc, NetScientific Plc, Open Orphan Plc, Sensyne Health Plc, Synairgen Plc, Tissue Regenix Group Plc and each, a "Takeover Code Portfolio Company";
"Tax" or "Taxation"	means any and all forms of taxes, levies, imposts, contributions, duties and charges in the nature of taxation (excluding, for the avoidance of doubt, rates, community charges and other similar charges) and all withholdings or deductions in respect thereof of whatever nature whenever imposed whether of the United Kingdom, the United States or elsewhere (including, for the avoidance of doubt, national insurance contributions and corresponding charges elsewhere) and whether directly or primarily chargeable against, recoverable from or attributable to each Portfolio Company or any other person including all fines, penalties, charges and interest relating to the same;
"Tax Authority"	means the H.M. Revenue & Customs, Customs & Excise, Department of Social Security, the U.S. Internal Revenue Service and any other governmental or other authority whatsoever competent to impose any Taxation whether in the United Kingdom, the United States or elsewhere;
"Theravance"	means Theravance Biopharma Inc., a Cayman Islands company limited by shares whose registered office is at Ugland House, Grand Cayman, KY1-1104, Cayman Islands;
"Transaction Documents"	means the Undertaking Letter Agreement, this Agreement, the Escrow Agreement, the Ancillary Transfer Documents and any other arrangement, document or notice entered into, to be entered into or served pursuant to any of them or otherwise by the Parties in connection with the transactions contemplated thereby;
"Transfer Condition"	means a condition included in a Transfer Notice in accordance with any Portfolio Agreement which provides that all or a specified number of Sale Securities must be sold to existing security holders, failing which none of the Sale Securities are required to be sold to existing security holders;

"Transfer Documents"	means definitive documents required under the Portfolio Agreements to effect the sale and transfer of the Sale Securities from the Seller to the Purchaser in the form required by the Portfolio Agreements and, where permitted or required by the Portfolio Agreements (but not otherwise), the applicable Portfolio Company;
"Transfer Notice"	means, in respect of each Portfolio Company, any transfer notice which is required by the terms of any Portfolio Agreement to be served on such Portfolio Company and/or other security-holders in such Portfolio Company by the Seller pursuant to any Compulsory Sale Provisions which are triggered by and apply to the proposed sale of Sale Securities to the Purchaser, in customary form as agreed by the Purchaser and the Seller;
"Transfer Taxes"	means all stamp duties and stamp, sales, use, transfer, filing, recording, ad valorem, privilege, documentary, registration conveyance, excise, license taxes or similar taxes, duties or fees, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties;
"Transferable Private Portfolio Companies"	means those Private Portfolio Companies set out in Part A Section 1 of **Schedule 1**;
"Transferable Sale Securities"	means the Sale Securities in each of the Private Portfolio Companies set out in Part A Section 1 of **Schedule 1** and each of the Public Portfolio Companies;
"True Up Amount"	means an amount equal to (x) the Aggregate True Up Value *less* (y) the Aggregate Relevant Completion Amount;
"True Up Excess Amount"	means an amount equal to the difference between (x) the Remaining Escrow Amount and (y) the higher of (A) the aggregate Initial Consideration (or, as applicable, Adjusted Consideration) for the remaining Sale Securities (other than any Excluded Sale Securities and any Sale Securities of Portfolio Companies which are to be transferred at the Relevant Completion or which have been transferred at any prior Relevant Completion) and (B) the Maximum True Up Amount;
"True Up Payment Date"	means the Longstop Date;
"True Up Pro Rata Amount"	has the meaning given in Clause 4.2(c);
"True Up Value"	means, in relation to each of the Sale Securities, the amount listed against the name of the relevant Portfolio Company in the column titled "*True Up Value*" of Part C of **Schedule 1** hereto;

"Unacquired Sale Securities"	means, in relation to each Portfolio Company, those Sale Securities (if any) that the Seller has not sold and transferred to the Purchaser pursuant to this Agreement and are not Excluded Sale Securities by 5:00 p.m. on the Longstop Date but excluding any such Sale Securities (if any) that the Seller has not sold and transferred to the Purchaser pursuant to this Agreement solely and directly as a result of a breach by the Seller of any of its obligations under this Agreement, including (without limitation) a failure by the Seller to satisfy the Condition contained in Clause 5.2(b)(i);
"Unconditional Date"	means with respect to each of the Sale Securities, the date on which the last Condition relating to such Sale Securities to be transferred to the Purchaser at the Relevant Completion is satisfied or waived in accordance with this Agreement (other than those Conditions which by their nature are to be satisfied at such Relevant Completion);
"Unconditional Sale Securities"	means any Sale Securities in respect of which the Conditions relating to such Sale Securities have been satisfied or waived in accordance with this Agreement (other than those Conditions which by their nature are to be satisfied at such Relevant Completion);
"Unconditional Sale Securities Notice"	has the meaning given in Clause 7.1;
"Unconditional Sale Securities Notice Date"	has the meaning given in Clause 7.1;
"Underpricing Amount"	has the meaning given in Clause 4.2(a);
"Underpricing Pro Rata Amount"	has the meaning given in Clause 4.2(a);
"Undertaking Letter Agreement"	means that certain letter agreement, dated 3 April 2020, by and between the Purchaser and Link Fund Solutions Limited (as amended from time to time);
"Valuer"	means, in respect of each Private Portfolio Company, the auditor of such Private Portfolio Company or, if applicable, such other independent valuer appointed by such Private Portfolio Company to determine the value of the Signing Sale Securities in such Private Portfolio Company, in each case in accordance with the relevant Portfolio Agreements;
"Viamet"	means Viamet Pharmaceuticals Holdings LLC, a limited liability company (registered in the State of Delaware under number 5081106) whose registered office is at The Corporation Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, New Castle, Delaware 19801, U.S.A.;
"Waiver and Consent"	has the meaning given in Clause 6.1; and
"Warranty Claim"	means any claim under this Agreement for breach of the Seller's Warranties.

1.2 In this Agreement:

(a) a reference to a "subsidiary undertaking" or "parent undertaking" is to be construed in accordance with section 1162 of the Act, and a reference to a "subsidiary" or "holding company" is to be construed in accordance with section 1159 of the Act;

(b) a reference to a document in the "agreed form" is a reference to a document in a form approved, and for the purposes of identification initialled, by or on behalf of the Purchaser and the Seller;

(c) a reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time before the date of this Agreement and any subordinate legislation made under the statutory provision (as so modified or re-enacted) before the date of this Agreement;

(d) a reference to a "person" includes a reference to any individual, firm, company, corporation or other body corporate, government, state, state agency, joint venture, association, partnership works council or employee representative body (whether or not having separate legal personality);

(e) a reference to a person includes a reference to that person's legal personal representatives, successors and permitted assigns;

(f) a reference to a "party" includes that party's successors and permitted assigns;

(g) a reference to a Clause, paragraph, or Schedule is a reference to a clause or paragraph of or schedule to this Agreement, unless the context otherwise requires;

(h) a reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any other legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;

(i) unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;

(j) "pound sterling" or "£" is a reference to the lawful currency of the United Kingdom;

(k) a reference to time of day is to London time; and

(l) a reference to writing shall include any mode of reproducing words in a legible and non-transitory form.

1.3 The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 The recitals and schedules to this Agreement form part of it. The headings and sub-headings of this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

2. Sale and Purchase of the Transferable Sale Securities

2.1 On the terms and subject to the conditions set out in this Agreement, the Seller shall sell, assign and transfer, or procure the sale, assignment and transfer of, each of the Transferable Sale Securities, and the Purchaser (or its Nominee) shall purchase, acquire and assume, with effect from the Relevant Completion Date, each of the Transferable Sale Securities with:

(a) full title guarantee and free from all Encumbrances (other than Permitted Encumbrances); and

(b) all rights and obligations attaching to them under the Portfolio Agreements of the relevant Portfolio Company as at the Relevant Completion (including all dividends and distributions declared, paid or made after the Relevant Completion Date).

2.2 The Parties acknowledge that the Purchaser will nominate a Nominee to purchase certain of the Sale Securities in Arix Bioscience, such that the Purchaser will acquire less than twenty per cent. (20%) of the voting rights in Arix Bioscience and, provided that the Purchaser procures that such person satisfies any reasonable KYC requirements of the Seller, the Seller shall not unreasonably withhold, condition or delay its consent to any person nominated to acquire any Sale Securities in Arix Bioscience.

3. Irrevocable Offer in Respect of the Signing Non-Transferable Sale Securities

3.1 On the terms and subject to the conditions set out in this Agreement, the Purchaser hereby makes, in relation to each Non-Transferable Portfolio Company, a binding and irrevocable offer to purchase, acquire and assume from the Seller the relevant Signing Non-Transferable Sale Securities, in each case with effect from the Relevant Completion Date for a purchase price equal to the Initial Consideration with respect to such Signing Non-Transferable Sale Securities (each, an "Offer").

3.2 Immediately after any applicable Waiver and Consents have been obtained or Compulsory Sale Provisions with respect to any relevant Signing Non-Transferable Sale Securities, and subject always to the Seller's acceptance of the Offer pursuant to Clauses 3.3 and 3.4, such Signing Non-Transferable Sale Securities shall be deemed to be Transferable Sale Securities to be transferred under the terms of this Agreement.

3.3 The Purchaser acknowledges and agrees that the Seller may accept the Offer for any of the Signing Non-Transferable Sale Securities by executing and delivering to the Purchaser, in each case, a notice of acceptance in substantially the form attached as **Schedule 8** hereto (each, a "Notice of Acceptance") duly executed by the Seller prior to 5:00 p.m. on the Longstop Date in accordance with Clause 3.4. The Purchaser further acknowledges that, on the date hereof, the Seller has deposited with the Purchaser's UK Solicitors Notices of Acceptance in respect of each Non-Transferable Portfolio Company duly executed by or on behalf of the Seller, which Notices of Acceptance shall be held in escrow by the Purchaser's UK Solicitors until, in the case of each Non-Transferable Portfolio Company, the earlier of (x) the relevant Notice of Acceptance's release from escrow in accordance with Clause 3.4 and (y) the earlier of (A) the date on which the relevant Signing Non-Transferable Sale Securities become Excluded Sale Securities (if applicable) and (B)

5:00 p.m. on the Longstop Date, at which time the Purchaser's UK Solicitors shall return the relevant Notice of Acceptance executed by the Seller and held by it to the Seller.

3.4 The Seller may accept the Offer for any of the Signing Non-Transferable Sale Securities by instructing the Purchaser's UK Solicitors to date and release from escrow and deliver to the Purchaser the relevant Notice of Acceptance duly executed by the Seller pursuant to Clause 3.3; provided, that if the Seller fails to instruct the Purchaser's UK Solicitors to date and release from escrow and deliver to the Purchaser a Notice of Acceptance in respect of any Signing Non-Transferable Sale Securities that are deemed to be Transferable Sale Securities pursuant to Clause 3.2 by the date which is the earlier of (x) the date which falls five (5) Business Days prior to the date on which any such Signing Non-Transferable Sale Securities are required to be transferred pursuant to the applicable Portfolio Agreements or the terms of any Waiver and Consent and (y) the date which falls (5) Business Days prior to the Longstop Date (the "Final Acceptance Date"), the Purchaser's UK Solicitors shall automatically date and release from escrow and deliver to the Purchaser the relevant Notice of Acceptance duly executed by the Seller on the Final Acceptance Date. Upon the delivery of a Notice of Acceptance duly executed by the Seller pursuant to this Clause 3.4, the relevant Signing Non-Transferable Sale Securities specified in such Notice of Acceptance shall be sold, assigned and transferred by the Seller to the Purchaser at the next Relevant Completion pursuant to Clause 7.

3.5 The Purchaser expressly agrees that the execution of this Agreement by the Seller shall not constitute, in any manner whatsoever, an undertaking by the Seller to sell, assign or transfer any of the Signing Non-Transferable Sale Securities to the Purchaser, but shall only constitute an option for the Seller, exercisable at its sole discretion, in accordance with Clauses 3.3 and 3.4 of this Agreement.

3.6 In consideration of the obligations of the Seller under this Agreement, the Purchaser irrevocably and unconditionally undertakes not to withdraw, revoke, modify or qualify any Offer in any respect prior to the Longstop Date, except as expressly set forth in this Agreement.

3.7 The Seller acknowledges the benefit of each Offer conferred on it without any undertaking to accept any such Offer, except as expressly set forth in this Agreement.

3.8 Each Offer will remain valid and in effect until the Longstop Date, provided that, with respect to any relevant Signing Non-Transferable Sale Securities that are the subject of any such Offer, if and to the extent any such Signing Non-Transferable Sale Securities become Excluded Sale Securities after the date of this Agreement, such Offer (solely with respect to such Excluded Sale Securities) shall automatically lapse and shall no longer be capable of acceptance (but, for the avoidance of doubt, such Offer with respect to all the remaining Signing Non-Transferable Sale Securities shall remain in full force and effect).

4. Consideration; Determination of Final Consideration; Payment

4.1 The consideration for the sale of each of the Transferable Sale Securities purchased pursuant to this Agreement shall be the payment by the Purchaser of the Initial Consideration as adjusted in accordance with Clauses 4.2, 4.3, 4.6, and 4.15 (as applicable) below (the Initial Consideration having been so adjusted shall be referred to herein as the "Final Consideration").

4.2 In the case of each Public Portfolio Company, the consideration payable in respect of the relevant Sale Securities shall be the Initial Consideration as adjusted, to the extent applicable:

(a) to the extent the Adjusted Consideration for the Sale Securities in any of the Price Adjustable Portfolio Companies (in each case as determined pursuant to the applicable Portfolio Agreements and Clause 6.2) is less than the Initial Consideration set out in **Schedule 1** (in each case, the difference between the Initial Consideration and the Adjusted Consideration, the "Underpricing Amount"), an amount equal to such Public Portfolio Company's Pro Rata Portion of the Underpricing Amount in respect of such Sale Securities (or such other amount as may be agreed between the Parties in writing, provided that all, but not less than all, of the Underpricing Amount is allocated to the Sale Securities of the Public Portfolio Companies) shall be allocated to the Sale Securities of such Public Portfolio Company (the "Underpricing Pro Rata Amount"), and the Initial Consideration for such Public Portfolio Company's Sale Securities shall be increased by its Underpricing Pro Rata Amount; and

(b) subject to Clause 6.4, to the extent the Adjusted Consideration for the Sale Securities in any of the Price Adjustable Portfolio Companies (in each case as determined pursuant to the applicable Portfolio Agreements and Clause 6.2) is greater than the Initial Consideration set out in **Schedule 1** (in each case, the difference between the Initial Consideration and the Adjusted Consideration, the "Overpricing Amount"), an amount equal to such Public Portfolio Company's Pro Rata Portion of the Overpricing Amount in respect of such Sale Securities (or such other amount as may be agreed between the Parties in writing, provided that all, but not less than all, of the Overpricing Amount is allocated to the Sale Securities of the Public Portfolio Companies) shall be allocated to the Sale Securities of such Public Portfolio Company (the "Overpricing Pro Rata Amount"), and the Initial Consideration for such Public Portfolio Company's Sale Securities shall be decreased by its Overpricing Pro Rata Amount;

(c) to the extent that the True Up Amount (if any) is a positive number, an amount equal to such Public Portfolio Company's Pro Rata Portion of the True Up Amount (or such other amount as may be agreed between the Parties in writing, provided that all, but not less than all, of the True Up Amount is allocated to the Sale Securities of the Public Portfolio Companies) shall be allocated to the Sale Securities of such Public Portfolio Company (the "True Up Pro Rata Amount"), and the Initial Consideration for such Public Portfolio Company's Sale Securities shall be increased by its True Up Pro Rata Amount; and

(d) to the extent that the True Up Amount (if any) is a negative number, an amount equal to such Public Portfolio Company's Pro Rata Portion of the True Up Amount (or such other amount as may be agreed between the Parties in writing, provided that all, but not less than all, of the True Up Amount is allocated to the Sale Securities of the Public Portfolio Companies) shall be allocated to the Sale Securities of such Public Portfolio Company, and the Initial Consideration for such Public Portfolio Company's Sale Securities shall be decreased by its True Up Pro Rata Amount,

provided always that the total aggregate decrease to the Initial Consideration for the Sale Securities of the Public Portfolio Companies pursuant to Clauses 4.2(b) and 4.2(d) shall not exceed the total aggregate Initial Consideration set out against the Public Portfolio Companies in Part B of **Schedule 1**.

4.3 In the case of each Transferable Private Portfolio Company (including, upon the Seller's acceptance of the relevant Offer pursuant to Clauses 3.3 and 3.4, each Non-Transferable Portfolio Company),

the consideration payable in respect of the relevant Sale Securities to be transferred at the Relevant Completion shall be (i) with respect to each Transferable Private Portfolio Company other than the Price Adjustable Portfolio Companies, the Initial Consideration, and (ii) with respect to each of the Price Adjustable Portfolio Companies, the Initial Consideration as adjusted, to the extent applicable, in accordance with Clause 6.

4.4 The Purchaser shall pay or cause to be paid by wire transfer of immediately available funds an amount equal to the Escrow Amount no later than three (3) Business Days after the date of this Agreement, to be held by the Escrow Agent on the terms set out in the Escrow Agreement.

4.5 At least five (5) Business Days prior to each Relevant Completion (but in the case of Sale Securities in any Public Portfolio Company other than 4d Pharma, Open Orphan, Synairgen and Theravance (which such transfer mechanics are described in Clause 7.3), immediately following the delivery by the Purchaser of the Pre-Completion Notice described in Clause 7.2):

(a) the Seller and the Purchaser shall jointly instruct the Escrow Agent to pay on the Relevant Completion Date:

(i) the sum of:

(A) in the case of any Sale Securities in any Portfolio Company (other than the Price Adjustable Portfolio Companies) to be transferred at such Relevant Completion, the Initial Consideration for such Sale Securities;

(B) in the case of any Sale Securities in any of the Price Adjustable Portfolio Companies to be transferred at such Relevant Completion, the Adjusted Consideration for such Sale Securities;

(ii) *plus* any Underpricing Amount allocated in respect of any of the Price Adjustable Portfolio Companies pursuant to Clause 4.2(a) to the Sale Securities of the Public Portfolio Companies which have been transferred at a prior Relevant Completion;

(iii) *less* any Overpricing Amount allocated in respect of any of the Price Adjustable Portfolio Companies pursuant to Clause 4.2(b) to the Sale Securities of the Public Portfolio Companies which have been transferred at a prior Relevant Completion,

in each case up to the Remaining Escrow Amount, to the account designated by the Seller, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Seller (in the case of each Relevant Completion the amount to be paid by the Escrow Agent to the Seller at such Relevant Completion, including any Gross Up Amount, in the aggregate, being the "Relevant Completion Amount");

(iv) the True Up Excess Amount (if any), to the account designated by the Purchaser, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Purchaser;

(b) the Seller shall deliver to the Depositary written instructions to transfer on the Relevant Completion Date:

(i) with respect to any Sale Securities in any Public Portfolio Company, the applicable Sale Securities to the account of the Purchaser or its Nominee notified by the Purchaser in the applicable Pre-Completion Notice; and

(ii) with respect to any Sale Securities in any Private Portfolio Company, the applicable Sale Securities to the Purchaser or its Nominee or to an account of the Purchaser or its Nominee notified in the applicable Pre-Completion Notice,

and in each case the Seller shall use its commercially reasonable endeavours to procure that the delivery of the applicable Sale Securities to such account occurs on the Relevant Completion Date or as soon as practicable thereafter (and in any event no later than the first (1st) Business Day thereafter).

4.6 If any Sale Securities become Excluded Sale Securities pursuant to the provisions of this Agreement, then, within two (2) Business Days of such Sale Securities becoming Excluded Sale Securities, the Seller and the Purchaser shall jointly instruct the Escrow Agent to pay an amount equal to the True Up Excess Amount (if any) to the account designated by the Purchaser, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Purchaser; provided, that no such instruction or payment shall be made, and the Purchaser shall not be entitled to receive such amount, if the Escrow Agent has already paid such amount to the Purchaser pursuant to Clause 4.5(a)(iv).

4.7 Subject to Clause 6.4, on the earlier of (x) the date falling five (5) Business Days after Final Completion and (y) the Longstop Date, the Seller and the Purchaser shall jointly instruct the Escrow Agent to pay:

(a) if there are any Unacquired Sale Securities:

(i) to the extent that the True Up Amount is a positive number, an amount equal to such amount (up to the Remaining Escrow Amount) to the account designated by the Seller, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Seller; and

(ii) to the extent that any Surplus Escrow Amount is left in the Escrow Account after deduction of the True Up Amount to be paid to the Seller pursuant to Clause 4.7(a)(i) from the Remaining Escrow Amount, such Surplus Escrow Amount to the account designated by the Purchaser, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Purchaser;

(b) if there are no Unacquired Sale Securities in any Portfolio Company, to the extent that any Surplus Escrow Amount is left in the Escrow Account after payment of the Relevant Completion Amount to the Seller at Final Completion, such Surplus Escrow Amount to the account designated by the Purchaser, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Purchaser.

4.8 To the extent that the True Up Amount is a negative number, the Seller shall pay an amount equal to the difference between (x) the True Up Value and (y) the Initial Consideration or Adjusted Consideration (as applicable) for the Unacquired Sale Securities to the account designated by the Purchaser, by wire transfer of immediately available funds, for the benefit of the Purchaser.

4.9 Any payment made or procured to be made pursuant to Clause 4.5 to the Seller shall be paid on the Relevant Completion Date in accordance with Clause 7. Any payment made or procured to be made pursuant to Clauses 4.7(b) or 4.8 to the Purchaser shall be paid promptly (and in any event within two (2) Business Days) after Final Completion. Any payment made or procured to be made pursuant to Clause 4.7(a) to the Seller and the Purchaser (as applicable) shall be paid on the True Up Payment Date.

4.10 To the extent that any Surplus Escrow Amount is left in the Escrow Account after valid termination of this Agreement in accordance with its terms, within five (5) Business Days after such termination the Seller and the Purchaser shall jointly instruct the Escrow Agent to pay such Surplus Escrow Amount to the account designated by the Purchaser, by wire transfer of immediately available funds from the Escrow Account, for the benefit of the Purchaser.

4.11 The Parties acknowledge and agree that no money shall be paid out of the Escrow Account otherwise than in accordance with this Clause 4 or the terms of the Escrow Agreement.

4.12 If the Purchaser or the Seller fails to give a written instruction in breach of Clauses 4.5, 4.6, 4.7, 4.8 or 4.10, the Purchaser (in the case of a breach by the Purchaser), or the Seller (in the case of a breach by the Seller), shall:

(a) indemnify the other Party against all Losses incurred by it as a result of such breach and in taking any action or proceedings to enforce its rights to receive payment of the amount that is due; and

(b) to the extent the Escrow Agent becomes involved in any such action or proceedings, be responsible for and shall pay any costs or fees properly incurred by the Escrow Agent as a result.

4.13 The relevant Final Consideration shall be adopted for all Tax reporting purposes.

4.14 Any consideration paid pursuant to this Clause 4 shall be paid without deduction or withholding of any kind unless such deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any such amounts, the sum otherwise payable by the Purchaser (or the Escrow Agent on behalf of the Purchaser) shall be increased to such amount as will ensure that, after the deduction or withholding has been made, the Seller will receive the same amount as it would have been entitled to receive if no deduction or withholding had been required (the amount of such increase, the "Gross Up Amount"); provided, that with respect to any such payment to be made by the Escrow Agent, to the extent the Remaining Escrow Amount is insufficient to cover any Gross Up Amount (or is insufficient to pay any amount otherwise payable by the Escrow Agent to the Seller), the Purchaser shall pay or cause to be paid by wire transfer of immediately available funds the amount of such Gross Up Amount (or such amount otherwise payable) to the Escrow Agent no later than two (2) Business Days prior to the date of such payment.

4.15 At any time prior to the date on which a Transfer Notice is served in respect of a Private Portfolio Company in accordance with the Roadmap, the Purchaser may, with the prior written consent of the Seller, adjust the Initial Consideration specified for that Private Portfolio Company (and any other Private Portfolio Company in respect of which a Transfer Notice has not then been served) in Schedule 1, provided that in aggregate such adjustments do not result in a change to the aggregate Initial Consideration so specified in respect of the Private Portfolio Companies.

5. Conditions

5.1 The parties agree that the sale and purchase of the Sale Securities contemplated by this Agreement may take place at more than one Relevant Completion.

5.2 Each Relevant Completion is conditional upon the satisfaction or, where capable of waiver, waiver of the following conditions (collectively, the "Conditions"):

(a) by the Parties:

(i) no order having been received from an Authority preventing the transfer of the applicable Sale Securities to the Purchaser at such Relevant Completion; and

(ii) to the extent applicable, the Seller having obtained either: (A) the right to transfer the applicable Sale Securities to the Purchaser; or (B) a Waiver and Consent from the requisite security holders of such Portfolio Company, in the case of each of (A) and (B) pursuant to and in accordance with the Compulsory Sale Provisions under the applicable Portfolio Agreements;

(b) by the Purchaser:

(i) the Seller's Warranties shall be true and accurate at the Relevant Completion Date; and

(c) by the Seller:

(i) the Purchaser's Warranties shall be true and accurate at the Relevant Completion Date.

5.3 The Seller and the Purchaser shall each use their commercially reasonable endeavours to achieve satisfaction of the Conditions as soon as reasonably practicable after the date of this Agreement and in any event not later than 5:00 p.m. on the Longstop Date.

5.4 The Purchaser and the Seller shall co-operate fully in all actions necessary to procure the satisfaction of the Conditions including the provision by both Parties and any relevant Portfolio Companies of all information reasonably necessary to make any notification or filing to, or as requested by, any relevant Authority, keeping the other Party informed of the progress of any notification or filing and providing such assistance as may reasonably be required.

5.5 If, at any time, either Party becomes aware of a fact or circumstance that could reasonably be considered likely to prevent a Condition being satisfied, it shall inform the other Party as soon as reasonably practicable.

5.6 At any time on or before 5:00 p.m. on the Longstop Date, the Purchaser and the Seller each may, to the extent permitted by law, in its absolute discretion waive any of the Conditions insofar as they relate to the other Party (other than the Condition set out in Clause 5.2(a)(i), which in the case of each Relevant Completion may not be waived by any Party), either in whole or in part, by notice in writing to the other Party.

5.7 If:

(a) the Escrow Amount is not received in the Escrow Account by the sixth (6th) Business Day after the date of this Agreement, at any time thereafter the Seller may terminate this

Agreement with immediate effect by written notice to the Purchaser, and upon such termination, all clauses of this Agreement except for this sub-clause and the Surviving Provisions shall lapse and cease to have any effect;

(b) all Relevant Completions have not occurred on or before 5:00 p.m. on the Longstop Date, then this Agreement may be terminated with immediate effect by either Party by written notice to the other Party, and upon such termination all clauses of this Agreement except for this sub-clause and the Surviving Provisions shall lapse and cease to have any effect;

provided, that neither the termination nor lapsing of this Agreement or any provisions hereof pursuant to this Clause 5.7 shall affect any accrued rights or liabilities of any Party or the validity of any transfer of Sale Securities which may have taken place prior to such termination.

5.8 The following provisions shall continue to have effect, notwithstanding the termination or lapse of the Agreement under Clause 5.7:

(a) Clause 1 (*Interpretation*);

(b) Clause 5.7 and 5.8 (*Conditions*);

(c) Clause 11 (*Confidential Information*);

(d) Clause 12 (*Announcements and Filings*);

(e) Clause 13 (*Variation and Waiver*);

(f) Clause 17 (*Costs and Expenses*);

(g) Clause 20 (*Entire Agreement*);

(h) Clause 22 (*Notices*);

(i) Clause 25 (*No Rescission*); and

(j) Clause 26 (*Governing Law and Jurisdiction*)

(collectively, the "Surviving Provisions").

6. Compulsory Sale Provisions; Cooperation; Other Pre-Completion Covenants

6.1 The Seller and the Purchaser acknowledge that the Signing Sale Securities of the Private Portfolio Companies are subject to the Compulsory Sale Provisions included in the relevant Portfolio Agreements. To permit the implementation of the transaction contemplated by this Agreement, the Seller shall: (i) trigger the Compulsory Sale Provisions applicable to each of such Sale Securities by sending a Transfer Notice to the relevant Private Portfolio Company; and/or (ii) seek a waiver of the applicable Compulsory Sale Provisions and consent to the transfer of the Sale Securities to the Purchaser (or its Nominee) pursuant to this Agreement in accordance with the applicable Portfolio Agreements (a "Waiver and Consent"), in each case as set out in (and at the time provided in) **Schedule 5** hereto (the "Roadmap"). In connection with the foregoing, (x) to the extent the Portfolio Agreements require the Seller to identify the proposed transferee of the Sale Securities, the Purchaser shall provide the Seller with the name of its Nominee (if any) prior to the date the relevant Transfer Notice or Waiver and Consent (as applicable) is to be dispatched by the Seller

pursuant to the Roadmap (in the absence of such notice, the Seller shall be entitled to enter the name of the Purchaser as the proposed transferee) and (y) the Seller shall take such actions as are required under the Portfolio Agreements (to the extent it is able) in order to permit each Relevant Completion to occur on or around the date set out in **Schedule 5** hereto under the column "*Targeted Relevant Completion Date*". The Seller and the Purchaser shall cooperate in good faith with respect to the implementation of the Roadmap in accordance with the terms of this Agreement. No variation or amendment of the Roadmap shall be valid unless it is in writing and signed by or on behalf of each Party (with each such consent to a proposed amendment not to be unreasonably withheld, delayed or conditioned by either Party).

6.2 Subject to Clause 6.5 and without limiting the generality of Clause 6.1:

(a) with respect to the Sale Securities in each of AMO Pharma, Oxford Nanopore and Novabiotics, subject to Clause **6.4**, if the Seller is unable to obtain a Waiver and Consent in relation to such Signing Sale Securities:

(i) if the Seller agrees a purchase price for such Signing Sale Securities with the directors of the relevant Portfolio Company, or, if the Seller is unable to agree a purchase price for such Signing Sale Securities with the directors of such Portfolio Company, the Valuer of such Portfolio Company determines an aggregate purchase price for such Signing Sale Securities that is higher than the Initial Consideration for such Signing Sale Securities set out in Part A of **Schedule 1** hereto, in accordance with the applicable Portfolio Agreements, then the Initial Consideration shall be increased by the amount by which the Adjusted Consideration exceeds the Initial Consideration; or

(ii) if the Seller agrees a purchase price for such Signing Sale Securities with the directors of the relevant Portfolio Company, or, if the Seller is unable to agree a purchase price for such Signing Sale Securities with the directors of such Portfolio Company, the Valuer of such Portfolio Company determines an aggregate purchase price for such Signing Sale Securities that is lower than the Initial Consideration for such Signing Sale Securities set out in Part A of **Schedule 1**, in accordance with the applicable Portfolio Agreements, then the Initial Consideration shall be decreased by the amount by which the Initial Consideration exceeds the Adjusted Consideration; and

(b) with respect to the Sale Securities in Malin J1, subject to Clause **6.4**, the Initial Consideration for the relevant Signing Sale Securities shall be adjusted, to the extent applicable, as follows:

(i) if the Valuer determines an aggregate purchase price for such Signing Sale Securities that is higher than the Initial Consideration for such Signing Sale Securities set out in Part A of **Schedule 1** hereto, then the Initial Consideration shall be increased by the amount by which the Adjusted Consideration exceeds the Initial Consideration; or

(ii) if the Valuer determines an aggregate purchase price for such Signing Sale Securities that is lower than the Initial Consideration for such Signing Sale Securities set out in Part A of **Schedule 1** hereto, then the Initial Consideration shall be decreased by the amount by which the Initial Consideration exceeds the Adjusted Consideration.

6.3 Subject to Clause 6.5 and without limiting the generality of Clause 6.1, with respect to the Sale Securities:

(a) in Viamet, if any of the other security holders in Viamet validly exercises tag-along rights under the applicable Compulsory Sale Provisions of Viamet's Portfolio Agreements (the securities held by such security holders in Viamet, the "Tag-Along Securities"), and the Purchaser does not agree to purchase such Tag-Along Securities, the Seller shall not be obliged to sell and the Purchaser shall not be obliged to purchase the Viamet Signing Sale Securities pursuant to this Agreement and such Signing Sale Securities shall become Unacquired Sale Securities for all purposes hereunder; and

(b) in the case of Malin J1, if any of the other security holders in Malin J1 validly exercises their right of first refusal under the applicable Compulsory Sale Provisions of Malin J1's Portfolio Agreements in relation to some, but not all, of the Malin J1 Signing Sale Securities (any such Signing Sale Securities applied for purchase by such security holders, the "ROFR Securities"):

(i) then the Purchaser shall be obliged to purchase such Signing Sale Securities (other than the ROFR Securities) pursuant to this Agreement;

(ii) the Seller shall be obliged to sell (x) such ROFR Securities to such security holders in accordance with the applicable Portfolio Agreements and (y) such Signing Sale Securities (other than the ROFR Securities) to the Purchaser pursuant to this Agreement,

and such ROFR Securities shall become Excluded Sale Securities for all purposes hereunder.

6.4 No adjustment shall be made under Clauses 6.2(a)(i) or 6.2(b)(i), where, as a result of an adjustment to the Initial Consideration for the Sale Securities in any Price Adjustable Portfolio Company, the aggregate adjustment to the Initial Consideration in respect of the Sale Securities in all of the Price Adjustable Portfolio Companies pursuant to such Clauses would exceed the total aggregate Initial Consideration set out against the Public Portfolio Companies in Part B of **Schedule 1**, without the Purchaser's prior written consent. Where the Purchaser does not provide such prior written consent, the Seller shall not be obliged to sell and the Purchaser shall not be obliged to purchase the Sale Securities in respect of which the Purchaser's prior written consent is not given in accordance with the preceding sentence and such Sale Securities shall become Unacquired Sale Securities for all purposes hereunder. Where the Purchaser does consent to any such adjustment pursuant to the Clauses 6.2(a)(i) or 6.2(b)(i), the amount by which any such adjustment exceeds the total aggregate Initial Consideration set out against the Public Portfolio Companies in Part B of **Schedule 1** shall increase the Initial Consideration for the Sale Securities in the relevant Price Adjustable Portfolio Company pursuant to such clauses but shall not operate as an Overpricing Amount pursuant to Clause 4.2(b).

6.5 To the extent that, following any adjustment to the Initial Consideration for any Sale Securities pursuant to Clauses 6.2 and 6.3, any such Sale Securities become Unacquired Sale Securities, any adjustment to the Initial Consideration for any such Sale Securities made pursuant to Clauses 6.2 and 6.3 shall be disregarded for all purposes under this Agreement and the consideration for any such Sale Securities shall be the Initial Consideration for all purposes under this Agreement.

6.6 For the avoidance of doubt, the Seller shall not be obligated to sell, transfer or assign, or procure the sale, transfer or assignment (as applicable), and the Purchaser shall not be required to purchase, take transfer of and assume, any Excluded Sale Securities under this Agreement. To the extent that any Signing Sale Securities become Excluded Sale Securities under this Agreement:

(a) in the case of any Excluded Sale Securities in any Public Portfolio Company and any Private Portfolio Company other than the Price Adjustable Portfolio Companies, the Initial Consideration; and

(b) in the case of any Excluded Sale Securities in any of the Price Adjustable Portfolio Companies, the Adjusted Consideration,

shall be decreased by an amount equal to the product of (x) the number of such Excluded Sale Securities and (y) the Price per Sale Security applicable to such Excluded Sale Securities. Any adjustment to the Initial Consideration or the Adjusted Consideration (as applicable) of any Signing Sale Securities pursuant to this Clause 6.6 shall be without prejudice to any other price adjustment made pursuant to this Agreement.

6.7 The Purchaser and the Seller shall cooperate with each other in furnishing any information or performing any action reasonably requested by the other Party, in each case that is reasonably necessary for the timely and effective consummation of the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, from and after the date of this Agreement:

(a) each of the Seller and the Purchaser shall use their respective best endeavours to obtain, satisfy or agree the form of all Transfer Documents and Ancillary Transfer Documents which, pursuant to the relevant Portfolio Agreements, are required to be obtained, satisfied or agreed by, as applicable, the Seller or the Purchaser;

(b) each of the Seller and the Purchaser shall use their respective best endeavours to obtain all approvals and consents required from each Portfolio Company or the security holders of each Portfolio Company (as applicable) pursuant to the terms of the relevant Portfolio Agreements for the transfer of the Sale Securities to the Purchaser; and

(c) each of the Seller and the Purchaser, as the case may be, will provide any information or documents reasonably requested by any Portfolio Company in order to achieve the Relevant Completion or which are required to be provided pursuant to the relevant Portfolio Agreements for the Purchaser to be the transferee of any relevant Sale Securities, pursuant to any applicable Portfolio Agreements or otherwise or any information required to satisfy know-your-customer or anti-money laundering requirements of such Portfolio Company;

provided, however, when used in this Clause 6, the terms "reasonable endeavours" and "best endeavours" shall not be deemed to impose on the Seller or the Purchaser any obligation to make a payment of any fee, cost or other monetary amount (including, without limitation, any additional investment in any form in a Portfolio Company or the costs of any Valuer) to any Portfolio Company or any other person from whom a consent or approval is sought.

6.8 In addition to the Parties' other covenants in this Clause 6, in respect of each of the Sale Securities, the Parties agree that, subject to the terms of the relevant Portfolio Agreements, from and including

the date of this Agreement until the applicable Relevant Completion Date, each of the Seller and the Purchaser shall perform its respective obligations set out in **Schedule 3**.

6.9 The Seller shall keep the Purchaser fully informed at regular intervals of the progress and status in relation to each proposed transfer of Sale Securities in each Private Portfolio Company (including as to the status and progress in obtaining each Waiver and Consent and in relation to each Transfer Notice served (in each case as applicable)) and hereby agrees that it shall:

(a) consult with the Purchaser and take into account any reasonable comments of the Purchaser in relation to each proposed transfer of Sale Securities in each Private Portfolio Company or any Waiver and Consent or Transfer Notice;

(b) unless otherwise agreed in writing by the Purchaser and the Seller, include the Initial Consideration listed against the name of the relevant Portfolio Company in the column titled "*Initial Consideration*" of **Schedule 1** hereto in any Transfer Notice in connection with any Compulsory Sale process; and

(c) not revoke any Transfer Notice without the Purchaser's prior written consent.

6.10 To the extent applicable, in respect of each of the Sale Securities, following satisfaction or waiver, as the case may be, of the relevant Conditions, but not less than five (5) Business Days prior to the Relevant Completion, the Purchaser may provide to the Seller in writing the names and all relevant details of the individuals to be appointed as directors of the relevant Portfolio Company upon such Relevant Completion, together with completed applications and connected papers in connection therewith, and, if so provided, the Seller shall promptly submit such details to such Portfolio Company for approval. The Purchaser irrevocably agrees that the Seller shall not be held responsible for any delay or failure by the relevant Portfolio Company to appoint any individual nominated by the Purchaser as a director of such Portfolio Company where such delay or failure is not caused by the Seller's non-compliance with this Clause 6.10.

6.11 Concurrently with the execution of this Agreement, the Seller shall cause the Depositary to provide validation of the current DTC and CREST location of the applicable Sale Securities and confirmation that such Sale Securities are freely tradeable.

7. Completion

7.1 Within five (5) Business Days following the Unconditional Date (but in any case prior to the Longstop Date) with respect to any Sale Securities of any Portfolio Company (other than 4d Pharma, Open Orphan, Synairgen and Theravance), the Seller shall deliver to the Purchaser a written notice notifying the Purchaser of the Seller's intention to proceed to a Relevant Completion (each such notice, an "Unconditional Sale Securities Notice", and the date of delivery of any such Unconditional Sale Securities Notice being the "Unconditional Sale Securities Notice Date") setting out:

(a) the Unconditional Sale Securities able to be transferred to the Purchaser;

(b) the Relevant Completion Amount payable in respect of the Unconditional Sale Securities; and

(c) the date on which any such Unconditional Sale Securities are required to be transferred pursuant to the applicable Portfolio Agreements or the terms of any Waiver and Consent,

provided, that if the Seller fails to deliver an Unconditional Sale Securities Notice in respect of such Unconditional Sale Securities by the date which is the later of (A) the date which falls five (5) Business Days prior to the date on which any such Unconditional Sale Securities are required to be transferred pursuant to the applicable Portfolio Agreements or the terms of any Waiver and Consent and (B) the date which falls five (5) Business Days prior to the Longstop Date (such date, the "Final Unconditional Date"), the Seller shall be deemed to have delivered an Unconditional Sale Securities Notice to the Purchaser on the Final Unconditional Date.

7.2 As soon as possible following receipt by the Purchaser of an Unconditional Sale Securities Notice with respect to any Unconditional Sale Securities and in any event no later than five (5) Business Days following receipt thereof, the Purchaser shall deliver to the Seller a written notice (each such notice, a "Pre-Completion Notice") setting out:

(a) unless earlier notified to the Seller pursuant to Clause 6.1, the identity of any Nominee or Nominees of the Purchaser (or account or custodian of any such person) that will take transfer of any Unconditional Sale Securities at such Relevant Completion (and the Unconditional Sale Securities each such Nominee will take transfer of);

(b) solely with respect to the Sale Securities in the Private Portfolio Companies, the proposed completion date of such Relevant Completion, being a date which is not less than five (5) Business Days and not more than twenty (20) Business Days after the date of the Pre-Completion Notice (and in any event not later than the Longstop Date) (the "Private Portfolio Company Proposed Completion Date"); and

(c) solely with respect to the Sale Securities in the Public Portfolio Companies, the proposed completion date of such Relevant Completion, being a date which is not less than one (1) Business Day after the date of the Pre-Completion Notice (so long as the Pre-Completion Notice is delivered by 2:00 p.m. on the date of delivery of the Pre-Completion Notice) and not later than the last Private Portfolio Company Proposed Completion Date (and in any event not later than the Longstop Date) (the "Public Portfolio Company Proposed Completion Date").

7.3 Notwithstanding the foregoing provisions of this Clause 7, in the case of the Sale Securities of each of 4d Pharma, Open Orphan, Synairgen and Theravance:

(a) the date of this Agreement shall be deemed the Unconditional Sale Securities Notice Date for such Sale Securities and the Seller shall be deemed to have delivered to the Purchaser an Unconditional Sale Securities Notice substantially in the form attached as **Schedule 9** hereto with respect to such Sale Securities;

(b) the Purchaser shall be deemed to have delivered to the Seller a Pre-Completion Notice on the date of this Agreement substantially in the form attached as **Schedule 10** hereto in respect of such Sale Securities; and

(c) immediately following the Escrow Agent notifying the Parties that the Escrow Amount (in pound sterling) has been received in the Escrow Account pursuant to the terms of the Escrow Agreement (but in no event before such time): (i) the Parties shall jointly instruct the Escrow Agent to pay the Relevant Completion Amount in respect of such Sale Securities at the Relevant Completion to the account designated by the Seller, by wire transfer of immediately available funds from the Escrow Account, and to notify the Parties immediately upon such payment being initiated (together with wire transfer details) in

accordance with the Escrow Agreement (the "First Completion Payment Notice"), and (ii) simultaneously with such joint written instruction, the Seller shall deliver an instruction to the Depositary to transfer such Sale Securities to the Purchaser or any Nominee identified by the Purchaser in the relevant Pre-Completion Notice on the Relevant Completion Date (with a copy of such instruction to the Purchaser). For the purposes of this Clause 7.3, the "Relevant Completion Date" shall be the date the Escrow Agent delivers to the Parties the First Completion Payment Notice, and the Seller shall use its commercially reasonable endeavours to procure that the delivery of the applicable Sale Securities to the account of the Purchaser shall occur (x) if the Seller receives the First Completion Payment Notice from the Escrow Agent by no later than 12:00 p.m. on the date of the First Completion Payment Notice, on the date of the First Completion Payment Notice, and (y) if the Seller receives the First Completion Payment Notice from the Escrow Agent after 12:00 p.m. on the date of the First Completion Payment Notice, on the first Business Day immediately following the date of the First Completion Payment Notice.

7.4 Unless otherwise agreed by the Seller and the Purchaser in writing, each Relevant Completion shall take place at the offices of the Seller's Solicitors on the earlier of (x) the Proposed Completion Date with respect to the applicable Unconditional Sale Securities set out in the relevant Pre-Completion Notice and (y) if the Purchaser fails to deliver a Pre-Completion Notice or if the Proposed Completion Date is later than the earlier of (A) the date on which any such Unconditional Sale Securities are required to be transferred pursuant to the applicable Portfolio Agreements or the terms of any Waiver and Consent and (B) the Longstop Date, the Relevant Completion in respect of such Unconditional Sale Securities shall occur on the earlier of (1) the twentieth (20th) Business Day after the relevant Unconditional Sale Securities Notice Date, (2) the date on which such Unconditional Sale Securities are required to be transferred pursuant to the applicable Portfolio Agreements or the terms of any Waiver and Consent and (2) the Longstop Date (the date of such Relevant Completion, the "Relevant Completion Date").

7.5 At each Relevant Completion:

(a) the Seller shall do all those things required of it (insofar as they apply to the relevant Sale Securities) in accordance with Clause 4.5 and Part A of **Schedule 4**; and

(b) the Purchaser shall do all those things required of it (insofar as they apply to the relevant Sale Securities) in accordance with Clause 4.5, Part B of **Schedule 4** and any relevant Unconditional Sale Securities Notice.

7.6 If a Party does not comply with its material obligations under this Clause 7 and **Schedule 4** at the Relevant Completion in any respect, the other Party shall not be obliged to complete the sale of the relevant Sale Securities or perform any of the other obligations set out in **Schedule 4** at the Relevant Completion and the other Party may in its absolute discretion (in addition and without prejudice to any other right or remedy available to the other Party hereunder or at common law) by written notice to the non-complying Party:

(a) defer such Relevant Completion to such other date (not being after the Longstop Date) as such Party may specify (and so that the provisions of this Agreement relating to such Relevant Completion shall apply *mutatis mutandis*) with, in the case of non-compliance by the Purchaser, interest accruing on the Relevant Completion Amount pursuant to Clause 18 until such time as such Completion actually occurs;

(b) waive all or any of the requirements contained or referred to in the Unconditional Sale Securities Notice, the Pre-Completion Notice or **Schedule 4** (as applicable) at its discretion and proceed to such Relevant Completion so far as practicable, without prejudice to any rights against the non-complying Party for breach of contract or otherwise under this Agreement; or

(c) if the Longstop Date has passed, terminate this Agreement by notice in writing to the non-complying Party.

7.7 Where a Party terminates this Agreement pursuant to Clause 7.6(c), each Party's further rights and obligations with respect to any Sale Securities which have not been transferred by the Seller to the Purchaser at a Relevant Completion prior to the date of such termination shall cease immediately on such termination, but such termination shall not affect a Party's accrued rights and obligations at termination. Those provisions set out in Clause 5.8 shall continue to have effect, notwithstanding the termination of this Agreement under Clause 7.6(c).

8. Warranties

8.1 The Seller warrants to the Purchaser that the Seller's Warranties are true and accurate (i) at the date of this Agreement and (ii) at each Relevant Completion Date.

8.2 The Purchaser warrants (with respect to itself and any Nominee) to the Seller that the Purchaser's Warranties are true and accurate (i) at the date of this Agreement, and (ii) at each Relevant Completion Date.

8.3 The Seller's liability for Warranty Claims shall be limited or excluded, as the case may be, as set out in **Schedule 6** hereto.

8.4 In respect of the Seller's Warranties contained in paragraphs 1.6 to 1.9 (inclusive) of **Schedule 7** only, the Purchaser shall not be entitled to claim that any fact, matter or circumstance causes any of such Seller's Warranties to be breached if such fact, matter or circumstance is fairly disclosed to the Purchaser in the Data Room.

8.5 Each of the Seller's Warranties shall be construed as a separate and independent warranty and shall not be restricted or limited by reference to any other warranty or any term of this Agreement.

8.6 Where any of the Seller's Warranties is qualified by the expression "to the Seller's actual knowledge" or "so far as the Seller is actually aware" or any similar expression, for the purposes of any such Seller's Warranty "actual knowledge" of the Seller means only the actual knowledge of Joy Doran, Ann Hall, Paul Doran, Stephen Booth, Viresh Kanabar and Nigel Boyling but shall exclude any other constructive or imputed knowledge, including the knowledge of the Seller's agents and/or its advisers.

8.7 The Purchaser acknowledges and agrees that, except as provided under the Seller's Warranties, no other statement, promise or forecast made by or on behalf of the Seller or any member of the Seller's Group may form the basis of any Warranty Claim by the Purchaser or any other member of the Purchaser's Group under or in connection with this Agreement or any Transaction Document. In particular, the Seller does not make any representation or warranty as to the accuracy of any forecasts, estimates, projections, statements of intent or opinion provided to the Purchaser or its Representatives on or before the date of this Agreement (including any documents in the Data Room).

8.8 Except in the case of fraud and as against any individual or entity who has acted fraudulently, the Purchaser agrees and undertakes with the Seller that neither it nor any other member of the Purchaser's Group has any rights against, and will waive and shall not make any claim against, any employee, director, officer, adviser or agent of any member of the Seller's Group on whom the Purchaser may have relied before agreeing to any term of this Agreement or any other Transaction Document or before entering into this Agreement or any other Transaction Document.

8.9 All of the Seller's Warranties and the Purchaser's Warranties contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement until the expiry of the period for making claims for breach of such Seller's Warranties under this Agreement (at which time such Seller's Warranties and Purchaser's Warranties shall terminate).

9. Effect of Completion

This Agreement shall, as regards the Purchaser's Warranties and the Seller's Warranties and any other of its provisions remaining to be performed or capable of having or taking effect following each Relevant Completion Date, remain in full force and effect following such Relevant Completion Date.

10. Dealings in Takeover Code Sale Securities

10.1 The Purchaser warrants to the Seller that, as at the date of this Agreement, it and its Concert Parties do not have any interest in shares in the capital of any of the Takeover Code Portfolio Companies (with the question as to whether the Purchaser or any of its Concert Parties hold an interest in such shares being determined in accordance with the Takeover Code).

10.2 The Purchaser shall not, and insofar as it is legally able to do so, shall procure that its Concert Parties do not, acquire or dispose of any shares in the capital of any of the Takeover Code Portfolio Companies prior to the earlier of (i) the termination of this Agreement and (ii) the Relevant Completion Date in respect of each such Takeover Code Portfolio Company.

11. Confidential Information

11.1 Subject to Clause 11.2 and Clause 12, the Seller undertakes to the Purchaser, the Purchaser acting for itself and as agent and trustee for each of its Affiliates, and the Purchaser undertakes to the Seller, the Seller acting for itself and as agent and trustee for each of its Affiliates, that the Seller (and its Affiliates) or the Purchaser (and the Purchaser's Group) (as the case may be) shall treat as confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:

(a) the other Party including, where that other Party is the Seller, each of its Affiliates and where that other Party is the Purchaser, each member of the Purchaser's Group (the "Disclosing Party");

(b) the provisions or the subject matter of this Agreement, any other Transaction Document or any Transfer Document or Ancillary Transfer Document and any claim or potential claim thereunder; and

(c) the negotiations relating to this Agreement or any other Transaction Documents or any Transfer Document or Ancillary Transfer Document.

11.2 Clause 11.1 does not apply to disclosure of any such information as is referred to in that Clause by a Party:

(a) which is required to be disclosed by law, by a rule of a listing authority or stock exchange to which any Party is subject or submits or by any Authority with relevant powers to which any Party is subject or submits, whether or not the requirement has the force of law provided that the disclosure shall, if permitted by law and so far as is practicable, be made after consultation with, in the case of disclosure by the Purchaser or the relevant Portfolio Company, the Seller or, in the case of disclosure by the Seller, the Purchaser and after taking into account the reasonable requirements of the Seller or the Purchaser (as applicable) as to its timing, content and manner of making or despatch;

(b) to an adviser for the purpose of advising in connection with the transactions contemplated by this Agreement provided that such disclosure is necessary for these purposes and is on the basis that the Party disclosing such information procures that such person keeps such information confidential on the same terms which apply to the Disclosing Party under this Agreement;

(c) to (i) a director, officer, employee or auditor or (ii) with the prior written approval of the Seller (not to be unreasonably withheld, conditioned or delayed), a financing source, of the Purchaser or a member of the Purchaser's Group whose function requires him to have the relevant confidential information and on the basis that the party disclosing such information procures that such person keeps such information confidential on the same terms which apply to the Disclosing Party under this Agreement;

(d) to a member of the Seller's Group whose function requires him to have the relevant confidential information and is on the basis that the party disclosing such information procures that such member keeps such information confidential on the same terms which apply to the Disclosing Party under this Agreement; or

(e) to the extent that the information has been made public by, or with the consent of, the Disclosing Party.

11.3 The restrictions contained in this Clause 11 shall continue to apply after each Relevant Completion.

12. Announcements and Filings

12.1 Subject to Clause 12.2, no Party may, before or for a period of six (6) months after any Relevant Completion, make or issue a public announcement, communication or circular concerning the existence of, or the transactions referred to, in this Agreement unless it has first obtained the other Party's written consent, which shall not be unreasonably withheld or delayed.

12.2 Clause 12.1 shall not apply to a public announcement, communication, circular or filing required by law, by a rule of a listing authority or stock exchange to which any Party is subject or submits, or by an Authority with relevant powers to which any Party is subject or submits, whether or not the requirement has the force of law, provided that the public announcement, communication, circular or filing shall, if permitted by law and so far as is practicable, be made or issued after consultation with, in the case of one to be made or issued by the Purchaser, the Seller or, in the case of one to be made or issued by the Seller, the Purchaser and after taking into account the reasonable requirements of the Seller or the Purchaser (as applicable) as to its timing, content and manner of despatch.

12.3 If this Agreement is terminated in accordance with its terms, the restrictions contained in this Clause 12 shall continue to apply after the termination of this Agreement for a period of six (6) months from the date of such termination.

13. Variation and Waiver

13.1 No variation or amendment of this Agreement shall be valid unless it is in writing and signed by or on behalf of each Party.

13.2 Any failure by any party to exercise, or any delay by it in exercising, any right, power or remedy provided for in this Agreement or by law shall not effect or constitute a waiver of such right, power or remedy.

13.3 Any single or partial exercise of any right, power or remedy provided for in this Agreement or by law shall not preclude any other or further exercise of it or any other right, power or remedy.

14. Further Assurance

The Parties shall, at their own cost and expense, procure that their respective Affiliates shall, at their own cost and expense, do, execute and perform all such further deeds, documents, assurances, acts and things as may be reasonably required to give effect to the terms of this Agreement and to secure for the Seller or the Purchaser (as the case may be) the full benefit of the rights, powers and remedies conferred upon them in this Agreement.

15. Time of the Essence

Except as otherwise stated in this Agreement, time is of the essence in relation to each provision of this Agreement.

16. Assignment

Neither Party may assign or transfer this Agreement or any of its rights or obligations under it without the prior written consent of the other Party; provided, that the Purchaser may assign any of its rights and obligations under this Agreement to any Nominee, but, provided further, that notwithstanding any such assignment, the Purchaser shall remain liable for any obligations so assigned. Any proposed assignment in violation of this Clause 16 shall be null and void *ab initio*.

17. Costs and Expenses

17.1 Except as otherwise provided in this Agreement or in any other Transaction Document, each Party shall bear its own costs and expenses arising out of or in connection with the negotiation, preparation, execution and implementation of this Agreement, all other Transaction Documents and any Transfer Documents and Ancillary Transfer Documents and the transactions contemplated thereunder, provided that:

(a) the Seller shall bear one hundred per cent. (100%) of the costs and expenses of the Escrow Agent in respect of the opening and maintenance of the Escrow Account;

(b) the Purchaser shall bear one hundred per cent. (100%) of the policy premium for insurance coverage against liabilities of the Seller in respect of any Warranty Claims, if so purchased by the Purchaser;

(c) the Purchaser shall bear one hundred per cent. (100%) of the costs and expenses of the filing fee for any Notification and Report Form required to be filed under the HSR Act; and

(d) for the avoidance of doubt, each Party shall bear its own costs and expenses arising out of or in connection with the proposed transfer of the Sale Securities in each Private Portfolio Company pursuant to Clause 6 (including, without limitation, the costs and expenses arising out of or in connection with any Waiver and Consent or Transfer Notice) and provided always that the cost of any Valuer shall be borne by the Seller and/or the relevant Portfolio Company pursuant to the terms of the relevant Portfolio Agreement.

17.2 All and any Transfer Taxes incurred in connection with the consummation of the transactions contemplated by this Agreement shall be borne by the Purchaser.

18. Interest

If any Party fails to pay or procure (so far as it is able) payment of a sum due from it under this Agreement on the due date for such payment, that Party shall pay interest at the Agreed Rate (accrued daily and compounded monthly) on the overdue sum from the due date of payment until the date on which its obligations to pay the sum are discharged.

19. Provision of Information to Insurers

If at any time after the date of this Agreement the Purchaser wishes to insure against any liabilities of the Seller in respect of any Warranty Claims, the Parties shall provide such information in relation to this Agreement and the Portfolio Companies as a prospective insurer or insurance broker may require before effecting the insurance.

20. Entire Agreement

20.1 This Agreement (together with the other Transaction Documents) constitutes the entire agreement between the Parties and supersedes any previous agreements relating to the transactions contemplated thereby and sets out the complete legal relationship of the Parties arising from or connected with that subject matter.

20.2 For the avoidance of doubt, the Parties agree that, to the extent that this Agreement conflicts with the provisions of any of the other Transaction Documents, this Agreement takes precedence.

20.3 Nothing in this Clause 20 shall have the effect of limiting any liability arising from fraud.

21. Invalidity

21.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, that shall not affect:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

(b) the legality, validity or enforceability under the laws of any other jurisdiction of that or any other provision of this Agreement.

22. Notices

22.1 Any notice or other communication given under or in connection with this Agreement shall be in writing, in the English language and may be served by delivering it personally or sending it by first class post (and airmail, if overseas) or electronic mail to the address and for the attention of the relevant Party set out in Clause 22.3 (or as otherwise notified by that Party under this Agreement).

22.2 Any such notice shall be deemed to have been received:

(a) if delivered personally, at the time of delivery;

(b) if sent by mail, other than airmail, two (2) Business Days after posting it;

(c) in the case of airmail, six (6) Business Days after posting it; and

(d) in the case of electronic mail, when confirmation of its transmission has been recorded.

22.3 The addresses of the Parties for the purpose of this Clause 22 are:

In the case of the Seller:

Address: c/o Link Fund Solutions Limited
6th Floor, 65 Gresham Street
London EC2V 7NQ
United Kingdom
For the attention of: Joy Doran
E-mail: Joy.Doran@linkgroup.co.uk

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

Address: Debevoise & Plimpton LLP
65 Gresham Street
London EC2V 7NQ
United Kingdom
For the attention of: Katherine Ashton
E-mail: kashton@debevoise.com

In the case of the Purchaser:

Address: 4 Park Plaza
Suite 550
Irvine, CA 92614
U.S.A.
For the attention of: Clifford Press
E-mail: cpress@acaciares.com

With copies to (which shall not constitute notice):

Address: Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
U.S.A.
For the attention of: Aneliya Crawford, Esq.
E-mail: Aneliya.crawford@srz.com

and

Address: Herbert Smith Freehills LLP
Exchange House
Primrose Street, London, EC2A 2EG
United Kingdom
For the attention of: Alan Montgomery and Stephen Newby
E-mail: Alan.Montgomery@hsf.com and Stephen.newby@hsf.com

or such other address or electronic mail address as may be notified in writing from time to time by the relevant Party to the other Party.

22.4 In proving service of a notice or other communication, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in this Clause 22 (or as otherwise notified by that Party under this Agreement) and delivered either to that address or into the custody of the postal authorities as a mail or airmail letter, or that the notice was transmitted by electronic mail to the e-mail address of the relevant Party set out in this Clause 22 (or as otherwise notified by that Party under this Agreement).

23. Counterparts

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered shall be an original, and all of which together shall constitute one and the same Agreement.

24. Specific Performance

Each Party acknowledges and agrees that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

25. No Rescission

25.1 Each Party irrevocably and unconditionally waives any right it may have to rescind this Agreement and the documents referred to in it.

25.2 This Agreement shall not be capable of termination save as is expressly stated in it.

26. Governing Law and Jurisdiction

26.1 This Agreement shall be governed by and construed in accordance with English law.

26.2 The English courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement and the Parties submit to the exclusive jurisdiction of the English courts.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF this Agreement has been signed by the parties (or their duly authorised representatives) on the date stated at the beginning of this Agreement.

Executed by **ACACIA RESEARCH CORPORATION** acting by Clifford Press, an officer	)	/s/ Clifford Press
	)	Chief Executive Officer
Executed by **LF EQUITY INCOME FUND** a sub-fund of LF Investment Fund, acting through its Authorised Corporate Director, Link Fund Solutions Limited, acting by Karl Midl and - Antony Stuart, each a director	)	/s/ Karl Midl
	)	Director
	)	
	)	/s/Anthony Stuart
	)	Director

SUPPLEMENTAL AGREEMENT

SUPPLEMENTAL AGREEMENT, dated as of June 4, 2020 (this "**Agreement**"), by and between Acacia Research Corporation, a Delaware corporation (the "**Company**"), and Starboard Value LP (the "**Designee**") on behalf of itself and on behalf of the funds and accounts under its management that as of the date hereof hold, or that will after the date hereof hold, Preferred Shares, Series A Warrants, Series B Warrants and/or Notes (each as defined in the Securities Purchase Agreement (as defined below)) (the "**Starboard Funds**").

WHEREAS, the Company, the Designee and certain Starboard Funds have entered into, among others, that certain Securities Purchase Agreement, dated as of November 18, 2019 (the "**Securities Purchase Agreement**");

WHEREAS, pursuant to the Securities Purchase Agreement: (i) on November 18, 2019 the Company issued to certain Starboard Funds an aggregate of 350,000 Preferred Shares and Series A Warrants to purchase an aggregate of 5,000,000 shares of Common Stock and (ii) on February 25, 2020 the Company issued Series B Warrants to purchase an aggregate of 100,000,000 shares of Common Stock;

WHEREAS, (i) on or about June 4, 2020, the Company intends to consummate an Approved Investment by purchasing certain securities (the "**June 2020 Approved Investment Assets**") from Woodford Investment Management Ltd. (such Approved Investment, the "**June 2020 Approved Investment**") and to fund a portion of the purchase price for such June 2020 Approved Investment through the issuance of $115,000,000 aggregate principal amount of Notes (the "**June 2020 Approved Investment Notes**") to certain Starboard Funds, as contemplated by and pursuant to the terms and conditions set forth in the Securities Purchase Agreement, and (ii) in connection with the consummation of the June 2020 Approved Investment, the Designee is required to release the amount of $35,000,000 from the Escrow Account; and

WHEREAS, the Company anticipates that following the consummation of the June 2020 Approved Investment, it will sell or otherwise monetize for cash a substantial portion of the June 2020 Approved Investment Assets, and desires to be able to use the cash proceeds from such monetization to redeem any outstanding June 2020 Approved Investment Notes in order to reduce the Company's obligation to make interest payments thereunder.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, provisions and covenants contained herein, the parties hereby agree as follows:

1. Definitions. Unless otherwise specified herein, all capitalized terms used and not defined herein shall have the meanings ascribed to them in the Securities Purchase Agreement.

2. Escrow Account.

    a. At any time and from time to time after the date hereof, to the extent the Company sells (a "**June 2020 Approved Investment Asset Sale**") any of the June 2020 Approved Investment Assets, the Company shall simultaneously with the receipt of any cash proceeds from consummation of any June 2020 Approved Investment Asset Sale deposit such cash

proceeds, net of any reasonable fees and expenses directly related to such June 2020 Approved Investment Asset Sale(s) (the "**June 2020 Approved Investment Sale Proceeds**"), into the existing Escrow Account (or if required by the Escrow Agent, an escrow account similar in all material respects to the Escrow Account) (the "**June 2020 Approved Investment Proceeds Escrow Account**"), for the benefit of the Starboard Funds holding Preferred Shares, in accordance with the existing Escrow Agreement (or if required by the Escrow Agent, in accordance with a June 2020 Approved Investment Proceeds Escrow Agreement similar in all material respects to the Escrow Agreement attached as Exhibit I to the Securities Purchase Agreement) (the "**June 2020 Approved Investment Proceeds Escrow Agreement**") until such time as the amount of June 2020 Approved Investment Sale Proceeds deposited in the June 2020 Approved Investment Proceeds Escrow Account equals $35 million. The Company hereby covenants and agrees that it shall not have any, legal, equitable or contractual rights to any portion of the funds in June 2020 Approved Investment Escrowed Amount (as defined below) other than those contractual rights specifically set forth in this Section 2 and in the June 2020 Approved Investment Proceeds Escrow Agreement.

b. The $35 million June 2020 Approved Investment Sale Proceeds deposited in the June 2020 Approved Investment Proceeds Escrow Account shall be allocated to the Preferred Shares (in all cases pro rata among the Starboard Funds holding Preferred Shares based on their respective pro rata holdings of Preferred Shares at the applicable time of determination), and shall be governed by the provisions of Section 4(u)(iii) –(vi) of the Securities Purchase Agreement, which shall apply, *mutatis mutandis*, with respect to the June 2020 Approved Investment Proceeds Escrow Account with the following defined term substitutions (each as defined below in Section 2(c): (i) "June 2020 Approved Investment Proceeds Escrow Account" for "Escrow Account", (ii) "June 2020 Approved Investment Proceeds Escrow Agreement" for "Escrow Agreement", (iii) "June 2020 Approved Investment Escrow Release Amount" for "Control Account Release Amount"/"Escrow Account Release Amount", (iv) "June 2020 Approved Investment Escrow Release Event" for "Escrow Amount Release Event" and (v) "June 2020 Approved Investment Escrowed Amount" for "Escrowed Amount".

c. For purposes of this Agreement, the following definitions shall apply:

(i) "**June 2020 Approved Investment Escrow Release Amount**" means, with respect to any given June 2020 Approved Investment Escrow Release Event as defined in clause (I) of the definition thereof, the amount of cash as specified in clause (II) of the definition thereof.

(ii) "**June 2020 Approved Investment Escrow Release Event**" means, as applicable:

(a) (I) the consummation of an Approved Investment occurring following the June 2020 Approved Investment; then (II) the amount of such Approved Investment;

(b) (I) the Company's receipt of written confirmation by or on behalf of the applicable Starboard Fund that it has properly received shares of Common Stock issuable pursuant to an applicable Conversion Notice; then (II) the Stated Value (as defined in the Certificate of Designations) attributable to the Conversion Amount (as defined in the Certificate of Designations) as indicated in the applicable Conversion Notice (as defined in the Certificate of Designations); and

(c) (I) the Company's receipt of a written notice by the Designee electing to effect a voluntary release of cash; then (II) the cash amount specified by the Designee in such election notice.

(iii) "**June 2020 Approved Investment Escrowed Amount**" means, as of any given date, the cash amounts held in the June 2020 Approved Investment Proceeds Escrow Account.

d. For the avoidance of doubt, except solely with respect to a Cash Payment Obligation that represents the repayment of the Stated Value of the Preferred Shares, the Company is not permitted to satisfy any applicable Cash Payment Obligation from the June 2020 Approved Investment Proceeds Escrow Account, but is required to directly pay such Cash Payment Obligation to the applicable Starboard Funds irrespective of the June 2020 Approved Investment Escrowed Amount available in the June 2020 Approved Investment Proceeds Escrow Account and regardless of the Designee's right to draw from the June 2020 Approved Investment Proceeds Escrow Account for all Cash Payment Obligations.

e. Following the deposit of the first $35 million of June 2020 Approved Investment Sale Proceeds in the June 2020 Approved Investment Proceeds Escrow Account as provided above, the Company shall (i) redeem $80 million aggregate principal amount of the June 2020 Approved Investment Notes by September 30, 2020 and (ii) redeem $35 million aggregate principal amount of the June 2020 Approved Investment Notes by December 31, 2020, notwithstanding anything to the contrary in the June 2020 Approved Investment Notes. The redemptions contemplated by the immediately preceding sentence shall be paid by the Company by wire transfer of immediately available funds to the Starboard Funds pursuant to wire instructions as specified by the Designee in writing to the Company, and shall be for an amount in cash for the June 2020 Approved Investment Notes being redeemed equal to (x) their Redemption Amount (as defined in the Notes) or (y) if an Event of Default or an event that with the passage of time (except as waived in Section 4) and/or giving of notice would constitute an Event of Default has occurred solely pursuant to Section 4(a)(xvi) or Section 4(a)(xvii) of the Notes, their Event of Default Redemption Price (as defined in the Notes) applicable to such Events of Defaults

3. Waiver of Preferential Dividend Rate of the Preferred Shares Provided no Triggering Event (as defined in the Certificate of Designations), or event that with the passage of time and/or giving of notice would constitute a Triggering Event, has occurred and is continuing, on and solely on any day that the June 2020 Approved Investment Escrowed Amount equals or exceeds $35,000,000 (or such lesser Stated Value of the Preferred Shares then outstanding), the Designee, on behalf of the Starboard Funds holding Preferred Shares, waives any Preferential Dividends that accrued on those days in an amount that exceeds 3.00% per annum. On all other days, the Preferential Dividends will accrue at the rate specified in the Certificate of Designations. When due, the Company shall pay an amount that includes the Preferential Dividends in accordance with the Certificate of Designations less any pro-rated portion that is waived pursuant to this Section 3.

4. Waiver of Ratio of Consolidated Total Debt to EBITDA Solely (i) during the period that any June 2020 Approved Investment Notes remain outstanding and (ii) as to the June 2020 Approved Investment Notes, the Designee on behalf of the Starboard Funds that hold June 2020 Approved Investment Notes hereby waive the Company's requirement to comply with the financial covenant set forth in Section 10(f)(ii) of the June 2020 Approved Investment Notes for the Test Periods ending on June 30, 2020 and September 30, 2020. The June 2020 Approved Investment Notes shall reflect such waiver. The parties hereby acknowledge and agree that the June 2020 Approved Investment Notes shall be deemed issued pursuant to the Securities Purchase Agreement and shall be deemed "Notes" with respect to all the Transaction Documents.

5. Amendment to Securities Purchase Agreement and Series B Warrants.

   a. In accordance with Section 9(e) of the Securities Purchase Agreement and Section 9 of the Series B Warrants, the Company and the Designee representing the Required Holders (as defined in the Securities Purchase Agreement and the Series B Warrants) hereby agree to amend the Securities Purchase Agreement and the Series B Warrants, as set forth in this Section 5, which amendments shall be binding upon each Buyer and holder of Securities and the Company.

   b. As of the execution and delivery of this Agreement by the Company and the Designee, the definition of "Transaction Documents" set forth in Section 3(b) of the Securities Purchase Agreement shall be amended to add this Agreement and the June 2020 Approved Investment Proceeds Escrow Agreement to such definition.

   c. The Form of Note attached as Exhibit B to the Securities Purchase Agreement are amended and restated in its entirety in the form attached hereto as Exhibit A.

   d. The Guarantee attached as Exhibit E to the Securities Purchase Agreement and the Security Agreement attached as Exhibit F to the Securities Purchase Agreement are amended and restated in their entirety as set forth in Exhibit B and Exhibit C attached hereto, respectively.

   e. The first two (2) sentences of Section 1(a) of the Series B Warrants is hereby amended and restated, as follows:

"(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Issuance Date, in whole or in part, by delivery of a written notice, in the form attached hereto as Exhibit A (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. On or prior to the Trading Day immediately preceding the applicable Share Delivery Date (as defined below), the Holder shall either (A) provided that the applicable Exercise Notice is for a Cash Exercise, pay to the Company an amount equal to the applicable Cash Exercise Price (as defined in Section 1(b)) multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Cash Exercise Price**") in cash by wire transfer of immediately available funds, (B) provided that the applicable Exercise Notice is delivered to the Company on or prior to the Cash Exercise Expiration Date (as defined in Section 1(b)), notify the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)), which notice may be included in the applicable Exercise Notice, or (C) notify the Company that this Warrant is being exercised by a cancellation of all or any portion of the Principal (as defined in the Notes) amount outstanding under the Holder's (or the Holder's designee's) Notes (a "**Note Cancellation**") for an amount of cancelled Notes calculated at the Other Exercise Price (as defined in Section 1(b)) multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the "**Aggregate Other Exercise Price**" and together with the Aggregate Cash Exercise Price, the "**Aggregate Exercise Price**")."

f. Section 1(b) of the Series B Warrants is hereby amended and restated, as follows:

"(b) Exercise Price. For purposes of this Warrant:

"**Exercise Price**" means, as applicable, (i) the Cash Exercise Price or (ii) the Other Exercise Price, in each case subject to adjustment as provided herein.

"**Cash Exercise**" means an exercise of this Warrant for cash prior to the applicable Cash Exercise Expiration Date.

"**Cash Exercise Expiration Date**" means (i) as to a Limited Cash Exercise, the Expiration Date (i.e., November 15, 2027), and (ii) otherwise, August 25, 2022.

"**Cash Exercise Price**" means (i) as to a Limited Cash Exercise, $3.65, and (ii) otherwise, $5.25, in each case subject to adjustment as provided herein.

"**Other Exercise Price**" means $3.65, subject to adjustment as provided herein.

"**Limited Cash Exercise**" means, with respect to the Holder, a Cash Exercise of this Warrant at a time the Holder no longer holds any Notes (other than Notes held as a result of any breach of any redemption obligation by the Company) for an aggregate number of shares of Common Stock not exceeding the Holder's Limited Cash Exercise Warrant Share Number, subject to adjustment as provided herein."

"**Limited Cash Exercise Warrant Share Number**" means:

(x) with respect to the initial Holder of this Warrant, such number of shares of Common Stock set forth opposite the name of such initial Holder below, in each case, subject to adjustment as provided herein:

Name of initial Holder	**Limited Cash Exercise Warrant Share Number**
Starboard Value and Opportunity Master Fund Ltd.	19,439,726
Starboard Value and Opportunity S LLC	3,150,685
Starboard Value and Opportunity C LP	1,827,397
Starboard Value and Opportunity Master Fund L LP	1,732,877
Account managed by Starboard Value LP	5,356,164

and

(y) with respect to any subsequent Holder of this Warrant, the portion, if any, of any Holder's Limited Cash Exercise Warrant Share Number transferred to the Holder of this Warrant as determined by the transferor in its sole and absolute discretion as set forth in a document of transfer."

For the avoidance of doubt, for any shares not included in the Limited Cash Exercise Warrant Share Number, there shall be no change to the number of Warrant Shares that can be exercised (x) through a Cash Exercise at the Cash Exercise Price at any time through the Cash Exercise Termination Date or (y) through a Note Cancellation at the Other Exercise Price at any time through the Expiration Date (each of such terms in this paragraph as defined in the Series B Warrants).

6. Additional Rights. In addition to all the designations, preferences, and rights of the Preferred Shares set forth in the Certificate of Designations, the Company and the Designee on behalf of itself and the Starboard Funds hereby acknowledge and agree to the following:

a. Optional Redemption at the Holder's Election. At any time or times (i) during the period commencing on May 15, 2021 and ending on August 15, 2021, inclusive, (ii) during the period commencing on May 15, 2022 and ending on August 15, 2022, inclusive, and (iii) during the period commencing on November 15, 2024 and ending on February 15, 2025, inclusive (each of the events described in the immediately preceding clauses (i) through (iii), a "**Holder Optional Redemption Trigger Event**"); provided, however, that in cases of the immediately preceding clauses (i) and (ii) less than $50,000,000 of aggregate principal amount of SPA Notes are outstanding as of the applicable Holder Optional Redemption Notice Date (as defined below) and the related Holder Optional Redemption Date (as defined below), each Holder shall have the right, in its sole and absolute discretion, to require that the Company redeem (a "**Holder Optional Redemption**"), to the fullest extent permitted by law and out of funds lawfully available therefor, all or

any portion of the Conversion Amount of such Holder's Series A Preferred Shares then outstanding by delivering written notice thereof (a "**Holder Optional Redemption Notice**" and the date such Holder delivers such notice to the Company, a "**Holder Optional Redemption Notice Date**") to the Company which notice shall state (i) the number of Series A Preferred Shares that is being redeemed by such Holder, (ii) the date on which such Holder Optional Redemption shall occur, which date shall be the thirtieth (30^{th}) day from the applicable Holder Optional Redemption Notice Date (or, if such date falls on a day other than a Business Day, the next day that is a Business Day) (a "**Holder Optional Redemption Date**") and (iii) the wire instructions for the payment of the applicable Holder Optional Redemption Price (as defined below) to such Holder. The portion of such Holder's Series A Preferred Shares subject to redemption pursuant to this Section 6(a) shall be redeemed by the Company in cash at a price equal to the product determined by multiplying (i) the applicable Holder Optional Redemption Premium and (ii) the Conversion Amount being redeemed, including, without limitation, any accrued and unpaid Dividends on such Conversion Amount and any accrued and unpaid Late Charges (as defined in Section 19(d) of the Certificate of Designations) on such Conversion Amount and Dividends, if any, through the applicable Holder Optional Redemption Date (a "**Holder Optional Redemption Price**"). On the applicable Holder Optional Redemption Date, the Company shall deliver or shall cause to be delivered to each Holder the applicable Holder Optional Redemption Price in cash by wire transfer of immediately available funds pursuant to wire instructions provided by such Holder in writing to the Company. Notwithstanding anything to the contrary in this Section 6(a), until the applicable Holder Optional Redemption Price is paid, in full, the Redemption Amount that is subject to the applicable Holder Optional Redemption may be (i) converted, in whole or in part, by the Holders into shares of Common Stock pursuant to Section 5 of the Certificate of Designations and/or (ii) exchanged, in whole or in part, by a Holder into Exchange Notes and Exchange Series B Warrants pursuant to Section 16 of the Certificate of Designations. All Series A Preferred Shares converted by a Holder after the delivery of a Holder Optional Redemption Notice pursuant to Section 5(c) of the Certificate of Designations or exchanged pursuant to Section 16 of the Certificate of Designations shall reduce the Series A Preferred Shares required to be redeemed on the Holder Optional Redemption Date. Holder Optional Redemptions made pursuant to this Section 6(a) shall be made in accordance with Section 11 of the Certificate of Designations. To the extent redemptions required by this Section 6(a) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of a Holder's Series A Preferred Shares under this Section 6(a), such Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for such Holder. Accordingly, any redemption premium due under this Section 6(a) is intended by the parties to be,

and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty.

b. Redemption at the Option of the Company. At any time during the period commencing on May 15, 2022 and ending on August 15, 2022, inclusive (the "**Company Optional Trigger Date**"), so long as (i) less than $50,000,000 of aggregate principal amount of SPA Notes are outstanding as of the applicable Company Optional Redemption Notice Date (as defined below) and the related Company Optional Redemption Date (as defined below) and (ii) there has been no Equity Conditions Failure during the period beginning on the applicable Company Optional Redemption Notice Date (as defined below) through the applicable Company Optional Redemption Date (as defined below), the Company shall have the right to redeem all, but not less than all, of the Conversion Amount then remaining under the Series A Preferred Shares then outstanding (a "**Company Optional Redemption Amount**") as designated in the applicable Company Optional Redemption Notice on the applicable Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The applicable Company Optional Redemption Amount shall be redeemed by the Company by delivery of the applicable Company Optional Redemption Price on the applicable Company Optional Redemption Date in cash by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company at a price equal to 115% of the Conversion Amount to be redeemed, including, without limitation, any accrued and unpaid Dividends on such Conversion Amount and any accrued and unpaid Late Charges on such Conversion Amount and Dividends, if any through the applicable Company Optional Redemption Date (a "**Company Optional Redemption Price**"). The Company may exercise its right to require redemption under this Section 6(b) by delivering within five (5) Trading Days of the Company Optional Trigger Date a written notice thereof to all, but not less than all, of the Holders (a "**Company Optional Redemption Notice**" and the date all of the Holders receive such notice is referred to as a "**Company Optional Redemption Notice Date**"). Each Company Optional Redemption Notice shall be irrevocable. Each Company Optional Redemption Notice shall (i) state the date on which the applicable Company Optional Redemption shall occur (a "**Company Optional Redemption Date**"), which date shall be the ninetieth (90th) day following the applicable Company Optional Redemption Notice Date; provided that if such date falls on a day that is not a Business Day, the next day that is a Business Day and (ii) state the aggregate Company Optional Redemption Amount which the Company has elected to be subject to Company Optional Redemption from the Holders pursuant to this Section 6(b) on the applicable Company Optional Redemption Date and (iii) certify that there has been no Equity Conditions Failure on the applicable Company Optional Redemption Notice Date. If the Company confirmed that there was no such Equity Conditions Failure as of the applicable Company Optional Redemption Notice Date but an Equity Conditions Failure occurs between the applicable Company Optional Redemption Notice Date and the applicable Company Optional Redemption Date (a "**Company Optional Redemption Interim Period**"), the Company shall provide the Holders a subsequent written notice to that effect. If

there is an Equity Conditions Failure during such Company Optional Redemption Interim Period, then the applicable Company Optional Redemption shall be null and void with respect to all or any part designated by such Holder of the applicable unconverted Company Optional Redemption Amount and such Holder shall be entitled to all the rights of a Holder with respect to such applicable Company Optional Redemption Amount. Notwithstanding anything to the contrary in this Section 6(b), until the applicable Company Optional Redemption Price is paid, in full, the applicable Company Optional Redemption Amount may be (i) converted, in whole or in part, by the Holders into shares of Common Stock pursuant to Section 5 of the Certificate of Designations and/or (ii) exchanged, in whole or in part, by a Holder into Exchange Notes and Exchange Series B Warrants pursuant to Section 16 of the Certificate of Designations. All Conversion Amounts converted or exchanged by a Holder after the applicable Company Optional Redemption Notice Date shall reduce such Holder's Company Optional Redemption Amount required to be redeemed on the applicable Company Optional Redemption Date. Company Optional Redemptions made pursuant to this Section 6(b) shall be made in accordance with Section 11 of the Certificate of Designations. To the extent redemptions required by this Section 6(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Shares by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of the Series A Preferred Shares under this Section 6(b), the Holders' damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holders. Accordingly, any redemption premium due under this Section 6(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holders' actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, any Conversion Amount that is subject to a Conversion Notice delivered to the Company may no longer be subject to a Company Optional Redemption even if the shares issuable upon such conversion have not been delivered on or prior to the Company Optional Redemption Date. If the Company elects to cause a Company Optional Redemption pursuant to this Section 6(b), then it must simultaneously take the same action in the same proportion with respect to all Series A Preferred Shares to the extent practicable or, if the pro rata basis is not practicable for any reason, by lot or such other equitable method as the Company determines in good faith.

c. All capitalized terms used and not defined in this Section 6 shall have the meanings ascribed to them in the Certificate of Designations. All section references and defined terms in this Section 6 shall refer to and deem to incorporate in this Section 6 the corresponding section(s) of, and definition(s) set forth in, the Certificate of Designations. Each Starboard Fund may, in connection with the offer, sale, assignment or transfer of all or any portion of its Preferred Shares, assign the rights set forth in this Section 6 to such offeree, buyer, assignee or transferee of such Preferred Shares.

7. Total Principal Amount of Notes. The parties hereby agree that notwithstanding anything to the contrary in the Securities Purchase Agreement, the total principal amount of Notes that may be issued under the Securities Purchase Agreement shall not exceed the sum of (i) $365,000,000 and (ii) the principal amount of the June 2020 Approved Investment Notes that have been redeemed pursuant to Section 2(e) above; provided, however, that at no one time shall there be more than $365,000,000 principal amount of Notes outstanding.

8. Clarification. All references in any of the Transaction Documents (including, without limitation, this Agreement) to the "Certificate of Designations" (and corollary references to "thereto", "thereof", "thereunder" or words of like import referring to the Certificate of Designations) shall mean the Amended and Restated Certificate of Designations for the Company's shares of Series A Convertible Preferred Stock dated as of January 7, 2020.

9. Representations and Warranties. The Designee represents and warrants to the Company, and the Company represents and warrants to the Designee as of the date hereof: Such Person is an entity duly organized and validly existing under the laws of the jurisdiction of its formation, has the requisite power and authority to execute and deliver this Agreement and to carry out and perform all of its obligations under the terms of this Agreement; This Agreement has been duly executed and delivered on behalf of such Person, and this Agreement constitutes the valid and legally binding obligation of such Person enforceable against such Person in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies; The execution, delivery and performance by such Person of this Agreement and the consummation by such Person of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Person, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Person is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Person, except in the case of clause (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Person to perform its obligations hereunder. In addition, the Company hereby represents and warrants to the Designee as of the date hereof that (i) the Board of Directors of the Company approved the resolutions set forth in Schedule A attached hereto and (ii) each Subsidiary listed on Schedule B attached hereto is an Immaterial Subsidiary (as defined in the Notes).

10. Fees and Expenses. The Company shall reimburse the Designee or its designee(s) for all reasonable and documented costs and expenses incurred in connection with the transactions contemplated hereby and the Additional Closing related to the June 2020 Approved Investment (including all legal fees and disbursements in connection therewith, documentation and implementation of the transactions contemplated hereby and thereby, which amount may be withheld by one or more Starboard Fund(s) from such Starboard Fund's Additional Purchase Price for June 2020 Approved Investment Notes purchased at

the Additional Closing related to the June 2020 Approved Investment and which aggregate amount shall not exceed $200,000 without the prior approval of the Company.

11. Post-Closing Covenants. Notwithstanding anything to the contrary, and subject to the terms of that certain Pledge and Security Agreement, dated as of the date hereof (as amended, the "**Security Agreement**"):

a. Within five (5) Business Days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received the results of customary searches (including comparable searches in any jurisdiction outside the United States) for UCC financing statements, tax liens and judgment liens filed on or prior to the date hereof, against the Company or any of the Guarantors or any property of the foregoing, which results, to the knowledge of the Company or any Guarantor, will not show any such liens (other than Permitted Liens and Intellectual Property Rights that occur in the ordinary course of the Company's and Guarantors' business as a purchaser, seller and enforcer of Intellectual Property Rights).

b. Within three (3) Business Days after the receipt by the Company of all search results described in Section 11(a) above (or such later date as determined by the Collateral Agent in its reasonable discretion), the Company shall provide to the Collateral Agent evidence of the filing of (i) applicable UCC-3 termination statements with respect to the liens disclosed on such search results and (ii) all other payoff, termination and release documents mutually agreed to by the Company and the Collateral Agent .

c. Within thirty (30) calendar days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received an account control agreement, with respect to each account referred to in Schedule IV of the Security Agreement as of the date hereof, in form and substance satisfactory to the Collateral Agent, duly executed by the Company and/or Guarantor, as applicable, and such bank or financial institution (as applicable), or enter into other arrangements, as required under Section 5(i) of the Security Agreement, in form and substance satisfactory to the Collateral Agent, in each case, subject to the terms of the Security Agreement.

d. Within five (5) Business Days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received all certificates and/or instruments evidencing the Pledged Interests (as defined in the Security Agreement) as of the date hereof, accompanied by undated instruments of transfer executed in blank, as applicable.

e. Within thirty (30) calendar days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received

applicable property and liability insurance certificates and endorsements (including loss payable endorsements), in form and substance reasonably satisfactory to the Collateral Agent, naming the Collateral Agent as an additional insured and as mortgagee (as applicable) as its interests may appear with respect to all such property and liability insurance policies referred to in Section 5(e)(i) of the Security Agreement and in each case, maintained by the Company and/or any Guarantor as of the date hereof.

f. Within ten (10) Business Days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received, with respect to each Subsidiary organized in Germany, customary joinder agreements to the Security Documents dated as of the date hereof, executed in connection with the Additional Closing related to the June 2020 Approved Investment, in each case, in form and substance reasonably satisfactory to the Collateral Agent.

g. Within five (5) Business Days after the Additional Closing related to the June 2020 Approved Investment (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received, with respect to Acacia Intellectual Property Fund, L.P., customary joinder agreements to the Security Documents dated as of the date hereof, executed in connection with the Additional Closing related to the June 2020 Approved Investment, in each case, in form and substance reasonably satisfactory to the Collateral Agent.

h. On or prior to June 11, 2020, the Company shall pay the upfront fee described in Section 4(g) of the Securities Purchase Agreement and the costs and expenses pursuant to Section 10 of this Agreement to the Starboard Funds (and/or their designee) by wire transfer of immediately available funds pursuant to wire instructions delivered by the Designee to the Company in writing.

i. Any breach of this Section 11 with be deemed an "Event of Default" (as defined in the Notes) under the Notes.

12. Indemnification. In consideration of the Designee's execution and delivery of this Agreement and in addition to all of the Company's other obligations under this Agreement and the other Transaction Documents, the Company shall defend, protect, indemnify and hold harmless the Designee, each Starboard Fund and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**"), as incurred, from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company

in this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby, (c) any cause of action, suit or claim brought or made against such Indemnitee by the Company or a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of this Agreement, any other Transaction Document or any other certificate, instrument or document contemplated hereby or thereby or any advice or assistance provided to or on behalf of the Company by any Indemnitee at the request of the Company, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, or (iii) the status of such Buyer or holder of the Securities as an investor in the Company pursuant to the transactions contemplated by this Agreement and any of the other Transaction Documents. For the avoidance of doubt, the indemnification set forth in this Section 12 is intended to apply, and shall apply, to direct claims asserted by the Designee or any Starboard Fund against the Company as well as any third party claims asserted by an Indemnitee (other than the Designee or a Starboard Fund) against the Company. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 12 shall be the same as those set forth in Section 7 of the Registration Rights Agreement.

13. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Amendment shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof to the fullest extent enforceable under applicable law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

14. Counterparts; Headings. This Amendment may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The headings of this Amendment are for convenience of reference and shall not form part of, or affect the interpretation of, this Amendment.

15. Severability. If any provision of this Amendment is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Amendment so long as this Amendment as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. Amendments. Any amendments or modifications hereto must be executed in writing by all parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first above written.

COMPANY:

ACACIA RESEARCH CORPORATION

By: /s/ Clifford Press
Name: Clifford Press
Title: Chief Executive Officer

[Signature Page to Supplemental Agreement]

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

BUYER:

STARBOARD VALUE LP

By: /s/ Jeffrey C. Smith
Name: Jeffrey C. Smith
Title: Authorized Signatory

[Signature Page to Supplemental Agreement]

Exhibit A

Form of Note

[FORM OF SENIOR SECURED NOTE]

THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A FORM REASONABLY SATISFACTORY TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS ELIGIBLE TO BE SOLD OR SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 3 AND 13(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE MAY BE LESS THAN THE AMOUNT SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3 OF THIS NOTE.

ACACIA RESEARCH CORPORATION

SENIOR SECURED NOTE

Issuance Date: [ ][1] Original Principal Amount: U.S. $[•]

FOR VALUE RECEIVED, Acacia Research Corporation, a Delaware corporation (the "**Company**"), hereby promises to pay to [BUYER] or registered assigns (the "**Holder**") in cash the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption or otherwise, the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon an Interest Payment Date (as defined below), the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Secured Note (including all Senior Secured Notes issued in exchange, transfer or replacement hereof, this "**Note**") is one of an issue of Senior Secured Notes issued pursuant to the Securities Purchase Agreement on an Additional Closing Date that is the Issuance Date (collectively, the "**Notes**" and such other Senior Secured Notes, the "**Other Notes**"). Certain capitalized terms used herein are defined in Section 27.

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[1] Insert the applicable Additional Closing Date, or, in the case of an Exchange (as defined in the Certificate of Designations), the date of the issuance of the applicable Exchange Note (as defined in the Certificate of Designations).

1. PAYMENTS OF PRINCIPAL; PREPAYMENT. ON THE MATURITY DATE, THE COMPANY SHALL PAY TO THE HOLDER AN AMOUNT IN CASH REPRESENTING ALL OUTSTANDING PRINCIPAL, ANY ACCRUED AND UNPAID INTEREST AND ANY ACCRUED AND UNPAID LATE CHARGES (AS DEFINED IN SECTION 19(B)) ON SUCH PRINCIPAL AND INTEREST. THE "**MATURITY DATE**" SHALL BE NOVEMBER 15, 2027. OTHER THAN AS SPECIFICALLY PERMITTED BY THIS NOTE, THE COMPANY MAY NOT PREPAY ANY PORTION OF THE OUTSTANDING PRINCIPAL, ACCRUED AND UNPAID INTEREST OR ACCRUED AND UNPAID LATE CHARGES ON PRINCIPAL AND INTEREST, IF ANY.

2. INTEREST. INTEREST ON THIS NOTE SHALL COMMENCE ACCRUING ON THE ISSUANCE DATE AT THE INTEREST RATE AND SHALL BE COMPUTED ON THE BASIS OF A 360-DAY YEAR AND TWELVE 30-DAY MONTHS AND SHALL BE PAYABLE SEMI-ANNUALLY IN ARREARS ON EACH NOVEMBER 15 AND MAY 15 AFTER THE ISSUANCE DATE, PROVIDED THAT IF ANY SUCH DATE FALLS ON A DAY THAT IS NOT A BUSINESS DAY, THE NEXT DAY THAT IS A BUSINESS DAY (EACH, AN "**INTEREST PAYMENT DATE**"), TO THE HOLDER OF RECORD AT THE CLOSE OF BUSINESS ON THE PRECEDING NOVEMBER 1 AND MAY 1 (EVEN IF SUCH DAY IS NOT A BUSINESS DAY) (EACH, AN "**INTEREST RECORD DATE**"). INTEREST SHALL BE PAYABLE ON EACH INTEREST PAYMENT DATE, TO THE RECORD HOLDER OF THIS NOTE ON THE APPLICABLE INTEREST RECORD DATE, IN CASH, BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS PURSUANT TO WIRE INSTRUCTIONS PROVIDED BY THE HOLDER IN WRITING TO THE COMPANY. PRIOR TO THE PAYMENT OF INTEREST ON AN INTEREST PAYMENT DATE, INTEREST ON THIS NOTE SHALL ACCRUE AT THE INTEREST RATE AND BE PAYABLE BY WAY OF INCLUSION OF THE INTEREST IN THE REDEMPTION AMOUNT ON EACH REDEMPTION DATE. FROM AND AFTER THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, THE INTEREST RATE SHALL BE INCREASED TO TEN PERCENT (10.0%) PER ANNUM. IN THE EVENT THAT SUCH EVENT OF DEFAULT IS SUBSEQUENTLY CURED, THE ADJUSTMENT REFERRED TO IN THE PRECEDING SENTENCE SHALL CEASE TO BE EFFECTIVE AS OF THE DATE OF SUCH CURE; PROVIDED, THAT THE INTEREST AS CALCULATED AND UNPAID AT SUCH INCREASED RATE DURING THE CONTINUANCE OF SUCH EVENT OF DEFAULT SHALL CONTINUE TO APPLY TO THE EXTENT RELATING TO THE DAYS AFTER THE OCCURRENCE OF SUCH EVENT OF DEFAULT THROUGH AND INCLUDING THE DATE OF CURE OF SUCH EVENT OF DEFAULT; PROVIDED, FURTHER, THAT FOR THE PURPOSE OF THIS SECTION 2, SUCH EVENT OF DEFAULT SHALL NOT BE DEEMED CURED UNLESS AND UNTIL ANY ACCRUED AND UNPAID INTEREST SHALL BE PAID TO THE HOLDER, INCLUDING, WITHOUT LIMITATION, INTEREST ACCRUED AT THE INCREASED RATE OF TEN PERCENT (10.0%) PER ANNUM.

3. REGISTRATION; BOOK-ENTRY. THE COMPANY SHALL MAINTAIN A REGISTER (THE "**REGISTER**") FOR THE RECORDATION OF THE NAMES AND ADDRESSES OF THE HOLDERS OF EACH NOTE AND THE PRINCIPAL AMOUNT OF THE NOTES (AND STATED INTEREST THEREON) HELD BY SUCH HOLDERS (THE "**REGISTERED NOTES**"). THE ENTRIES IN THE REGISTER SHALL BE CONCLUSIVE AND BINDING FOR ALL PURPOSES ABSENT MANIFEST ERROR. THE COMPANY AND

THE HOLDERS OF THE NOTES SHALL TREAT EACH PERSON WHOSE NAME IS RECORDED IN THE REGISTER AS THE OWNER OF A NOTE FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, THE RIGHT TO RECEIVE PAYMENTS OF PRINCIPAL AND INTEREST, IF ANY, HEREUNDER, NOTWITHSTANDING NOTICE TO THE CONTRARY. A REGISTERED NOTE MAY BE ASSIGNED OR SOLD IN WHOLE OR IN PART ONLY BY REGISTRATION OF SUCH ASSIGNMENT OR SALE ON THE REGISTER. UPON ITS RECEIPT OF A REQUEST TO ASSIGN OR SELL ALL OR PART OF ANY REGISTERED NOTE BY THE HOLDER, THE COMPANY SHALL RECORD THE INFORMATION CONTAINED THEREIN IN THE REGISTER AND ISSUE ONE OR MORE NEW REGISTERED NOTES IN THE SAME AGGREGATE PRINCIPAL AMOUNT AS THE PRINCIPAL AMOUNT OF THE SURRENDERED REGISTERED NOTE TO THE DESIGNATED ASSIGNEE OR TRANSFEREE PURSUANT TO SECTION 12. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 3, THE HOLDER MAY ASSIGN THE NOTE OR ANY PORTION THEREOF TO AN AFFILIATE OF THE HOLDER OR A RELATED FUND OF THE HOLDER WITHOUT DELIVERING A REQUEST TO ASSIGN OR SELL SUCH NOTE TO THE COMPANY AND THE RECORDATION OF SUCH ASSIGNMENT OR SALE IN THE REGISTER (A "**RELATED PARTY ASSIGNMENT**"); PROVIDED, THAT (X) THE COMPANY MAY CONTINUE TO DEAL SOLELY WITH SUCH ASSIGNING OR SELLING HOLDER UNLESS AND UNTIL THE HOLDER HAS DELIVERED A REQUEST TO ASSIGN OR SELL SUCH NOTE OR PORTION THEREOF TO THE COMPANY FOR RECORDATION IN THE REGISTER; (Y) THE FAILURE OF SUCH ASSIGNING OR SELLING HOLDER TO DELIVER A REQUEST TO ASSIGN OR SELL SUCH NOTE OR PORTION THEREOF TO THE COMPANY SHALL NOT AFFECT THE LEGALITY, VALIDITY, OR BINDING EFFECT OF SUCH ASSIGNMENT OR SALE AND (Z) SUCH ASSIGNING OR SELLING HOLDER SHALL, ACTING SOLELY FOR THIS PURPOSE AS A NON-FIDUCIARY AGENT OF THE COMPANY, MAINTAIN A REGISTER (THE "**RELATED PARTY REGISTER**") COMPARABLE TO THE REGISTER ON BEHALF OF THE COMPANY, AND ANY SUCH ASSIGNMENT OR SALE SHALL BE EFFECTIVE UPON RECORDATION OF SUCH ASSIGNMENT OR SALE IN THE RELATED PARTY REGISTER. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, UPON REDEMPTION OF ANY PORTION OF THIS NOTE IN ACCORDANCE WITH THE TERMS HEREOF OR CANCELLATION OF ANY PORTION OF THIS NOTE IN ACCORDANCE WITH SECTION 26, THE HOLDER SHALL NOT BE REQUIRED TO PHYSICALLY SURRENDER THIS NOTE TO THE COMPANY UNLESS (A) THE FULL REDEMPTION AMOUNT REPRESENTED BY THIS NOTE IS BEING REDEEMED OR CANCELLED, IN WHICH CASE THE HOLDER SHALL DELIVER SUCH CERTIFICATE TO THE COMPANY AS SOON AS REASONABLY PRACTICABLE FOLLOWING SUCH REDEMPTION OR CANCELLATION OR (B) THE HOLDER HAS PROVIDED THE COMPANY WITH PRIOR WRITTEN NOTICE REQUESTING REISSUANCE OF THIS NOTE UPON PHYSICAL SURRENDER OF THIS NOTE. THE HOLDER AND THE COMPANY SHALL MAINTAIN RECORDS SHOWING THE PRINCIPAL, INTEREST AND LATE CHARGES, IF ANY, REDEEMED AND/OR CANCELLED AND THE DATES OF SUCH REDEMPTIONS AND/OR CANCELLATIONS OR SHALL USE SUCH OTHER METHOD, REASONABLY SATISFACTORY TO THE HOLDER AND THE COMPANY, SO AS NOT TO REQUIRE PHYSICAL SURRENDER OF THIS NOTE UPON REDEMPTION OR CANCELLATION. IF

THE COMPANY DOES NOT UPDATE THE REGISTER TO RECORD SUCH PRINCIPAL, INTEREST AND LATE CHARGES PAID AND THE DATES OF SUCH PAYMENTS AND CANCELLATIONS WITHIN TWO (2) BUSINESS DAYS OF SUCH OCCURRENCE, THEN THE REGISTER SHALL BE AUTOMATICALLY DEEMED UPDATED TO REFLECT SUCH OCCURRENCE.

4. RIGHTS UPON EVENT OF DEFAULT.

4.1. Event of Default. Each of the following events shall constitute an **Event of Default**" and each of the events in clauses (iv) and (v) shall constitute a "**Bankruptcy Event of Default**":

(a) the failure of the applicable Registration Statement required to be filed pursuant to the Registration Rights Agreement to be filed or declared effective within the applicable time period specified in the Registration Rights Agreement, or, at any time while the applicable Registration Statement is required to be maintained effective pursuant to the terms of the Registration Rights Agreement, the effectiveness of the applicable Registration Statement lapses for any reason (including, without limitation, the issuance of a stop order) or is unavailable to any holder of the Notes for sale of all of such holder's Registrable Securities in accordance with the terms of the Registration Rights Agreement, and such lapse or unavailability continues for a period of ten (10) consecutive Trading Days or for more than an aggregate of fifteen (15) Trading Days in any 365-day period (other than days during an Allowable Grace Period (as defined in the Registration Rights Agreement));

(b) the Company's failure to pay to the Holder any amount of Principal, Interest, Late Charges, Redemption Price or other amounts when and as due under this Note or any other Transaction Document, except, in the case of a failure to pay Interest and/or Late Charges when and as due, in which case only if such failure continues for a period of at least an aggregate of two (2) Business Days;

(c) any acceleration or default-triggered redemption or conversion prior to maturity of any Indebtedness or preferred equity of the Company and/or any of its Subsidiaries in an aggregated principal amount and/or stated amount in excess of $10,000,000;

(d) the Company or any of its Subsidiaries, pursuant to or within the meaning of Title 11, U.S. Code, or any similar federal, foreign or state law for the relief of debtors (collectively, "**Bankruptcy Law**"), (A) commences a voluntary case, (B) consents to the entry of an order for relief against it in an involuntary case, (C) consents to the appointment of a receiver, trustee, assignee, liquidator or similar official (a "**Custodian**"), (D) makes a general assignment for the benefit of its creditors or (E) admits in writing that it is generally unable to pay its debts as they become due;

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (A) is for relief against the Company or any of its Subsidiaries in an involuntary case, (B) appoints a Custodian of the Company or any of its Subsidiaries or (C) orders the liquidation of the Company or any of its Subsidiaries;

(f) one or more judgments, orders or awards for the payment of money aggregating (above any insurance coverage or indemnity from a credit worthy party so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment, order or award is covered by insurance or an indemnity and the Company will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment, order or award) in excess of $20,000,000 are rendered against the Company or any of its Subsidiaries and which judgments, orders or awards are not, within thirty (30) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay;

(g) other than as specifically set forth in another clause of this Section 4(a), the Company or any of its Subsidiaries breaches any representation, warranty, covenant or other term or condition set forth in this Note, except, in the case of a breach of a covenant or other term or condition of any such agreement which is curable, only if such breach continues for a period of at least an aggregate of twenty (20) days;

(h) if the Holder is a Designee, other than as specifically set forth in another clause of this Section 4(a), the Company or any of its Subsidiaries breaches any representation, warranty, covenant or other term or condition set forth in Sections 3(b), 3(c), 3(d), 3(e), 3(i), 3(j), 3(k), 3(l), 3(p), 3(q), 3(r), 3(v), 3(ee), 3(ii), 3(mm), 3(nn), 3(qq), 4(v) or 4(z) of the Securities Purchase Agreement, except, in the case of a breach of a covenant or other term or condition of any such agreement which is curable, only if such breach continues for a period of at least an aggregate of thirty (30) days;

(i) any breach or failure in any respect to comply with Section 10 of this Note, except, in the case of a breach or a failure which is curable, only if such breach continues for a period of at least an aggregate of thirty (30) days;

(j) any material provision of any Security Document (as determined by the Collateral Agent) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Company or any Subsidiary intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Security Document;

(k) any Security Document or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the holders of the Notes on any Collateral purported to be covered thereby;

(l) any bank at which any deposit account, blocked account, or lockbox account of the Company or any Subsidiary is maintained shall fail to comply with any material term of any deposit account, blocked account, lockbox account or similar agreement to which such

bank is a party or any securities intermediary, commodity intermediary or other financial institution at any time in custody, control or possession of any investment property of the Company or any Subsidiary shall fail to comply with any of the terms of any investment property control agreement to which such Person is a party (it being understood that only accounts pursuant to which the Collateral Agent has requested account control agreements should be subject to this clause (xii));

(m) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company as to whether any Event of Default has occurred;

(n) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion or exercise (as the case may be) of any Securities (as defined in the Securities Purchase Agreement) acquired by the Holder under the Securities Purchase Agreement as and when required by such Securities, the Certificate of Designations or the Securities Purchase Agreement, unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) consecutive Trading Days;

(o) the Company becomes an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended;

(p) (A) the suspension of the Common Stock from trading on an Eligible Market for a period of five (5) consecutive Trading Days or for more than an aggregate of fifteen (15) Trading Days in any 365-day period or (B) the failure of the Common Stock to be listed on an Eligible Market;

(q) at any time following the fifth (5^{th}) consecutive Business Day after an Authorized Share Failure (as defined in the Series B Warrants), except, solely with respect to the first occurrence of an Authorized Share Failure hereunder, to the extent the Company is complying with the terms set forth in Section 1(h) of the Series B Warrants;

(r) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes; or

(s) any Event of Default (as defined in the Additional Notes) occurs with respect to any Additional Notes.

4.2. Redemption Right. At any time after the earlier of the Holder's receipt of an Event of Default Notice (as defined in Section 10(e)) and the Holder becoming aware of an Event of Default, the Holder may require the Company to redeem (an "**Event of Default Redemption**") all or any portion of this Note by delivering written notice thereof (the **Event of Default Redemption Notice**" and the date the Holder delivers an Event of Default Redemption Notice to the Company, an **Event of Default Redemption Notice Date**") to the Company, which Event of Default Redemption Notice shall indicate the portion of this Note the Holder is electing to require the Company to redeem. Each portion of this Note subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company in cash by wire transfer

of immediately available funds at a price equal to the Redemption Amount being redeemed*plus*, only in the cases of an Event of Default Redemption pursuant to Section 4(a)(xvi) or Section 4(a)(xvii), an amount in cash equal to the product obtained by multiplying (A) the number of shares of Common Stock issuable upon exercise of the Series B Warrants (without regard to any limitations on exercise set forth in the Series B Warrants) held by the Holder at the time the Company pays the applicable Event of Redemption Price (as defined below) to the Holder and (B) the excess, if any, of (1) the highest Closing Sale Price of the shares of Common Stock during the period beginning on the date immediately preceding such Event of Default and ending on the date the Holder delivers the related Event of Default Redemption Notice, over (2) the lowest Other Exercise Price in effect during such period (the "**Event of Default Redemption Price**"). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 8. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Note by the Company, such redemptions shall be deemed to be voluntary prepayments. The Company and the Holder agree that in the event of the Company's redemption of any portion of the Note under this Section 4(b), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

4.3. Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing the applicable Event of Default Redemption Price, without the requirement for any notice or demand or other action by the Holder or any other Person; provided that the Holder may, in its sole and absolute discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable. Redemptions required by this Section 4(c) shall be made in accordance with the provisions of Section 8.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION AND CHANGE OF CONTROL.

5.1. Assumption. Upon the occurrence or consummation of any Fundamental Transaction, and it shall be a required condition to the occurrence or consummation of any Fundamental Transaction that, the Company and the Successor Entity or Successor Entities, jointly and severally, shall succeed to the Company, and the Company shall cause any Successor Entity or Successor Entities to jointly and severally succeed to the Company, and be added to the term "Company" under this Note (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Note referring to the "Company" shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company, may exercise every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Note

with the same effect as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company in this Note. The provisions of this Section 5(a) shall apply similarly and equally to successive Fundamental Transactions and Corporate Events.

5.2. Redemption Right. Not less than ten (10) days prior to the consummation of a Change of Control, the Company shall deliver written notice thereof to the Holder (a "**Change of Control Notice**") setting forth a description of such transaction in reasonable detail and the anticipated date of the consummation of such Change of Control if then known. At any time during the period beginning on the earliest to occur of (x) the public announcement of any oral or written agreement by the Company or any of its Subsidiaries (the "**Announcement Date**"), upon consummation of which the transaction contemplated thereby would reasonably be expected to result in a Change of Control, (y) the Holder's receipt of a Change of Control Notice, and (z) the consummation of such transaction which results in a Change of Control, and ending twenty-five (25) Trading Days after the date of the consummation of such Change of Control, the Holder may require the Company to redeem (a "**Holder Change of Control Redemption**") all or any portion of this Note by delivering written notice thereof (a "**Holder Change of Control Redemption Notice**") to the Company, which Holder Change of Control Redemption Notice shall indicate the Redemption Amount the Holder is electing to require the Company to redeem. Within ten (10) days before or after the applicable Change of Control, the Company may redeem (a "**Company Change of Control Redemption**" and, together with a Holder Change of Control Redemption, a "**Change of Control Redemption**") all but not less than all of this Note by delivering written notice (a "**Company Change of Control Redemption Notice**" and, together with a Holder Change of Control Redemption Notice, a "**Change of Control Redemption Notice**") to the Holder, which Company Change of Control Redemption Notice shall indicate the Redemption Amount that is subject to such Company Change of Control Redemption; provided, that a Company Change of Control Redemption shall only be permitted with respect to a Change of Control in which one hundred percent (100%) of the Equity Interests of the Company is purchased for cash and/or Cash Equivalents. If the Company elects to cause a Company Change of Control Redemption pursuant to this Section 5(b), then it must simultaneously take the same action with respect to all Other Notes and Additional Notes then outstanding. The portion of this Note subject to redemption pursuant to this Section 5(b) shall be redeemed by the Company in cash by wire transfer of immediately available funds at a price equal to the sum of (A) the Redemption Amount of the Notes being redeemed and (B) the Make-Whole Amount (the "**Change of Control Redemption Price**"). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 8 and shall have priority to payments to stockholders in connection with a Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of the Note by the Company, such redemptions shall be deemed to be voluntary prepayments. The parties hereto agree that in the event of the Company's redemption of any portion of the Note under this Section 5(b), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

6. OPTIONAL REDEMPTION AT THE HOLDER'S ELECTION. AT ANY TIME OR TIMES (I) DURING THE PERIOD COMMENCING ON MAY 15, 2021 AND

ENDING ON AUGUST 15, 2021, INCLUSIVE, (II) DURING THE PERIOD COMMENCING ON MAY 15, 2022 AND ENDING ON AUGUST 15, 2022, INCLUSIVE AND (III) DURING THE PERIOD COMMENCING ON NOVEMBER 15, 2024 AND ENDING ON FEBRUARY 15, 2025, INCLUSIVE, (EACH OF THE EVENTS DESCRIBED IN THE IMMEDIATELY PRECEDING CLAUSES (I) THROUGH (III), A "**HOLDER OPTIONAL REDEMPTION TRIGGER EVENT**"); PROVIDED, HOWEVER, THAT IN CASES OF THE IMMEDIATELY PRECEDING CLAUSES (I) AND (II) LESS THAN $50,000,000 OF AGGREGATE PRINCIPAL AMOUNT OF SPA NOTES ARE OUTSTANDING AS OF THE APPLICABLE HOLDER OPTIONAL REDEMPTION NOTICE DATE (AS DEFINED BELOW) AND THE RELATED HOLDER OPTIONAL REDEMPTION DATE (AS DEFINED BELOW), THE HOLDER SHALL HAVE THE RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO REQUIRE THAT THE COMPANY REDEEM (A "**HOLDER OPTIONAL REDEMPTION**") ALL OR ANY PORTION OF THE REDEMPTION AMOUNT OF THIS NOTE THEN OUTSTANDING BY DELIVERING WRITTEN NOTICE THEREOF (A "**HOLDER OPTIONAL REDEMPTION NOTICE**" AND THE DATE THE HOLDER DELIVERS SUCH NOTICE TO THE COMPANY, A "**HOLDER OPTIONAL REDEMPTION NOTICE DATE**") TO THE COMPANY WHICH NOTICE SHALL STATE (I) THE PORTION OF THIS NOTE THAT IS BEING REDEEMED BY THE HOLDER, (II) THE DATE ON WHICH THE HOLDER OPTIONAL REDEMPTION SHALL OCCUR, WHICH DATE SHALL BE THE THIRTIETH (30^{TH}) DAY FROM THE APPLICABLE HOLDER OPTIONAL REDEMPTION NOTICE DATE (OR, IF SUCH DATE FALLS ON A DAY OTHER THAN A BUSINESS DAY, THE NEXT DAY THAT IS A BUSINESS DAY) (A "**HOLDER OPTIONAL REDEMPTION DATE**") AND (III) THE WIRE INSTRUCTIONS FOR THE PAYMENT OF THE APPLICABLE HOLDER OPTIONAL REDEMPTION PRICE (AS DEFINED BELOW) TO THE HOLDER. THE PORTION OF THIS NOTE SUBJECT TO REDEMPTION PURSUANT TO THIS SECTION 6 SHALL BE REDEEMED BY THE COMPANY IN CASH AT A PRICE EQUAL TO THE PRODUCT DETERMINED BY MULTIPLYING (I) THE APPLICABLE HOLDER OPTIONAL REDEMPTION PREMIUM AND (II) THE REDEMPTION AMOUNT BEING REDEEMED, INCLUDING, WITHOUT LIMITATION, ANY ACCRUED AND UNPAID INTEREST AND LATE CHARGES, IF ANY, ON SUCH REDEMPTION AMOUNT AND INTEREST THROUGH THE APPLICABLE HOLDER OPTIONAL REDEMPTION DATE (A "**HOLDER OPTIONAL REDEMPTION PRICE**"). ON THE APPLICABLE HOLDER OPTIONAL REDEMPTION DATE, THE COMPANY SHALL DELIVER OR SHALL CAUSE TO BE DELIVERED TO THE HOLDER THE HOLDER OPTIONAL REDEMPTION PRICE IN CASH BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS PURSUANT TO WIRE INSTRUCTIONS PROVIDED BY THE HOLDER IN WRITING TO THE COMPANY. HOLDER OPTIONAL REDEMPTIONS MADE PURSUANT TO THIS SECTION 6 SHALL BE MADE IN ACCORDANCE WITH SECTION 8. TO THE EXTENT REDEMPTIONS REQUIRED BY THIS SECTION 6 ARE DEEMED OR DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE PREPAYMENTS OF THE NOTE BY THE COMPANY, SUCH REDEMPTIONS SHALL BE DEEMED TO BE VOLUNTARY PREPAYMENTS. THE PARTIES HERETO AGREE THAT IN THE EVENT OF THE COMPANY'S REDEMPTION OF ANY PORTION OF THE NOTE UNDER THIS SECTION 6, THE HOLDER'S DAMAGES WOULD BE UNCERTAIN AND DIFFICULT TO ESTIMATE BECAUSE OF THE PARTIES' INABILITY TO PREDICT FUTURE INTEREST

RATES AND THE UNCERTAINTY OF THE AVAILABILITY OF A SUITABLE SUBSTITUTE INVESTMENT OPPORTUNITY FOR THE HOLDER.

7. NONCIRCUMVENTION. THE COMPANY HEREBY COVENANTS AND AGREES THAT THE COMPANY WILL NOT, BY AMENDMENT OF ITS CERTIFICATE OF INCORPORATION OR BYLAWS OR THROUGH ANY REORGANIZATION, TRANSFER OF ASSETS, CONSOLIDATION, MERGER, SCHEME OF ARRANGEMENT, DISSOLUTION, ISSUE OR SALE OF SECURITIES, OR ANY OTHER VOLUNTARY ACTION, AVOID OR SEEK TO AVOID THE OBSERVANCE OR PERFORMANCE OF ANY OF THE TERMS OF THIS NOTE, AND WILL AT ALL TIMES IN GOOD FAITH CARRY OUT ALL OF THE PROVISIONS OF THIS NOTE AND TAKE ALL ACTION AS MAY BE REQUIRED TO PROTECT THE RIGHTS OF THE HOLDER.

8. REDEMPTIONS.

8.1. Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder within three (3) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice; provided that upon a Bankruptcy Event of Default, the Company shall deliver the applicable Event of Default Redemption Price in accordance with Section 4(c) (as applicable, the "**Event of Default Redemption Date**"). If the Holder or the Company has submitted a Change of Control Redemption Notice in accordance with Section 5(b), the Company shall deliver the applicable Change of Control Redemption Price to the Holder (i) concurrently with the consummation of such Change of Control if such notice is received prior to the consummation of such Change of Control and (ii) within three (3) Business Days after the delivery to the Company or the Holder, as applicable, of such notice otherwise (such date, the "**Change of Control Redemption Date**"). The Company shall deliver to the Holder the applicable Holder Optional Redemption Price on the applicable Holder Optional Redemption Date. The Company shall pay the applicable Redemption Price to the Holder in cash by wire transfer of immediately available funds pursuant to wire instructions provided by the Holder in writing to the Company on the applicable due date. In the event of a redemption of less than all of the Redemption Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 13(d)) representing the outstanding Principal which has not been redeemed and any accrued Interest on such Principal which shall be calculated as if no Redemption Notice has been delivered. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Redemption Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Redemption Amount and (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 13(d)) to the Holder representing such Redemption Amount to be redeemed. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of any amount, including Late Charges, which have accrued prior to the date of such notice with respect to the Redemption Amount subject to such notice.

8.2. Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes or the Additional Securities, if any, for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b), Section 5(b) or Section 6 or pursuant to analogous provisions set forth in the Other Notes, the Additional Notes or the Certificate of Designations (each, an "**Other Redemption Notice**"), the Company shall promptly, but no later than one (1) Business Day of its receipt thereof, forward to the Holder a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is three (3) Business Days prior to the Company's receipt of the Holder's Redemption Notice and ending on and including the date which is three (3) Business Days after the Company's receipt of the Holder's Redemption Notice and the Company is unable to redeem the entire Redemption Prices and such other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from the Holder and each holder of the Other Notes and the Additional Securities, if any, based on the Principal amount of this Note, the principal amount of the Other Notes and the Additional Notes and/or the Stated Value of the Series A Preferred Shares submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

9. SECURITY. THIS NOTE, THE OTHER NOTES AND THE ADDITIONAL NOTES ARE SECURED TO THE EXTENT AND IN THE MANNER SET FORTH IN THE SECURITY DOCUMENTS.

10. COVENANTS.

10.1. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock

(a) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock and the Company shall not permit any of its Subsidiaries to issue any shares of Preferred Stock; provided, however, such limitations shall not apply to (collectively, "**Permitted Debt**"):

(1) the Incurrence by the Company or any of its Subsidiaries of Indebtedness under any Credit Facilities in an aggregate principal amount outstanding at any time not to exceed $100.0 million, less the amount of Indebtedness outstanding under clause (22) of this Section 10(a)(i));

(2) the Incurrence by the (i) Company of Indebtedness represented by the Notes, Other Notes and Additional Notes and (ii) Guarantors of Indebtedness represented by the Guarantees issued with respect to the Notes, Other Notes and the Additional Notes;

(3) Indebtedness, Disqualified Stock and Preferred Stock existing on the Subscription Date and Series A Preferred Shares issued pursuant to the Securities Purchase Agreement (other than Indebtedness described in clause (1) of this Section 10(a)(i));

(4) Indebtedness with respect to all obligations and liabilities, contingent or otherwise, in respect of letters of credit, acceptances and similar facilities incurred in the ordinary course of business, including, without limitation, letters of credit and bank guarantees issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit, such obligations are reimbursed within thirty (30) days following such drawing;

(5) Indebtedness arising from agreements of the Company or a Guarantor providing for indemnification, adjustment of purchase price, deferred purchase price, earn-out or similar obligations, in each case, Incurred in connection with any acquisition or disposition of any business, assets or a Subsidiary of the Company or assumed, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(6) Indebtedness of the Company to a Guarantor;provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Guarantor ceasing to be a Guarantor or any other subsequent transfer of any such Indebtedness (except to the Company or another Guarantor) shall be deemed, in each case to be an Incurrence of such Indebtedness;

(7) shares of Preferred Stock of a Guarantor issued to the Company or another Guarantor;provided that any subsequent issuance or transfer of any Capital Stock or any other event that results in any Guarantor that holds such shares of Preferred Stock of another Guarantor ceasing to be a Guarantor or any other subsequent transfer of any such shares of Preferred Stock (except to the Company or another Guarantor) shall be deemed, in each case, to be an issuance of shares of Preferred Stock;

(8) Indebtedness of a Guarantor to the Company or another Guarantor;provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Guarantor lending such Indebtedness ceasing to be a Guarantor or any other subsequent transfer of any such Indebtedness (except to the Company or another Guarantor) shall be deemed, in each case, to be an Incurrence of such Indebtedness;

(9) obligations in respect of self-insurance and obligations (including reimbursement obligations with respect to letters of credit and bank guarantees) in respect of performance, bid, appeal and surety bonds and similar instruments and performance and completion guarantees and similar obligations provided by the Company or any Subsidiary, in each case, incurred in the ordinary course of business;

(10) any guarantee or co-issuance by the Company or a Guarantor of Indebtedness or other obligations of the Company or any Guarantor so long as the Incurrence of such Indebtedness or other obligations by the Company or such Guarantor is not prohibited under the terms of this Note; provided that if such Indebtedness is by its express terms subordinated in right of payment to the Notes and the Additional Notes or the Guarantee of such Guarantor, as applicable, any such guarantee or co-issuance of such Guarantor with respect to such Indebtedness shall be subordinated in right of payment to such Guarantor's Guarantee with respect to the Notes and Additional Notes substantially to the same extent as such Indebtedness is subordinated to the Notes and Additional Notes or the Guarantee of such Guarantor, as applicable;

(11) the Incurrence by the Company or any Guarantor of Indebtedness or Disqualified Stock or Preferred Stock of a Guarantor which serves to refund, refinance, replace, renew, extend or defease any Indebtedness, Disqualified Stock or Preferred Stock Incurred as permitted under clauses (2), (3) and (11) of this Section 10(a)(i) or any Indebtedness, Disqualified Stock or Preferred Stock Incurred to so refund or refinance such Indebtedness, Disqualified Stock or Preferred Stock, including any Indebtedness, Disqualified Stock or Preferred Stock Incurred to pay premiums (including lender premiums), defeasance costs, accrued interest, fees and expenses in connection therewith (subject to the following proviso, "**Refinancing Indebtedness**") prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being refunded or refinanced, replaced, renewed, extended or defeased;

(B) has a Stated Maturity which is no earlier than ninety one (91) days after the Maturity Date;

(C) to the extent such Refinancing Indebtedness refinances (x) Indebtedness junior to the Notes and the Additional Notes or the Guarantee of such Guarantor, as applicable, such Refinancing Indebtedness is junior to the Notes and the Additional Notes or the Guarantee of such Guarantor, as applicable, or (y) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock; and

(D) is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced plus premium and fees Incurred in connection with such refinancing;

(12) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, that such Indebtedness is extinguished within ten (10) Business Days of its Incurrence;

(13) Indebtedness of the Company or any Guarantor consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(14) Indebtedness of the Company or any Guarantor Incurred in the ordinary course of business under guarantees of Indebtedness of suppliers, licensees, franchisees or customers;

(15) to the extent constituting Indebtedness, obligations in respect of (A) customer deposits and advance payments received in the ordinary course of business, (B) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued or relating to liabilities or obligations Incurred in the ordinary course of business and (C) any customary cash management, cash pooling or netting or setting off arrangements or automatic clearinghouse arrangements in the ordinary course of business;

(16) Indebtedness to current or former officers, managers, consultants, directors and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Company permitted by this Note;

(17) Indebtedness in connection with a Qualified Receivables Financing;

(18) the incurrence of contingent liabilities arising out of endorsements of checks, drafts and other similar instruments for deposit or collection in the ordinary course of business;

(19) Indebtedness of the Company and its Subsidiaries, to the extent the net proceeds thereof are promptly used to purchase all of this Note, the Other Notes and the Additional Notes in connection with a Change of Control;

(20) Indebtedness incurred by the Company or any Guarantor;provided, that (i) the net proceeds of such Indebtedness will be used to prepay other outstanding Indebtedness of the Company or any Guarantor and (ii) such Indebtedness is thereafter promptly assumed, retired or otherwise repaid by a Person (other than the Company or any Subsidiary) and upon such assumption, retirement or other repayment, such Indebtedness is non-recourse to the Company or any Subsidiary;

(21) Indebtedness in respect of an acquisition permitted hereunder, which Indebtedness is not incurred in connection with such acquisition by the Company or any Subsidiary in contemplation of such acquisition and such Indebtedness is existing at the time such Person becomes a Subsidiary of the Company or a Guarantor (other than Indebtedness incurred solely in contemplation of such Person becoming a Subsidiary of the Company or a Guarantor, in an aggregate principal amount outstanding at any time not to exceed $20.0 million; and

(22) Indebtedness in respect of margin loans not to exceed $4,000,000 in the aggregate Incurred solely in connection with the $115,000,000 principal amount of Notes issued on June 4, 2020.

(b) For purposes of determining compliance with this Section 10(a), in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock meets the criteria of more than one of the categories of Permitted Debt, the Company shall, in its sole discretion, divide, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock in any manner that complies with this Section 10(a) and such item of Indebtedness, Disqualified Stock or Preferred Stock shall be treated as having been Incurred pursuant to only one of the clauses in Section 10(a)(i), but may be Incurred partially under one clause and partially under one or more other clauses. Accrual of interest, the accretion of accreted value, the amortization or accretion of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, the accretion of liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies shall not be deemed to be an Incurrence of Indebtedness for purposes of this Section 10(a) or Section 10(d). Any Indebtedness under a revolving credit or similar facility shall only be deemed to be Incurred at the time funds are borrowed. Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or similar instruments relating to, or Liens securing, Indebtedness which are otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided, that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 10(a). Indebtedness that is cash collateralized shall not be deemed to be Indebtedness hereunder to the extent of such cash collateralization. The principal amount of any Disqualified Stock or Preferred Stock will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof.

10.2. Limitation on Restricted Payments.

(a) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution on account of the Company's or any of its Subsidiaries' Equity Interests, including any payment made in connection with any merger or consolidation involving the Company (other than (A) dividends, payments or distributions by the Company payable solely in Equity Interests (other than Disqualified Stock) of the Company or in options, warrants or other rights to purchase such Equity Interests; or (B) dividends, payments or distributions by a Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a Subsidiary of the Company that is a Wholly Owned Subsidiary of the Company, the Company or a Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(2) purchase or otherwise acquire or retire for value any Equity Interests of the Company held by any Person other than the Company or a Subsidiary;

(3) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or

scheduled maturity, any Subordinated Indebtedness (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of (A) Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (B) Indebtedness permitted under clauses (6) and (8) of Section 10(a)(ii)); or

(4) make any Restricted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as "**Restricted Payments**").

(b) The provisions of Section 10(b)(i) shall not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within sixty (60) days after the date of declaration thereof or the giving of such irrevocable notice, as applicable, if at the date of declaration such payment or the giving of such notice would have complied with the provisions of this Note (assuming, in the case of a redemption payment, the giving of such notice would have been deemed a Restricted Payment at such time and such deemed Restricted Payment would have been permitted at such time);

(2) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests (**Retired Capital Stock**") of the Company or Subordinated Indebtedness of the Company or any Guarantor in exchange for (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of fractional shares), or out of the proceeds of the substantially concurrent sale of, Equity Interests of the Company or contributions to the equity capital of the Company (other than any Disqualified Stock or any Equity Interests sold to a Guarantor or to an employee stock ownership plan or any trust established by the Company or any Guarantor to the extent funded by the Company and its Subsidiaries) (collectively, including any such contributions, "**Refunding Capital Stock**"); and (B) the declaration and payment of accrued dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any of its Subsidiaries) of Refunding Capital Stock;

(3) the redemption, defeasance, repurchase or other acquisition or retirement of (x) Subordinated Indebtedness of the Company or any Guarantor made by exchange for, or out of the proceeds of the substantially concurrent sale of, new Indebtedness of the Company or any Guarantor or (y) Disqualified Stock of the Company or any Guarantor made in exchange for, or out of the proceeds of a substantially concurrent sale of, Disqualified Stock of the Company or any Guarantor, in either case which constitutes Refinancing Indebtedness under Section 10(a)(i)(11);

(4) the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Company held by any future, present or former employee, director or consultant of the Company or any Subsidiary of the Company (or the relevant Person's estate or beneficiary of such Person's estate) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement;

provided, however, that the aggregate amounts paid under this clause (4) do not exceed $2.5 million in any calendar year (with unused amounts in any calendar year being permitted to be carried over for succeeding calendar years up to a maximum of $5.0 million in the aggregate in any calendar year);

(5) (a) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Company or Disqualified Stock or Preferred Stock of any Guarantor and (b) the payment of any redemption price or liquidation value of any such Disqualified Stock or Preferred Stock when due in accordance with its terms, in each case, Incurred in accordance with Section 10(a);

(6) the declaration and payment of dividends or other distributions or payments to holders of Series A Preferred Shares, Series A Warrants or Series B Warrants pursuant to their terms;

(7) other Restricted Payments in an aggregate amount not to exceed the greater of (x) $10.0 million and (y) 2.5% of Total Assets at the time of such Restricted Payment;

(8) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants or other rights if such Equity Interests represent a portion of the exercise price of such options or warrants and payments in cash in lieu of the issuance of fractional shares;

(9) purchases of receivables pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing and the payment or distribution of Receivables Fees;

(10) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Company or a Guarantor pursuant to provisions similar to those described under Section 5(b); provided that, prior to or concurrently with such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Company (or a third party to the extent permitted by this Note) have satisfied all obligations pursuant to Section 5(b); and

(11) distributions or payments of Receivables Fees, sales contributions and other transfers of and purchases of assets pursuant to repurchase obligations, in each case in connection with a Qualified Receivables Financing;

(12) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds from the substantially concurrent contribution to the common equity of the Company or from the substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests (other than Disqualified Stock) of the Company; and

(13) the payment of cash in lieu of the issuance of fractional shares of Equity Interests in connection with any dividend or split of, or upon exercise or conversion of warrants, options or other securities exercisable or convertible into, Equity Interests

of the Company or in connection with the issuance of any dividend otherwise permitted to be made.

(c) For purposes of this Section 10(b), if any Investment or Restricted Payment would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of "Permitted Investments," the Company may classify such Investment or Restricted Payment in any manner that complies with this covenant and may later reclassify any such Investment or Restricted Payment so long as such Investment or Restricted Payment (as so reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.

10.3. Guarantees. The Company shall cause each Subsidiary (unless such Subsidiary is already a Guarantor) other than an Immaterial Subsidiary, and promptly after any Immaterial Subsidiary that is a Subsidiary ceases to be an Immaterial Subsidiary, the Company shall cause such Subsidiary, to execute and deliver to the Holder and the holders of the Other Notes, a Guarantee Agreement in the form of Exhibit E attached to the Securities Purchase Agreement pursuant to which such Subsidiary shall guarantee payment of the Notes.

10.4. Limitation on Liens.

(a) Neither the Company nor any of its Subsidiaries may issue, assume or guarantee any Indebtedness secured by a Lien (other than a Permitted Lien) upon any asset or property of the Company or such Subsidiary or on any evidences of Indebtedness or shares of Capital Stock of, or other ownership interests in, any Subsidiary (regardless of whether the asset, property, Indebtedness, Capital Stock or ownership interests were acquired before or after the date hereof).

(b) For purposes of this Section 10(d), if any Lien would be permitted pursuant to one or more of the exceptions contained in the definition of "Permitted Lien," the Company may classify such Lien in any manner that complies with this covenant and may later reclassify any such Lien so long as such Lien (as so reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.

10.5. Notices. The Company shall promptly, but in any event within one (1) Business Day, notify the Holder in writing whenever an Event of Default (an "**Event of Default Notice**") occurs, and, to the extent required pursuant to Section 24, simultaneously with the delivery of such notice to the Holder, file a Current Report on Form 8-K with the SEC to state such fact.

10.6. Financial Covenants.

(a) The Company shall maintain on deposit unrestricted and unencumbered cash and/or Marketable Securities in an aggregate amount equal to not less than $50,000,000; and

(b) The Company shall not permit the ratio of Consolidated Total Debt to EBITDA as of the last day of any Test Period to exceed 4.00 to 1.00 [INSERT SOLELY IN $115,000,000 PRINCIPAL AMOUNT ISSUED ON JUNE 4, 2020: ; provided,

however, that the Company shall not be required to comply with this Section 10(f)(ii) for the Test Periods ending on June 30, 2020 and September 30, 2020].

11. VOTE TO ISSUE, OR CHANGE THE TERMS OF, NOTES. THE AFFIRMATIVE VOTE OF THE REQUIRED HOLDERS AT A MEETING DULY CALLED FOR SUCH PURPOSE OR THE WRITTEN CONSENT WITHOUT A MEETING OF THE REQUIRED HOLDERS, VOTING TOGETHER AS A SINGLE CLASS, SHALL BE REQUIRED FOR ANY CHANGE OR AMENDMENT OR WAIVER OF ANY PROVISION TO THIS NOTE, ANY OF THE OTHER NOTES OR ANY OF THE ADDITIONAL NOTES. ANY CHANGE, AMENDMENT OR WAIVER BY THE COMPANY AND THE REQUIRED HOLDERS SHALL BE BINDING ON THE HOLDER OF THIS NOTE AND ALL HOLDERS OF THE OTHER NOTES AND THE ADDITIONAL NOTES. NO CONSIDERATION SHALL BE OFFERED OR PAID TO ANY OF THE HOLDERS OF NOTES OR ADDITIONAL NOTES TO AMEND OR WAIVE OR MODIFY ANY PROVISION OF THE NOTES AND/OR THE ADDITIONAL NOTES, UNLESS THE SAME CONSIDERATION (OTHER THAN THE REIMBURSEMENT OF LEGAL FEES) IS ALSO OFFERED TO ALL OF THE HOLDERS OF NOTES AND ADDITIONAL NOTES. THIS PROVISION CONSTITUTES A SEPARATE RIGHT GRANTED TO EACH OF THE HOLDERS OF NOTES AND ADDITIONAL NOTES BY THE COMPANY AND SHALL NOT IN ANY WAY BE CONSTRUED AS SUCH HOLDERS ACTING IN CONCERT OR AS A GROUP WITH RESPECT TO THE PURCHASE, DISPOSITION OR VOTING OF SECURITIES OR OTHERWISE.

12. TRANSFER. THE HOLDER MAY OFFER, SELL, ASSIGN OR TRANSFER ALL OR ANY PORTION OF THIS NOTE AND THE ACCOMPANYING RIGHTS HEREUNDER WITHOUT THE CONSENT OF THE COMPANY, SUBJECT ONLY TO THE PROVISIONS OF SECTION 2(F) OF THE SECURITIES PURCHASE AGREEMENT.

13. REISSUANCE OF THIS NOTE.

13.1. Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will within five (5) Business Days of such surrender, issue and deliver upon the order of the Holder a new Note (in accordance with Section 13(d) and subject to Section 3), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 13(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3 following cancellation pursuant to Section 26 or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

13.2. Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form (but without any obligation to post a surety or other bond) and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 13(d)) representing the outstanding Principal within five (5) Business Days of receipt of such evidence.

13.3. Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes within five (5) Business Days of such surrender (in accordance with Section 13(d)) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

13.4. Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 13(a) or Section 13(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges, if any, on the Principal and Interest of this Note, from the Issuance Date.

14. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. THE REMEDIES PROVIDED IN THIS NOTE SHALL BE CUMULATIVE AND IN ADDITION TO ALL OTHER REMEDIES AVAILABLE UNDER THIS NOTE AND ANY OF THE OTHER TRANSACTION DOCUMENTS AT LAW OR IN EQUITY (INCLUDING A DECREE OF SPECIFIC PERFORMANCE AND/OR OTHER INJUNCTIVE RELIEF). NO REMEDY CONTAINED HEREIN SHALL BE DEEMED A WAIVER OF COMPLIANCE WITH THE PROVISIONS GIVING RISE TO SUCH REMEDY. NOTHING HEREIN SHALL LIMIT THE HOLDER'S RIGHT TO PURSUE ACTUAL AND CONSEQUENTIAL DAMAGES FOR ANY FAILURE BY THE COMPANY TO COMPLY WITH THE TERMS OF THIS NOTE. THE COMPANY COVENANTS TO THE HOLDER THAT THERE SHALL BE NO CHARACTERIZATION CONCERNING THIS INSTRUMENT OTHER THAN AS EXPRESSLY PROVIDED HEREIN. AMOUNTS SET FORTH OR PROVIDED FOR HEREIN WITH RESPECT TO PAYMENTS, REDEMPTION AND THE LIKE (AND THE COMPUTATION THEREOF) SHALL BE THE AMOUNTS TO BE RECEIVED BY THE HOLDER AND SHALL NOT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, BE SUBJECT TO ANY OTHER OBLIGATION OF THE COMPANY (OR THE PERFORMANCE THEREOF). THE COMPANY ACKNOWLEDGES THAT A BREACH BY IT OF ITS OBLIGATIONS HEREUNDER WILL CAUSE IRREPARABLE HARM TO THE HOLDER AND THAT THE REMEDY AT LAW FOR ANY SUCH BREACH MAY BE INADEQUATE. THE COMPANY THEREFORE AGREES THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE HOLDER SHALL BE ENTITLED, IN ADDITION TO ALL OTHER AVAILABLE REMEDIES, TO AN INJUNCTION RESTRAINING ANY BREACH, WITHOUT THE NECESSITY OF SHOWING ECONOMIC LOSS AND WITHOUT ANY BOND OR OTHER SECURITY BEING REQUIRED.

15. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. IF (A) THIS NOTE IS PLACED IN THE HANDS OF AN ATTORNEY FOR COLLECTION OR ENFORCEMENT OR IS COLLECTED OR ENFORCED THROUGH ANY

LEGAL PROCEEDING OR THE HOLDER OTHERWISE TAKES ACTION TO COLLECT AMOUNTS DUE UNDER THIS NOTE OR TO ENFORCE THE PROVISIONS OF THIS NOTE OR (B) THERE OCCURS ANY BANKRUPTCY, REORGANIZATION, RECEIVERSHIP OF THE COMPANY OR OTHER PROCEEDINGS AFFECTING COMPANY CREDITORS' RIGHTS AND INVOLVING A CLAIM UNDER THIS NOTE, THEN THE COMPANY SHALL PAY THE COSTS INCURRED BY THE HOLDER FOR SUCH COLLECTION, ENFORCEMENT OR ACTION OR IN CONNECTION WITH SUCH BANKRUPTCY, REORGANIZATION, RECEIVERSHIP OR OTHER PROCEEDING, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISBURSEMENTS.

16. CONSTRUCTION; HEADINGS. THIS NOTE SHALL BE DEEMED TO BE JOINTLY DRAFTED BY THE COMPANY AND ALL THE BUYERS AND SHALL NOT BE CONSTRUED AGAINST ANY PERSON AS THE DRAFTER HEREOF. THE HEADINGS OF THIS NOTE ARE FOR CONVENIENCE OF REFERENCE AND SHALL NOT FORM PART OF, OR AFFECT THE INTERPRETATION OF, THIS NOTE.

17. FAILURE OR INDULGENCE NOT WAIVER. NO FAILURE OR DELAY ON THE PART OF THE HOLDER IN THE EXERCISE OF ANY POWER, RIGHT OR PRIVILEGE HEREUNDER SHALL OPERATE AS A WAIVER THEREOF, NOR SHALL ANY SINGLE OR PARTIAL EXERCISE OF ANY SUCH POWER, RIGHT OR PRIVILEGE PRECLUDE OTHER OR FURTHER EXERCISE THEREOF OR OF ANY OTHER RIGHT, POWER OR PRIVILEGE.

18. DISPUTE RESOLUTION. IN THE CASE OF A DISPUTE AS TO THE ARITHMETIC CALCULATION OF ANY REDEMPTION PRICE, THE COMPANY SHALL PAY THE APPLICABLE REDEMPTION PRICE THAT IS NOT DISPUTED, AND THE COMPANY SHALL SUBMIT THE DISPUTED ARITHMETIC CALCULATIONS WITHIN TWO (2) BUSINESS DAYS OF THE DELIVERY OF THE REDEMPTION NOTICE OR OTHER EVENT GIVING RISE TO SUCH DISPUTE, AS THE CASE MAY BE, TO THE HOLDER. IF THE HOLDER AND THE COMPANY ARE UNABLE TO AGREE UPON SUCH DETERMINATION OR CALCULATION WITHIN THREE (3) BUSINESS DAYS OF SUCH DISPUTED ARITHMETIC CALCULATION BEING SUBMITTED TO THE HOLDER, THEN THE COMPANY SHALL, WITHIN TWO (2) BUSINESS DAYS SUBMIT THE DISPUTED ARITHMETIC CALCULATION OF ANY REDEMPTION PRICE TO AN INDEPENDENT, OUTSIDE ACCOUNTANT, SELECTED BY THE HOLDER AND APPROVED BY THE COMPANY, SUCH APPROVAL NOT TO BE UNREASONABLY WITHHELD, CONDITIONED OR DELAYED. THE COMPANY, AT ITS EXPENSE, SHALL CAUSE THE ACCOUNTANT TO PERFORM THE CALCULATIONS AND NOTIFY THE COMPANY AND THE HOLDER OF THE RESULTS NO LATER THAN FIVE (5) BUSINESS DAYS FROM THE TIME IT RECEIVES THE DISPUTED CALCULATIONS. SUCH ACCOUNTANT'S CALCULATION SHALL BE BINDING UPON ALL PARTIES ABSENT DEMONSTRABLE ERROR.

19. NOTICES; PAYMENTS.

19.1. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the

Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company shall give written notice to the Holder at least ten (10) Business Days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction or Liquidation Event.

19.2. Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America via wire transfer of immediately available funds to an account designated by the Holder; provided, that the Holder, upon written notice to the Company, may elect to receive a payment of cash in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement). Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount due under the Transaction Documents which is not paid when due shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of six percent (6.0%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

20. CANCELLATION. AFTER ALL PRINCIPAL, ANY ACCRUED INTEREST AND ANY OTHER AMOUNTS AT ANY TIME OWED ON THIS NOTE HAVE BEEN PAID IN FULL, THIS NOTE SHALL AUTOMATICALLY BE DEEMED CANCELED AND SHALL NOT BE REISSUED, SOLD OR TRANSFERRED.

21. WAIVER OF NOTICE. TO THE EXTENT PERMITTED BY LAW, THE COMPANY HEREBY WAIVES DEMAND, NOTICE, PROTEST AND ALL OTHER DEMANDS AND NOTICES IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THIS NOTE.

22. GOVERNING LAW; JURISDICTION; JURY TRIAL. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS NOTE SHALL BE GOVERNED BY, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTIONS) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTIONS OTHER THAN THE STATE OF NEW YORK. THE COMPANY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN, AND HEREBY

IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. THE COMPANY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF TO THE COMPANY AT THE ADDRESS SET FORTH IN SECTION 9(F) OF THE SECURITIES PURCHASE AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. NOTHING CONTAINED HEREIN SHALL BE DEEMED OR OPERATE TO PRECLUDE THE HOLDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION AGAINST THE COMPANY IN ANY OTHER JURISDICTION TO COLLECT ON THE COMPANY'S OBLIGATIONS TO THE HOLDER, TO REALIZE ON ANY COLLATERAL OR ANY OTHER SECURITY FOR SUCH OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT RULING IN FAVOR OF THE HOLDER. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

23. SEVERABILITY. IF ANY PROVISION OF THIS NOTE IS PROHIBITED BY LAW OR OTHERWISE DETERMINED TO BE INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THE PROVISION THAT WOULD OTHERWISE BE PROHIBITED, INVALID OR UNENFORCEABLE SHALL BE DEEMED AMENDED TO APPLY TO THE BROADEST EXTENT THAT IT WOULD BE VALID AND ENFORCEABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF SUCH PROVISION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PROVISIONS OF THIS NOTE SO LONG AS THIS NOTE AS SO MODIFIED CONTINUES TO EXPRESS, WITHOUT MATERIAL CHANGE, THE ORIGINAL INTENTIONS OF THE COMPANY AND THE HOLDER AS TO THE SUBJECT MATTER HEREOF AND THE PROHIBITED NATURE, INVALIDITY OR UNENFORCEABILITY OF THE PROVISION(S) IN QUESTION DOES NOT SUBSTANTIALLY IMPAIR THE RESPECTIVE EXPECTATIONS OR RECIPROCAL OBLIGATIONS OF THE COMPANY OR THE HOLDER OR THE PRACTICAL REALIZATION OF THE BENEFITS THAT WOULD OTHERWISE BE CONFERRED UPON THE COMPANY OR THE HOLDER. THE COMPANY AND THE HOLDER WILL ENDEAVOR IN GOOD FAITH NEGOTIATIONS TO REPLACE THE PROHIBITED, INVALID OR UNENFORCEABLE PROVISION(S) WITH A VALID PROVISION(S), THE EFFECT OF WHICH COMES AS CLOSE AS POSSIBLE TO THAT OF THE PROHIBITED, INVALID OR UNENFORCEABLE PROVISION(S).

24. DISCLOSURE. EXCEPT IF AN INDIVIDUAL AFFILIATED WITH THE HOLDER SERVES ON THE BOARD, INCLUDING PURSUANT TO THE GOVERNANCE AGREEMENT, UPON RECEIPT OR DELIVERY BY THE COMPANY OF ANY NOTICE IN ACCORDANCE WITH THE TERMS OF THIS NOTE, UNLESS THE

COMPANY HAS IN GOOD FAITH DETERMINED THAT THE MATTERS RELATING TO SUCH NOTICE DO NOT CONSTITUTE MATERIAL, NONPUBLIC INFORMATION RELATING TO THE COMPANY OR ITS SUBSIDIARIES, THE COMPANY SHALL CONTEMPORANEOUSLY WITH ANY SUCH RECEIPT OR DELIVERY PUBLICLY DISCLOSE SUCH MATERIAL, NONPUBLIC INFORMATION ON A CURRENT REPORT ON FORM 8-K OR OTHERWISE. IN THE EVENT THAT THE COMPANY BELIEVES THAT A NOTICE CONTAINS MATERIAL, NONPUBLIC INFORMATION RELATING TO THE COMPANY OR ITS SUBSIDIARIES, THE COMPANY SO SHALL INDICATE TO THE HOLDER CONTEMPORANEOUSLY WITH DELIVERY OF SUCH NOTICE, AND IN THE ABSENCE OF ANY SUCH INDICATION, THE HOLDER SHALL BE ALLOWED TO PRESUME THAT ALL MATTERS RELATING TO SUCH NOTICE DO NOT CONSTITUTE MATERIAL, NONPUBLIC INFORMATION RELATING TO THE COMPANY OR ITS SUBSIDIARIES.

25. USURY. THIS NOTE IS SUBJECT TO THE EXPRESS CONDITION THAT AT NO TIME SHALL THE COMPANY BE OBLIGATED OR REQUIRED TO PAY INTEREST HEREUNDER AT A RATE OR IN AN AMOUNT WHICH COULD SUBJECT THE HOLDER TO EITHER CIVIL OR CRIMINAL LIABILITY AS A RESULT OF BEING IN EXCESS OF THE MAXIMUM INTEREST RATE OR AMOUNT WHICH THE COMPANY IS PERMITTED BY APPLICABLE LAW TO CONTRACT OR AGREE TO PAY. IF BY THE TERMS OF THIS NOTE, THE COMPANY IS AT ANY TIME REQUIRED OR OBLIGATED TO PAY INTEREST HEREUNDER AT A RATE OR IN AN AMOUNT IN EXCESS OF SUCH MAXIMUM RATE OR AMOUNT, THE RATE OR AMOUNT OF INTEREST UNDER THIS NOTE SHALL BE DEEMED TO BE IMMEDIATELY REDUCED TO SUCH MAXIMUM RATE OR AMOUNT AND THE INTEREST PAYABLE SHALL BE COMPUTED AT SUCH MAXIMUM RATE OR BE IN SUCH MAXIMUM AMOUNT AND ALL PRIOR INTEREST PAYMENTS IN EXCESS OF SUCH MAXIMUM RATE OR AMOUNT SHALL BE APPLIED AND SHALL BE DEEMED TO HAVE BEEN PAYMENTS IN REDUCTION OF THE PRINCIPAL BALANCE OF THIS NOTE.

26. CANCELLATION IN CONNECTION WITH SERIES B WARRANT EXERCISE. ALL OR ANY PORTION OF THE PRINCIPAL AMOUNT OUTSTANDING UNDER THIS NOTE MAY, AT THE ELECTION OF THE HOLDER, IN ITS SOLE AND ABSOLUTE DISCRETION, BE SURRENDERED TO THE COMPANY FROM TIME TO TIME FOR CANCELLATION IN PAYMENT OF THE OTHER EXERCISE PRICE IN ACCORDANCE WITH THE TERMS OF THE SERIES B WARRANTS. ANY (A) ACCRUED AND UNPAID INTEREST WITH RESPECT TO THE PRINCIPAL AMOUNT CANCELLED PURSUANT TO THE IMMEDIATELY PRECEDING SENTENCE AND (B) ACCRUED AND UNPAID LATE CHARGES, IF ANY, WITH RESPECT TO SUCH PRINCIPAL AND INTEREST, SHALL BE PAID IN CASH BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS PURSUANT TO WIRE INSTRUCTIONS PROVIDED BY THE HOLDER IN WRITING TO THE COMPANY ON THE APPLICABLE SHARE DELIVERY DATE (AS DEFINED IN THE SERIES B WARRANTS) AND SHALL NOT BE CANCELLED IN PAYMENT OF THE OTHER EXERCISE PRICE UPON EXERCISE OF THE SERIES B WARRANTS.

27. CERTAIN DEFINITIONS. FOR PURPOSES OF THIS NOTE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

27.1. "**Acquired Indebtedness**" means, with respect to any specified Person:

(a) Indebtedness of any other Person existing at the time such other Person (a) is merged with or into (or consolidated or otherwise combined with the Company or any Subsidiary) or (b) became a Subsidiary of such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person, in each case, including Indebtedness Incurred as consideration in, in contemplation of, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was otherwise acquired by such Person, or such asset was acquired by such Person, as applicable.

27.2. "**Additional Closing Date**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.3. "**Additional Notes**" means: (i) all Senior Secured Notes, if any, issued by the Company pursuant to the Securities Purchase Agreement on an Additional Closing Date that is not the Issuance Date, (ii) all Senior Secured Notes, if any, issued by the Company in an Exchange (as defined in the Certificate of Designations) and (iii) all Stockholders Notes.

27.4. "**Additional Securities**" means (i) the Additional Notes and (ii) all Series A Preferred Shares issued by the Company pursuant to the Securities Purchase Agreement on the Initial Closing Date.

27.5. "**Affiliate**" shall have the meaning ascribed to such term in Rule 405 of the Securities Act.

27.6. "**Approved Investment**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.7. "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

27.8. "**Buyer**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.9. "**Capital Stock**" means:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

27.10. "**Cash Equivalents**" means:

(a) U.S. Dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(b) securities issued or directly and fully guaranteed or insured by the government of the United States or any country that is a member of the European Union or any agency or instrumentality thereof in each case with maturities not exceeding two (2) years from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances, in each case with maturities not exceeding one year, and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $500 million, or the foreign currency equivalent thereof, and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency);

(d) repurchase obligations for underlying securities of the types described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above;

(e) commercial paper issued by a corporation (other than an Affiliate of the Company) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;

(f) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two (2) years from the date of acquisition;

(g) Indebtedness issued by Persons with a rating of "A" or higher from S&P or "A-2" or higher from Moody's in each case with maturities not exceeding two (2) years from the date of acquisition; and

(h) investment funds investing at least 95% of their assets in securities of the types described in clauses (i) through (vii) above.

27.11. "**Certificate of Designations**" has the meaning ascribed to such term in the Securities Purchase Agreement.

27.12. "**Change of Control**" means any Fundamental Transaction, other than (i) an Approved Investment, (ii) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company; provided, however, that a Change of Control will be deemed not to have occurred if ninety percent (90%) or more of the consideration in the transaction or transactions which otherwise would constitute a Change of Control consists of shares of common stock, depositary receipts or other certificates representing common equity interests traded or to be traded immediately following such transaction on an Eligible Market.

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

27.14. "**Collateral**" shall have the meaning ascribed to such term in the Security Documents.

27.15. "**Collateral Agent**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.16. "**Common Stock**" means (i) the Company's shares of common stock, par value $0.001 per share and (ii) any capital stock into which such Common Stock shall be changed or any capital stock resulting from a reorganization, recapitalization or reclassification of such Common Stock.

27.17. "**Consolidated**" means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

27.18. "**Consolidated Interest Expense**" means, for any Test Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts and (b) the portion of rent expense with respect to such period under Finance Lease Obligations that is treated as interest in accordance with GAAP as in effect on December 31, 2018, in each case of or by the Company and its Subsidiaries for the most recently completed Test Period,

all as determined on a Consolidated basis in accordance with GAAP, and in each case, excluding (i) any additional cash interest owing pursuant to any registration rights agreement, (ii) accretion or accrual of discounted liabilities, (iii) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses, (iv) any expensing of a bridge, commitment and other financing fees, (v) interest with respect to Indebtedness of any parent of such Person appearing on the balance sheet of such Person solely by reason of push down accounting and (vi) Swap Contract costs.

27.19. "**Consolidated Net Income**" means for any Test Period, the aggregate of the Net Income of a Person and its Subsidiaries for such period, determined on a Consolidated basis in accordance with GAAP; provided, however, that:

(a) any net after-tax extraordinary, nonrecurring or unusual gains or losses shall be excluded;

(b) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(c) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the Company) shall be excluded;

(d) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness shall be excluded;

(e) the Net Income for such period of any Person that is not a Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments actually paid in cash (or to the extent converted into cash) to the referent Person or a Subsidiary thereof in respect of such period;

(f) (a) the non-cash portion of "straight-line" rent expense shall be excluded and (b) the cash portion of "straight-line" rent expense which exceeds the amount expensed in respect of such rent expense shall be included;

(g) unrealized gains and losses relating to hedging transactions and mark-to-market of Indebtedness denominated in foreign currencies resulting from the application of ASC 830 shall be excluded;

(h) the income (or loss) of any non-consolidated entity during such Test Period in which any other Person has a joint interest shall be excluded, except to the extent of the amount of cash dividends or other distributions actually paid in cash to the Company or any of its Subsidiaries during such period; and

(i) the income (or loss) of a Subsidiary during such Test Period and accrued prior to the date it becomes a Subsidiary of the Company or any of its Subsidiaries or

is merged into or consolidated with the Company or any of its Subsidiaries or that Person's assets are acquired by the Company or any of its Subsidiaries shall be excluded.

27.20. "**Consolidated Non-cash Charges**" means, with respect to the Company and its Subsidiaries for any period, the aggregate depreciation, amortization, impairment, compensation, rent and other non-cash expenses of such Person and its Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP (including non-cash charges resulting from purchase accounting, in connection with any acquisition or disposition), but excluding (i) any such charge which consists of or requires an accrual of, or cash reserve for, anticipated cash charges for any future period and (ii) the non-cash impact of recording the change in fair value of any embedded derivatives under ASC 815 and related interpretations as a result of the terms of any agreement or instrument to which such Consolidated Non-cash Charges relate.

27.21. "**Consolidated Taxes**" means, with respect to the Company and its Subsidiaries on a consolidated basis for any period, provision for taxes based on income, profits or capital, including, without limitation, state franchise and similar taxes.

27.22. "**Consolidated Total Debt**" means, as of any date of determination, the aggregate principal amount of Indebtedness, including, without limitation, Finance Lease Obligations, of the Company and its Subsidiaries outstanding on such date; provided that Consolidated Total Debt shall not include Indebtedness in respect of letters of credit, except to the extent of unreimbursed amounts thereunder.

27.23. "**Credit Facilities**" means one or more debt facilities or other financing arrangements (including, without limitation, commercial paper facilities or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any indentures or credit facilities or commercial paper facilities that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount permitted to be borrowed thereunder or alters the maturity thereof or adds Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender or group of lenders.

27.24. "**Customary Intercreditor Agreement**" means (a) to the extent executed in connection with the incurrence or assumption of secured Indebtedness, the Liens on the Collateral securing such Indebtedness which are intended to rank equal in priority to the Liens on the Collateral securing the Securities and the Guarantees (but without regard to the control of remedies), a customary intercreditor agreement in form and substance reasonably acceptable to the Required Holders and the Company, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority to the Liens on the Collateral securing the Securities and the Guarantees (but without regard to the control of remedies) and (b) to the extent executed in connection with the incurrence or assumption of secured Indebtedness, the Liens on the Collateral securing such Indebtedness which are intended to rank junior (or senior, as applicable) in priority to the Liens on the Collateral securing the Securities and the Guarantees, a

customary intercreditor agreement in form and substance reasonably acceptable to the Required Holders and the Company, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior (or senior, as applicable) in priority to the Lien on the Collateral securing the Securities and the Guarantees.

27.25. "**Designee**" means Starboard Value LP or any of its Affiliates.

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

(a) matures or is mandatorily redeemable for cash or in exchange for Indebtedness, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; provided that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Capital Stock than the asset sale and change of control provisions applicable to the Notes and the Additional Notes and any purchase requirement triggered thereby may not become operative until (or contemporaneously with) compliance with the asset sale and change of control provisions applicable to the Notes and the Additional Notes (including the purchase of any Notes and Additional Notes tendered pursuant thereto)),

(b) is convertible or exchangeable for Indebtedness or Disqualified Stock at the option of the holder thereof, or

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

in each case prior to ninety one (91) days after the maturity date of the Notes and the Additional Notesprovided, however, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; provided, further, however, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; provided, further, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

27.27. "**EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period for the most recently completed Test Period plus, without duplication, to the extent the same was deducted in calculating such Consolidated Net Income:

(a) Consolidated Taxes; plus

(b) Consolidated Interest Expense; plus

(c) Consolidated Non-cash Charges; plus

(d) any premiums, expenses or charges (other than Consolidated Non-cash Charges) related to any issuance of Equity Interests, Investment, acquisition, disposition, recapitalization or the incurrence or repayment or amendment of Indebtedness (including a refinancing thereof) (whether or not successful or meeting the dollar amount thresholds specified herein), including (i) such fees, expenses or charges related to the issuance of Indebtedness, (ii) any amendment or other modification of Indebtedness and (iii) commissions, discounts, yield, premium or other fees and charges (including any interest expense) related to any Qualified Receivables Financing; plus

(e) the amount of loss on sale of receivables and related assets to a Receivables Subsidiary in connection with a Qualified Receivables Financing; plus

(f) any costs or expense incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Company or the net cash proceeds of an issuance of Equity Interests of the Company (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the amount available for Restricted Payments under Section 10(b)(i)(3)(A); plus

(g) the amount of any minority interest expense consisting of income of a Subsidiary attributable to minority equity interests of third parties in any non-Wholly Owned Subsidiary deducted in such period in calculating Consolidated Net Income, net of any cash distributions made to such third parties in such period; plus

(h) any unusual, non-recurring or extraordinary expenses, losses or charges;

less, without duplication, (i) non-cash income or gain increasing Consolidated Net Income for such period, excluding any such items to the extent they represent (1) the reversal in such period of an accrual of, or reserve for, potential cash expense in a prior period, (2) any non-cash gains with respect to cash actually received in a prior period to the extent such cash did not increase Consolidated Net Income in a prior period or (3) items representing ordinary course accruals of cash to be received in future periods; plus (ii) any net gain from discontinued operations or net gains from the disposal of discontinued operations to the extent increasing Consolidated Net Income.

In addition, to the extent not already included in Consolidated Net Income, notwithstanding anything to the contrary in the foregoing, EBITDA shall include the amount of net cash proceeds received by the Company and its Subsidiaries from business interruption insurance.

27.28. "**Eligible Market**" means the Principal Market, The New York Stock Exchange, The Nasdaq Capital Market, The Nasdaq Global Market or the NYSE American.

27.29. "**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock other than the Stockholders Notes).

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

27.31. "**Fair Market Value**" means, with respect to any asset or property, the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, as determined by the Company in its good faith discretion. "Fair Market Value" may be (but need not be) conclusively established by means of resolutions of the Board setting out such Fair Market Value as determined by the Board in good faith.

27.32. "**Finance Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a finance lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP as in effect as of the applicable time of determination.

27.33. "**Fundamental Transaction**" means (A) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of more than either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (iv) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) more than 50% of the outstanding shares of Common Stock, (y) more than 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in

the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) more than 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock, (y) more than 50% of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock not held by all such Subject Entities as of the Subscription Date calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) that the Company shall, directly or indirectly, including through Subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

27.34. "**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession, in the United States, consistently applied during the periods involved. For the avoidance of doubt the terms "consolidated" and "Consolidated" with respect to any Person shall mean such Person consolidated with its Subsidiaries.

27.35. "**Governance Agreement**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.36. "**Group**" means a "group" as that term is used in Section 13(d) of the Exchange Act and as defined in Rule 13d-5 thereunder.

27.37. "**Guarantor**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.38. "**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under (1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements and (2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

27.39. "**Holder Optional Redemption Premium**" means (i) in the case of the Holder Optional Trigger Events set forth in clauses (i) and (ii) of Section 6, 105% and (ii) in the case of the Holder Optional Trigger Event set forth in clause (iii) of Section 6, 100%

27.40. "**Immaterial Subsidiary**" means any Subsidiary of the Company that, together with any other Immaterial Subsidiary, (i) had total revenues for the Test Period as of the date of any determination that were less than 1% of the consolidated revenues of the Company and its Subsidiaries and (ii) as of the end date of the Test Period and as of the date of any determination held less than 1% of the consolidated assets of the Company and its Subsidiaries.

27.41. "**Incur**" (including, with correlative meaning, the term "**Incurrence**") means issue, assume, guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Equity Interests of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary.

27.42. "**Indebtedness**" means, with respect to any Person, without duplication: (1) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof), with the amount of letters of credit and bankers' acceptances being the amount equal to the amount available to be drawn, (c) representing the deferred and unpaid purchase price of any property (except trade payables and similar obligations) which purchase price is due more than one year after the later of the date of placing the property in service or taking delivery and title thereto, or (d) in respect of Finance Lease Obligations, if and to the extent that any of the foregoing indebtedness (other than letters of credit) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP as in effect on the applicable date of determination; (2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and (3) to the extent not otherwise included, the principal component of Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); provided, however, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value of such asset at such date of determination, and (b) the amount of such Indebtedness of such other Person.

27.43. "**Initial Closing Date**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.44. "**Intellectual Property**" has the meaning ascribed to such term in the Security Agreement.

27.45. "**Interest Rate**" means 6.00% per annum, subject to adjustment as set forth in Section 2.

27.46. "**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and suppliers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person.

27.47. "**Investment Grade Securities**" means:

(a) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents) and in each case with maturities not exceeding two (2) years from the date of acquisition,

(b) securities that have a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P, or, if Moody's or S&P ceases to rate the securities for reasons outside of the Company's control, an equivalent rating by any other "nationally recognized statistical rating organization," as such term is defined under Section 3(a)(62) under the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, as the case may be,

(c) investments in any fund that invests at least 95% of its assets in investments of the type described in clauses (i) and (ii) which fund may also hold immaterial amounts of cash pending investment and/or distribution, and

(d) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two (2) years from the date of acquisition.

27.48. "**Lien**" means any mortgage, pledge, hypothecation, assignment, deposit, arrangement, encumbrance, security interest, lien (statutory or otherwise), or preference, priority or other security or similar agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease be deemed to constitute a Lien.

27.49. "**Liquidation Event**" means the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries taken as a whole, in a single transaction or series of transactions, or adoption of any plan for the same.

27.50. "**Make-Whole Amount**" means

the excess of:

(1) the present value at such Change of Control Redemption Date of (i) the applicable Redemption Amount of the Notes being redeemed, plus (ii) all required Interest payments due on such Notes through the Maturity Date (excluding accrued but unpaid

interest), computed using a discount rate equal to the Treasury Rate as of such Change of Control Redemption Date plus 50 basis points; over

(2) the then outstanding Principal amount of this Note.

27.51. "**Marketable Securities**" means, any readily marketable equity securities (i) that are traded on an Eligible Market or the Principal Market, (ii) that are eligible for sale without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the Securities Act, (iii) that are not subject to any trading restriction by virtue of possession by the Company or any Subsidiary of any material, nonpublic information about the issuer of such equity securities, (iv) with respect to which the Company is not filing a Schedule 13D pursuant to Section 13 of the Exchange Act and the rules and regulations promulgated thereunder, (v) with respect to which the Company is not subject to Section 16 of the Exchange Act and (vi) that are issued by an issuer having a total equity market capitalization of not less than $75,000,000.

27.52. "**Moody's**" means Moody's Investors Services, Inc. or any successor to the rating agency business thereof.

27.53. "**Net Income**" means, with respect to the Company and its Subsidiaries, the net income (loss) of the Company and its Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

27.54. "**Obligations**" means any principal, interest, premium, if any, penalties, fees, indemnifications, reimbursements, expenses, damages or other liabilities or amounts payable under the documentation governing or otherwise in respect of any Indebtedness.

27.55. "**Officer**" means, with respect to any Person, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President (whether or not designated by a number or a word or words added before or after the title "Vice President"), the Treasurer, the Secretary or the Assistant Secretary of such Person, or any direct or indirect parent of such Person, as applicable, or other Person performing such functions, regardless of title or designated as an "Officer" by the Board of Directors for purposes of this Note.

27.56. "**Officer's Certificate**" means a certificate signed on behalf of the Company by an Officer of the Company and delivered to the Holder.

27.57. "**Other Exercise Price**" shall have the meaning ascribed to such term in the Series B Warrants.

27.58. "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common capital stock or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Required Holders, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Required Holders or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

27.59. "**Permitted Investments**" means:

(a) any Investment in the Company (including the Notes and the Additional Notes) or any Guarantor;

(b) any Investment in cash or Cash Equivalents, Investment Grade Securities or Marketable Securities, provided that such assets constitute Collateral;

(c) any Approved Investment;

(d) any Investment (x) existing on the Subscription Date, (y) made pursuant to binding commitments (whether or not subject to conditions) in effect on the Subscription Date or (z) that replaces, refinances, refunds, renews or extends any Investment described under either of the immediately preceding clauses (x) or (y), provided that any such Investment is in an amount that does not exceed the amount replaced, refinanced, refunded, renewed or extended unless required by the terms of the Investment or otherwise permitted hereunder;

(e) any Investment acquired by the Company or any of its Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Company or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Company or such other Investment or accounts receivable, (b) in satisfaction of judgments against other Persons, or (c) as a result of a foreclosure by the Company or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(f) Hedging Obligations entered into (1) for the purpose of fixing, managing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Note to be outstanding; (2) for the purpose of fixing, managing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing, managing or hedging commodity price risk with respect to any commodity purchases;

(g) Investments the payment for which consists of Equity Interests of the Company (other than Disqualified Stock);

(h) guarantees issued in accordance with Section 10(a);

(i) any Investment by Guarantors in other Guarantors;

(j) Investments consisting of purchases and acquisitions of (i) inventory, supplies, materials and equipment, (ii) intellectual property assets or (iii) contract rights, royalty rights, revenue streams, licenses or leases of intellectual property, in each case in the ordinary course of business and, with respect to clauses (ii) and (iii), in an aggregate amount not to exceed $50,000,000;

(k) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by

the arrangements governing such Qualified Receivables Financing or any related Indebtedness;provided, however, that any Investment in a Receivables Subsidiary is in the form of cash, a Purchase Money Note, contribution of additional receivables or an equity interest;

(l) Investments of a Guarantor acquired after the Subscription Date or of an entity merged into or consolidated with a Guarantor in a transaction that is not prohibited by Section 5(a) after the Subscription Date to the extent that such Investments were not made in contemplation of such acquisition, merger or consolidation and were in existence on the date of such acquisition, merger or consolidation;

(m) Investments in receivables owing to the Company or any Subsidiary created or acquired in the ordinary course of business;

(n) advances in the form of a prepayment of expense to vendors, suppliers and trade creditors consistent with their past practices, so long as such expenses were incurred in the ordinary course of business;

(o) Investment in or repurchases of this Note, the Other Notes, the Additional Notes, the Series A Preferred Shares or the Warrants;

(p) Investments resulting from the acquisition of a Person, otherwise permitted by this Note, which Investments at the time of such acquisition were held by the acquired Person and were not acquired in contemplation of the acquisition of such Person;

(q) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Note;

(r) any Investment by the Company or any Subsidiary in a Person, if as a result of such Investment: (x) such Person becomes a Guarantor; or (y) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or any Guarantor; and

(s) contributions to a "rabbi" trust for the benefit of employees or other grantor trust subject to claims of creditors in the case of a bankruptcy of the Company.

27.60. "**Permitted Liens**" means, with respect to any Person:

(a) Liens existing on the Subscription Date;

(b) Liens affecting property of a corporation or other entity existing at the time it becomes a Subsidiary or at the time it is merged into or consolidated with the Company or a Subsidiary (provided that such Liens are not incurred in connection with, or in contemplation of, such entity becoming a Subsidiary or such merger or consolidation and do not extend to or cover property of an Issuer or any Subsidiary other than property of the entity so acquired or which becomes a Subsidiary);

(c) Liens (including purchase money Liens) existing at the time of acquisition thereof on property acquired after the Subscription Date or to secure Indebtedness Incurred prior to or, at the time of the acquisition thereof for the purpose of financing all or part of the purchase price of property acquired after the Subscription Date (provided that such Liens do not extend to or cover any property of the Company or any of its Subsidiaries other than the property so acquired);

(d) Liens on any property acquired, developed, constructed or otherwise improved by the Company or any Subsidiary of the Company (including Liens on the Equity Interests of any Subsidiary of the Company and substantially all assets of such Subsidiary, in each case to the extent such property constitutes substantially all of the business of such Subsidiary) to secure or provide for the payment of any part of the purchase price of the property or the cost of the development, construction or improvement thereof (including architectural, engineering, financing, consultant, advisor and legal fees and preopening costs), or any Indebtedness incurred to provide funds for such purposes, or any Lien on any such property existing at the time of acquisition thereof;

(e) Liens which secure Indebtedness or other obligations of the Company or a Guarantor owing to the Company or a Guarantor of the Company permitted to be Incurred in accordance with Section 10(a), which may be senior, pari passu or junior in right of payment and priority to the security interests established by the Security Documents in accordance with a Customary Intercreditor Agreement;

(f) Liens to government entities, including pollution control or industrial revenue bond financing;

(g) Liens required by any contract or statute in order to permit the Company or a Subsidiary of the Company to perform any contract or subcontract made by it with or at the request of a governmental entity;

(h) mechanic's, materialman's, carrier's or other like Liens, arising in the ordinary course of business;

(i) Liens for taxes or assessments and similar charges;

(j) zoning restrictions, easements, licenses, covenants, reservations, restrictions on the use of real property and certain other minor irregularities of title;

(k) Liens required by an escrow agreement in connection with the incurrence of Indebtedness;

(l) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(m) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(n) leases and subleases of real property which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries;

(o) Liens securing cash management services (and other "bank products") in the ordinary course of business;

(p) Liens on equipment of the Company or any Subsidiary of the Company granted in the ordinary course of business to the Company's or such Subsidiary's client or supplier at which such equipment is located;

(q) Liens securing Indebtedness incurred pursuant to clause (1) of Section 10(a)(i) plus in the case of any such Indebtedness that is amended, extended, renewed, restated, refunded, replaced, refinanced, supplemented, modified or otherwise changed which is secured by a Lien permitted under this clause (xvii) or a portion thereof, the aggregate amount of fees, underwriting discounts, accrued and unpaid interest, premiums and other costs and expenses incurred in connection with such amendment, extension, renewal, restatement, refunding, replacement, refinancing, supplement, modification or change;

(r) Liens securing the Securities and the Guarantees;

(s) Liens on accounts receivable and related assets of the type specified in the definition of "Receivables Financing" Incurred in connection with a Qualified Receivables Financing;

(t) (a) judgment and attachment Liens and Liens arising out of decrees, orders and awards, in each case, to the extent not giving rise to an Event of Default and (b) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings that have the effect of preventing the forfeiture or sale of the property or assets subject to such notices and rights and for which adequate reserves have been made to the extent required by GAAP;

(u) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Permitted Investments to be applied against the purchase price for such Investment, and (ii) consisting of an agreement to sell any property in an asset sale permitted under this Note;

(v) any extension, renewal, replacement, restructuring, refinancing or other modification of any Indebtedness secured by a Lien permitted by any of the foregoing clauses (i) through (xxi); and

(w) Liens securing Indebtedness permitted under clause (22) of the definition of Permitted Debt.

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

27.62. "**Preferred Stock**" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

27.63. "**Principal Market**" means The Nasdaq Global Select Market.

27.64. "**Purchase Money Note**" means a promissory note of a Receivables Subsidiary evidencing a line of credit, which may be irrevocable, from the Company or any Subsidiary of the Company to a Receivables Subsidiary in connection with a Qualified Receivables Financing, which note is intended to finance that portion of the purchase price that is not paid by cash or a contribution of equity.

27.65. "**Qualified Receivables Financing**" means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

(a) the Board shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and the Receivables Subsidiary,

(b) all sales of accounts receivable and related assets to and by the Receivables Subsidiary are made at Fair Market Value, and

(c) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

27.66. "**Receivables Fees**" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Subsidiary in connection with, any Receivables Financing.

27.67. "**Receivables Financing**" means any transaction or series of transactions pursuant to which the Company or any of its Subsidiaries may sell, convey or otherwise transfer to a Person, or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Company or any of its Subsidiaries, and any assets related thereto including, without limitation, all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedging Obligations pursuant to a Swap Contract entered into by the Company or any such Subsidiary in connection with such accounts receivable.

27.68. "**Receivables Repurchase Obligation**" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a

result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

27.69. "**Receivables Subsidiary**" means a Wholly Owned Subsidiary of the Company (or other Person formed for the purposes of engaging in a Qualified Receivables Financing with the Company or any of its Subsidiaries in which the Company or such Subsidiary makes an Investment and to which the Company or such Subsidiary transfers accounts receivable and related assets) which engages in no activities other than in connection with the Receivables Financing, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business and which is designated by the Board (as provided below) as a Receivables Subsidiary and:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (x) is guaranteed by the Company or any of its Subsidiaries (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (y) is recourse to or obligates the Company or any of its Subsidiaries (other than such Receivables Subsidiary) in any way other than pursuant to Standard Securitization Undertakings, or (z) subjects any property or asset of the Company or any of its Subsidiaries, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

(b) with which neither the Company nor any of its Subsidiaries has any material contract, agreement, arrangement or understanding other than on terms which the Company reasonably believes to be no less favorable to the Company or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company or such Subsidiary, and

(c) to which neither the Company nor any of its Subsidiaries has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

(d) Any such designation by the Board or such other Person shall be evidenced to the Holder by delivery to the Holder of a certified copy of the resolution of the Board or such other Person giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

27.70. "**Redemption Amount**" means the sum of (A) the portion of the Principal to be redeemed or otherwise with respect to which this determination is being made, (B) accrued and unpaid Interest with respect to such Principal and (C) accrued and unpaid Late Charges, if any, with respect to such Principal and Interest.

27.71. "**Redemption Dates**" means, collectively, each Event of Default Redemption Date, each Change of Control Redemption Date and each Holder Optional Redemption Dates, each of the foregoing, individually, a "**Redemption Date**".

27.72. "**Redemption Notices**" means, collectively, each Event of Default Redemption Notice, each Change of Control Redemption Notice and each Holder Optional Redemption Notice, each of the foregoing, individually, a "**Redemption Notice**".

27.73. "**Redemption Prices**" means, collectively, each Event of Default Redemption Price, each Change of Control Redemption Price each Holder Optional Redemption Price, each of the foregoing, individually, a "**Redemption Price**".

27.74. "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

27.75. "**Registration Rights Agreement**" means that certain registration rights agreement dated as of the Subscription Date by and among the Company and the Buyers, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

27.76. "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.

27.77. "**Related Fund**" means, with respect to any Person, a fund or account managed by such Person or an Affiliate of such Person.

27.78. "**Required Holders**" means the holders of Notes and Additional Notes representing at least a majority of the aggregate principal amount of the Notes and Additional Notes then outstanding and shall include the Designee so long as the Designee and/or any of its Affiliates holds any Notes and/or Additional Notes.

27.79. "**Restricted Investment**" means an Investment other than a Permitted Investment.

27.80. "**S&P**" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

27.81. "**SEC**" means the United States Securities and Exchange Commission.

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

27.83. "**Securities Purchase Agreement**" means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the Buyers of the Notes pursuant to which the Company issued the Notes, the Additional Securities and the Warrants, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

27.84. "**Security Agreement**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.85. "**Security Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.86. "**Series A Preferred Shares**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.87. "**Series B Warrants**" has the meaning ascribed to such term in the Securities Purchase Agreement, and shall include all warrants issued in exchange therefor or replacement thereof.

27.88. "**SPA Notes**" means all Senior Secured Notes issued by the Company pursuant to the Securities Purchase Agreement on an Additional Closing Date.

27.89. "**Standard Securitization Undertakings**" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Company and its Subsidiaries which the Company has determined in good faith to be customary in a Receivables Financing including, without limitation, those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

27.90. "**Stated Maturity**" means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable.

27.91. "**Stated Value**" shall have the meaning ascribed to such term in the Certificate of Designations.

27.92. "**Stockholders Notes**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.93. "**Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

27.94. "**Subordinated Indebtedness**" means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the Notes and the Additional Notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to its Guarantee.

27.95. "**Subscription Date**" means November 18, 2019.

27.96. "**Subsidiary**" shall have the meaning ascribed to such term in the Securities Purchase Agreement. Unless otherwise indicated herein, all references to Subsidiaries shall mean Subsidiaries of the Company.

27.97. "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Required Holders, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or one or more Person or Persons (or, if so elected by the Required Holders, the Company or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

27.98. "**Swap Contracts**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

27.99. "**Test Period**" means, for any date of determination, the latest four (4) consecutive fiscal quarters of the Company for which financial statements are available.

27.100. "**Total Assets**" means at any date, the total assets of the Company and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP, excluding any assets that do not constitute Collateral.

27.101. "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock on such day, then on the principal securities exchange or securities market on which the Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time).

27.102. "**Transaction Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

27.103. "**Transfer Agent**" means Computershare Trust Company, N.A. or such other agent or agents of the Company as may be designated by the Board as the transfer agent for the Common Stock.

27.104. "**Treasury Rate"** means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two (2) Business Days prior to the date fixed for redemption (or, if such Statistical Release is no longer published, any publicly available source for similar market data)) most nearly equal to the then remaining term of the Notes to the Maturity Date; provided, however, that if the then remaining term of the Notes to the Maturity Date is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given,

the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that, if the then remaining term of the Notes to the Maturity Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

27.105. "**Warrants**" has the meaning ascribed to such term in the Securities Purchase Agreement, and shall include all warrants issued in exchange therefor or replacement thereof.

27.106. "**Weighted Average Life to Maturity**" means, when applied to any Indebtedness or Disqualified Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

27.107. "**Wholly Owned Subsidiary**" means, with respect to any Person, a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person and one or more Wholly Owned Subsidiaries of such Person.

[Signature Page Follows]

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

ACACIA RESEARCH CORPORATION

By: _____

Name:

Title:

June 04, 2020

Acacia Agrees to Acquire Portfolio of Life Science Assets for £223.9 million

Equity interests in up to 19 public and private life sciences companies

New York, NY – June 04, 2020 - Acacia Research Corporation (“we”, "Acacia" or "the Company") (Nasdaq: ACTG), a publicly-traded investor in absolute return assets, today announced that it had entered into an agreement with Link Fund Solutions Limited (“LFS”) to purchase shares in up to 19 public and private life sciences companies from LF Equity Income Fund (the “Fund”) for a total consideration of up to £223.9 million. The acquisition of the private companies is subject to the waiver or completion of customary pre-emption processes of such companies.

Clifford Press, Chief Executive Officer, stated, “This transaction is representative of the exceptional capabilities of Acacia’s transactional team with the financial and structuring support of our strategic partnership with Starboard Value LP. Despite pandemic conditions in the USA and UK, this transaction was enabled by the resources that Acacia brought to bear, including experience in complex financial structures; and highlights the flexibility and agility of our investment team – all supported by our ready access to capital.”

Al Tobia, President and Chief Investment Officer, added, “This is a unique transaction, entered into during a period of unparalleled market turmoil and dislocated equity markets. We previously communicated our interest in life sciences assets and have been actively researching opportunities to invest in this sector. Our acquisition of the life sciences portfolio from the Fund is a product of those research activities.”

Mr. Tobia noted, “We appreciate the financial and transactional support that we have received from Starboard Value throughout this process. This is an exciting step in transforming Acacia into a leading absolute return-focused platform for investing in intellectual property, technology, and other unique investment and acquisition opportunities. Acacia’s strategic committee continues to identify and research new opportunities in operating companies in parallel with this transaction. Following this transaction, we will continue to have substantial access to capital and financial flexibility to complete further acquisitions of size.

The transaction will be financed with $35 million in cash currently in escrow; the issuance of $115 million in new Starboard Notes; and cash on hand. Given the unique nature of this transaction, we have amended our agreement with Starboard to allow the Company to reduce its dividend and interest expense to the extent that the full proceeds of the financing are not needed in the near term, while maintaining the ability to deploy the full $400 million in Starboard capital into new investments.”

Advisors

Acacia was advised by WG Partners LLP, a life sciences-specialist investment bank. WG Partners originated the transaction and has advised Acacia on due diligence and transactional matters. Acacia's legal advisors were Herbert Smith Freehills, LLP in London, and Schulte, Roth, and Zabel, LLP in New York. LFS were advised by PJT Park Hill. LFS's legal advisors were Debevoise and Plimpton, LLP in London.

About Acacia Research Corporation

Founded in 1993, Acacia Research Corporation (ACTG) invests in absolute return assets of intellectual property, life sciences, and other developed technologies. In 2020, Acacia embarked on a strategic partnership with Starboard Value, L.P. to build a platform to pursue opportunities that leverage Acacia's governance experience and significant capital resources.

Information about Acacia Research Corporation and its subsidiaries is available at www.acaciaresearch.com.

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995

This news release contains forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These statements are based upon our current expectations and speak only as of the date hereof. Our actual results may differ materially and adversely from those expressed in any forward-looking statements as a result of various factors and uncertainties, including the ability to successfully implement our strategic plan, the ability to successfully build out a new leadership team within a certain timeframe, the ability to streamline financial reporting, the ability to successfully develop licensing programs and attract new business, changes in demand for current and future intellectual property rights, legislative, regulatory and competitive developments addressing licensing and enforcement of patents and/or intellectual property in general, general economic conditions and the success of our investments. Our Annual Report on Form 10-K, recent and forthcoming Quarterly Reports on Form 10-Q, recent Current Reports on Form 8-K, and any amendments to the forgoing, and other SEC filings discuss some of the important risk factors that may affect our business, results of operations and financial condition. We undertake no obligation to revise or update publicly any forward-looking statements for any reason.

The results achieved in the most recent quarter are not necessarily indicative of the results to be achieved by us in any subsequent quarters, as it is currently anticipated that Acacia Research Corporation's financial results will vary, and may vary significantly, from quarter to quarter. This variance is expected to result from a number of factors, including risk factors affecting our results of operations and financial condition referenced above, and the particular structure of our licensing transactions, which may impact the amount of inventor royalties and contingent legal fees expenses we incur from period to period.

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