SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

Form: 8-K

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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): **July 7, 2020 (June 30, 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**	**92614**
(Address of principal executive offices)	(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:

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, 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.

Senior Secured Note Exchange

On June 30, 2020, Acacia Research Corporation, a Delaware corporation (the "Company"), entered into an Exchange Agreement (the "Exchange Agreement") with Merton Acquisition HoldCo LLC, a Delaware limited liability company and wholly-owned subsidiary of the Company ("Merton") and Starboard Value LP (the "Designee"), on behalf of itself and on behalf of certain funds and accounts under its management, including the holders of the Company's $115 million outstanding aggregate principal amount of senior secured notes (the "Old Notes"), originally issued pursuant to the Company's previously reported Securities Purchase Agreement, dated November 18, 2019 (the "Purchase Agreement"), with the Designee and the Buyers (as defined in the Purchase Agreement), as supplemented by the Supplemental Agreement, dated June 4, 2020, with the Designee. Pursuant to the Exchange Agreement, the holders of the Old Notes exchanged (the "Exchange") the entire outstanding principal amount for new senior notes (the "New Notes") issued by Merton having an aggregate outstanding original principal amount of $115 million. Such exchange was exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 3(a)(9) thereof.

The New Notes bear interest at a rate of 6.00% per annum and will mature December 31, 2020. The New Notes are fully guaranteed by the Company and are secured by an all-assets pledge of the Company and Merton and non-recourse equity pledges of each of the Company's material subsidiaries. Pursuant to the Exchange Agreement, the New Notes (i) are deemed to be "Notes" for purposes of the Purchase Agreement, (ii) are deemed to be "June 2020 Approved Investment Notes" for purposes of the Exchange Agreement, and therefore the Company has agreed to redeem $80 million principal amount of the New Notes by September 30, 2020 and (iii) are deemed to be "Notes" for the purposes of the previously issued Series B Warrants of the Company (the "Series B Warrants"), and therefore may be tendered pursuant to a Note Cancellation under the Series B Warrants on the terms set forth in the Series B Warrants and the New Notes. Delivery of notes in the form of the New Notes will satisfy the delivery of Exchange Notes pursuant to Section 16(i) of the Certificate of Designations of the Company's Series A Convertible Preferred Stock, par value $0.001 per share. The New Notes will not be deemed to be "Notes" for the purposes of the Registration Rights Agreement, dated as of November 18, 2019, by and between the Company, the Designee and the Buyers.

The foregoing description of the Exchange Agreement, the Exchange and the New Notes are summaries of the material terms of such agreement, event and notes, do not purport to be complete and are qualified in their entirety by reference to the Exchange Agreement, form of Senior Secured Note, Stock Pledge Agreement, Guaranty and Release of Security Interests in Patents, which are filed as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5 to this Current Report on Form 8-K and are incorporated by reference herein.

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

The disclosure in Item 1.01 is incorporated by reference into this Item 2.03.

Item 3.03. Material Modification to Rights of Security Holders.

The disclosure in Item 1.01 is incorporated by reference into this Item 3.03.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit No.	Description of Exhibit
10.1	Exchange Agreement, dated June 30, 2020, among Acacia Research Corporation, Merton Acquisition HoldCo LLC and Starboard Value LP.
10.2	Form of Senior Secured Note.
10.3	Stock Pledge Agreement, dated June 30, 2020, entered into by Acacia Research Group LLC, Advanced Skeletal Innovations LLC and Saint Lawrence Communications LLC in favor of Starboard Value Intermediate Fund LP, as collateral agent.
10.4	Guaranty, dated June 30, 2020, entered into by the Guarantors (as defined therein) in favor of the Holders (as defined therein).
10.5	Release of Security Interests in Patents, dated June 30, 2020, between the Releasees (as defined therein) and Starboard Value Intermediate Fund LP, as collateral agent.

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: July 7, 2020

ACACIA RESEARCH CORPORATION

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

Exhibit 10.1

EXCHANGE AGREEMENT

This Exchange Agreement dated as of June 30, 2020 (this " **Agreement**"), is made by and between Acacia Research Corporation, a Delaware corporation (the "**Company**"), Merton Acquisition HoldCo LLC, a Delaware limited liability company and wholly-owned Subsidiary of the Company (" **Merton**") 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 (collectively, the "**Starboard Funds**").

W I T N E S S E T H

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, as supplemented by that certain Supplemental Agreement dated as of June 4, 2020 between the Company and the Designee on behalf of the Starboard Funds: (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, (ii) on February 25, 2020 the Company issued to certain Starboard Funds Series B Warrants to purchase an aggregate of 100,000,000 shares of Common Stock and (iii) on June 4, 2020, the Company issued Notes (the "**June 4 Notes**") to certain Starboard Funds in an aggregate principal amount of $115,000,000;

WHEREAS, the Company and the Designee, on behalf of itself and on behalf of the Starboard Funds that hold the June 4 Notes (the " **Holders**"), have agreed that each of the June 4 Notes shall be exchanged and replaced in their entirety by new notes issued by Merton in favor of each of the Holders in the form attached hereto as Exhibit A (the "**New Notes**"), to be dated as of the date hereof, in the original aggregate principal amount of $115,000,000, to the same Starboard Funds in the same respective amounts as the June 4 Notes; and

WHEREAS, the Company and the Designee, on behalf of itself and on behalf of the Holders, have agreed that the Company shall execute and deliver a Guarantee in favor of each of the Holders in the form attached hereto as Exhibit B (the "**Parent Guarantee**"), to be dated as of the date hereof.

WHEREAS, the Company and the Designee, on behalf of itself and on behalf of the Holders, have agreed that the Company and certain of its Subsidiaries and Affiliates shall execute and deliver (i) a Pledge and Security Agreement in the form attached hereto as Exhibit C (the "**New Security Agreement**"), to be dated as of the date hereof, and (ii) a Stock Pledge Agreement in the form attached hereto as Exhibit D (the "**New Pledge Agreement**"), to be dated as of the date hereof.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto 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 or the June 4 Notes, as applicable.

2. Surrender of June 4 Notes. On the date hereof, the Company shall pay all accrued and unpaid Interest with respect to the June 4 Notes to the Starboard Funds holding the June 4 Notes by wire transfer of immediately available funds pursuant to written wire instructions provided by the Designee to the Company prior to the date hereof. Upon (i) the issuance of the New Notes and (ii) the payment of accrued and unpaid Interest with respect to the June 4 Notes to the Starboard Funds holding the June 4 Notes as set forth in the immediately preceding sentence, the Designee, on behalf of the Holders, hereby surrenders to the Company all of its right, title and interest in and to the June 4 Notes and releases the Company from all of its obligations thereunder in exchange for the New Notes. As soon as practicable following the date hereof, the Designee shall cause the June 4 Notes to be physically delivered to the Company for cancellation pursuant to written delivery instructions provided by the Company in writing.

3. Issuance of New Note. Merton hereby agrees to issue the New Notes in favor of the Holders and to duly execute and deliver the New Security Agreement, and to cause the New Pledge Agreement, the New Security Agreement and other applicable Security Documents to be duly executed and delivered by its applicable Subsidiaries and Affiliates, to the Starboard Funds holding the June 4 Notes to be exchanged for New Notes as contemplated herein and to Starboard Value Intermediate Fund LP, in its capacity as collateral agent for such Starboard Funds. The parties hereby acknowledge and agree that (i) New Notes shall be deemed issued pursuant to the Securities Purchase Agreement and shall be deemed "Notes" with respect to all the Transaction Documents, including, without limitation, the Supplemental Agreement, and (ii) the issuance of the New Notes shall be deemed an "Additional Closing" with respect to all the Transaction Documents and, accordingly, the issuance of the New Notes shall be subject to the satisfaction (or waiver in writing by the Company or the Starboard Funds, as applicable) of the applicable conditions set forth in Sections 6 and 7 of the Securities Purchase Agreement, including that the Company and Merton shall bring down all applicable representations and warranties set forth in Section 3 of the Securities Purchase Agreement to the date hereof (or, to the extent made as of a certain date, as of such date) and, for which purpose, all references to (i) the Notes and (ii) the Company in the Securities Purchase Agreement, shall be deemed to refer to (ii) the New Notes and (ii) the Company and Merton, respectively; provided, however, that, for purposes of the representation contained in Section 3(pp) of the Securities Purchase Agreement, the Company and Merton have noted (and Designee and the Holders hereby acknowledge) that any financial information relating to the 2020 calendar year made available by the Company on, or at any time prior to, the date hereof with respect to the Company or any of its Subsidiaries, while prepared in good faith based on reasonable assumptions, has not been audited and therefore may be subject to change). For the avoidance of doubt, the only payment owed by the Designee and the Starboard Funds with respect to the Additional Closing deemed to occur on the date hereof is the surrender of the June 4 Notes in accordance with Section 2.

4. Release of Liens. Upon execution and delivery of the New Notes and the tender of the June 4 Notes in exchange therefor, the parties to that certain Pledge and Security Agreement, dated as of June 4, 2020 (the "**Security Agreement**"), among the Company and each subsidiary of the Company party thereto, in favor of Starboard Value Intermediate Fund LP, in its capacity as collateral agent for the Buyers (the "**Collateral Agent**" and, together with the other parties to the Security Agreement, the "**Loan Parties**") agree (i) they shall have no further recourse to the Loan Parties with regards to the indebtedness evidenced by the June 4 Notes, (ii) all outstanding indebtedness (including, without limitation, all principal, interest and fees) and all other obligations of the Company and the other Loan Parties under or relating to the June 4 Notes and the Security Documents in respect of the June 4 Notes are and shall be satisfied in full and irrevocably discharged, terminated and released, (iii) all security interests and other Liens granted to or held by the Collateral Agent for the benefit of the Collateral Agent in any Collateral (as defined in the Security Agreement) as security for such indebtedness or such other Obligations are and shall be forever and irrevocably satisfied, released and discharged without any action by any Person, (iv) the Security Documents in respect of the June 4 Notes shall terminate and be of no further force or effect other than those provisions therein that specifically survive termination and (v) the Loan Parties (or their respective counsel or designees) shall be automatically authorized to file the UCC (as defined in the Security Agreement) termination statements annexed hereto as Exhibit E, and to file intellectual property releases, to deliver control agreement terminations, to deliver landlord agreement terminations, and to file or deliver all other instruments, releases and documents reasonably necessary to evidence the release of the Collateral Agent's security interests and other Liens in the Collateral; provided, however, that, notwithstanding anything to the contrary, all indemnification, reimbursement and other obligations of such guaranties, security agreements, pledge agreements and other Security Documents that expressly survive that termination of any Security Document in respect of the June 4 Notes shall continue in full force and effect. Further, the Collateral Agent agrees to take all reasonable additional steps requested by the Loan Parties, at the sole expense of the Loan Parties, as may be necessary to release its security interests in the Collateral.

5. Agreements and Amendments to Securities Purchase Agreement.

a. In accordance with Section 9(e) of the Securities Purchase Agreement, the Company and the Designee representing the Required Holders (as defined in the Securities Purchase Agreement) hereby agree to amend the Securities Purchase Agreement, 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, the New Notes, the New Security Agreement, the New Pledge Agreement and the Parent Guarantee to such definition.

c. The Company hereby acknowledges and agrees that any Stockholder Notes to be issued to the Company's stockholders (i) shall rank *pari passu* with or junior in right of payment to the New Notes, (ii) if secured, shall rank pari passu with or junior in right of security to the Liens on the Collateral securing the New Notes, (iii) cannot be guaranteed by any Person that does not also guarantee the New Notes and (iv) cannot be more favorable than the New Notes to the respective holders thereof.

d. The parties hereby acknowledge and agree that the New Notes shall be deemed issued pursuant to the Securities Purchase Agreement and shall be deemed "Notes" with respect to all the Transaction Documents.

6. Amendment to Supplemental Agreement. In accordance with Section 16 of the Supplemental Agreement, the Company and the Designee hereby agree that all references in (i) Sections 2 and 7 of the Supplemental Agreement to "June 2020 Approved Investment Notes" shall refer to the New Notes, *mutatis mutandis* and (ii) Section 6 of the Supplemental Agreement to "SPA Notes" shall include a reference to the New Notes, *mutatis mutandis.*

7. Amendment to the Series B Warrants. In accordance with Section 9 of the Series B Warrants, the Company and the Designee representing the Required Holders (as defined in the Series B Warrants) hereby agree to amend the Series B Warrants to add the New Notes to the definition of the term "Note". For the avoidance of doubt, New Notes may be tendered pursuant to a Note Cancellation under the Series B Warrants on the terms set forth in the Series B Warrants and the New Notes.

8. Agreement regarding Registration Rights Agreement. In accordance with Section 11 of the Registration Rights Agreement, the Company and the Designee representing the Required Holders (as defined in the Registration Rights Agreement) hereby agree that, notwithstanding anything to the contrary in the Securities Purchase Agreement and the Registration Rights Agreement, the New Notes shall not be considered "Notes" as defined in the Registration Rights Agreement.

9. Satisfaction of Conversion Right. Notwithstanding anything to the contrary in the Certificate of Designations, the Company and the Designee on behalf of itself and the Starboard Funds hereby acknowledge and agree that delivery of New Notes in the form attached hereto as Exhibit A hereto shall satisfy the delivery of Exchange Notes pursuant to Section 16(i) of the Certificate of Designations.

10. Post-Closing Covenants. Notwithstanding anything to the contrary, and subject to the terms of the New Security Agreement and the New Pledge Agreement, as applicable:

a. Within thirty (30) calendar days after the date hereof (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 Guarantors, 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 New Security Agreement.

b. Within five (5) Business Days after the date hereof (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 New Security Agreement and the New Pledge Agreement, as applicable) as of the date hereof, accompanied by undated instruments of transfer executed in blank, as applicable.

c. Within thirty (30) calendar days after the date hereof (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 New Security Agreement and in each case, maintained by the Company and/or Guarantors, as applicable, as of the date hereof.

d. Within ten (10) Business Days hereof (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 for UCC financing statements, tax liens and judgment liens filed on or prior to the date hereof, against the Company, Merton, Acacia Research Group LLC and any property of the foregoing, which results will not show any such liens (other than Permitted Liens).

e. Within five (5) Business Days after the date hereof (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received evidence of filed UCC-3 termination statements and a patent security agreement termination, in each case, in form and substance reasonably satisfactory to the Collateral Agent, relating to the discharge, termination and release of Liens granted pursuant to the Security Agreement and that certain Patent Security Agreement, dated as of June 4, 2020, respectively.

f. Within five (5) Business Days hereof (or such later date as determined by the Collateral Agent in its reasonable discretion), the Collateral Agent shall have received, with respect to RRI Investments LLC, customary joinder agreement to the New Pledge Agreement dated as of the date hereof, in form and substance reasonably satisfactory to the Collateral Agent.

g. Any breach of this Section 10 shall be deemed an "Event of Default" (as defined in the New Notes) under the New Notes.

11. Representations and Warranties.

a. The Designee represents and warrants to the Company, and the Company represents and warrants to the Designee and the Starboard Funds holding the June 4 Notes to be exchanged for New Notes in accordance with this Agreement, that, as of the date hereof: (i) 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; (ii) 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; (iii) the execution, delivery and performance by such Person of this Agreement and the consummation by such Person of the transactions contemplated hereby will not (1) result in a violation of the organizational documents of such Person, (2) 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 (3) 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 (2) and (3) 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; and (iv) for the purposes of Rule 144 of the 1933 Act, as in effect on the date hereof, each such Person hereby acknowledges and agrees that, in the event of an exercise of Series B Warrants pursuant to a Note Cancellation (as defined in the Series B Warrants) tendering the New Notes, (1) the holding period of the New Notes may be tacked onto the holding period of the June 4 Notes; and (2) the holding period of the June 4 Notes and New Notes may be tacked onto the holding period of the Series B Warrant Shares, and neither the Company nor Merton agrees not to take a position contrary thereto or inconsistent with this Section 11(a)(iv).

b. In addition, the Company hereby represents and warrants to the Designee and the Starboard Funds holding the June 4 Notes to be exchanged for New Notes in accordance with this Agreement, that, as of the date hereof: (i) the Board of Directors of the Company approved the resolutions set forth in Schedule A attached hereto; (ii) no Subsidiary, other than Acacia Research Group, LLC (" **ARG**"), has any (a) Material Claims or Liabilities, whether direct or indirect, absolute, accrued or contingent, that would be required to be reflected on a balance sheet prepared with respect to such Person on a stand-alone basis in accordance with GAAP, (b) unusual forward or long-term commitments, (c) unrealized or anticipated losses from any unfavorable commitments, (d) contracts or commitments, including leases or with employees, except as set forth on Schedule B attached hereto, which, for purposes of the New Notes, shall not be a breach of Section 10 (g)(i)(3) thereof; or (e) litigation, arbitration or dispute, including regarding tax (clause (a) to and including clause (e) are collectively referred to herein as "**Obligations**"), other than legal and professional fees and royalty sharing arrangements, and related contracts or commitments, accrued in the ordinary course of the patent assertion business, and, in the case of (e), litigation with respect to such Subsidiaries as plaintiffs in Intellectual Property litigation, (iii) neither the Company, nor Merton or any of their respective Subsidiaries has any knowledge of any event, circumstance or information that that would give rise to a reasonable basis for the assertion against any Subsidiary, other than ARG, of any future Obligations material to such Subsidiary on a stand-alone basis, (iv) to the Company's knowledge, no Subsidiary, other than ARG, has conducted any business or operations or has had any liabilities or obligations or owned any asset or been party to any agreement during the last five (5) years, or, since such Subsidiary has been formed if such Subsidiary was formed within the last five (5) years, other than their ordinary course activities of purchasing and licensing intellectual property and liabilities incidental to such activities; and (v) the Subsidiaries listed on Schedule C attached hereto, represent all Material Subsidiaries (as defined below) of the Company. As used herein, (i) "**Material Subsidiary**" means any Subsidiary of the Company that, (x) had total revenues for the twelve (12) month period ended March 31, 2020 that were equal to, or more than, 1% of the consolidated revenues of the Company and its Subsidiaries or (y) as of March 31, 2020 held 1% or more of the consolidated assets of the Company and its Subsidiaries, (ii) "**Material Claims or Liabilities**" means claims or liabilities to third parties greater than $1 million, and (iii) "**Company's Knowledge**" means the actual knowledge or belief of Clifford Press, Al Tobia, Marc Booth, Meredith Simmons, Richard Rosenstein, Li Yu, Jennifer Graff or Nadereh Russell.

12. Fees and Expenses. The Company shall within three (3) Business Days of the date hereof reimburse the Designee or its designee(s) for all reasonable and documented costs and expenses incurred in connection with the transactions contemplated hereby (including all legal fees and disbursements in connection therewith, documentation and implementation of the transactions contemplated hereby), which aggregate amount shall not exceed $100,000 without the prior approval of the Company.

13. 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 13 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 13 shall be the same as those set forth in Section 7 of the Registration Rights Agreement.

14. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. 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.**

15. Counterparts; Headings. This Agreement 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 Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

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

17. 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 Agreement 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 Exchange Agreement*]

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

MERTON:

MERTON ACQUISITION HOLDCO LLC

By: /s/ Marc Booth
Name: Marc Booth
Title: Chief Executive Officer

[*Signature Page to Exchange Agreement*]

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

DESIGNEE:

STARBOARD VALUE LP

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

[*Signature Page to Exchange Agreement*]

EXHIBIT A

Form of New Note

EXHIBIT B

Form of Parent Guarantee

EXHIBIT C

New Security Agreement

EXHIBIT D

New Pledge Agreement

EXHIBIT E

Termination Statements

Schedule B
Contracts or Commitments

Schedule C
Material Subsidiaries

Exhibit 10.2

[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.

MERTON ACQUISITION HOLDCO LLC

SENIOR SECURED NOTE

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

FOR VALUE RECEIVED, Merton Acquisition HoldCo LLC, a Delaware limited liability company (the " **Company**"), hereby promises to pay to 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 issued in exchange for Senior Secured Notes issued by the Company 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.

(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 December 31, 2020. Other than as specifically permitted or required by this Note, the Supplemental Agreement and the Exchange Agreement, the Company or the Parent Guarantor 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; 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 .

(a) 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**":

(i) 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));

(ii) 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;

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

(iv) the Parent Guarantor 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;

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

(vi) 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 Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor 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;

(vii) other than as specifically set forth in another clause of this Section 4(a), the Parent Guarantor 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;

(viii) if the Holder is a Designee, other than as specifically set forth in another clause of this Section 4(a), the Parent Guarantor 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;

(ix) 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;

(x) 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 Parent Guarantor 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 Parent Guarantor or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Parent Guarantor or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Security Document;

(xi) 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;

(xii) any bank at which any deposit account, blocked account, or lockbox account of the Parent Guarantor 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 Parent Guarantor 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));

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

(xiv) the Parent Guarantor 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;

(xv) the Company or the Parent Guarantor 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;

(xvi) (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;

(xvii) 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 Parent Guarantor is complying with the terms set forth in Section 1(h) of the Series B Warrants;

(xviii) the Parent Guarantor does not directly or indirectly own 100% of the Equity Interests of the Company;

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

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

(b) 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**") 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 Default Redemption Price (as defined below) to the Holder and (B) the excess, if any, of (1) the highest Closing Sale Price (as defined in the Warrants) 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.

(c) 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.

(a) Assumption. Upon the occurrence or consummation of any Fundamental Transaction with respect to the Company or the Parent Guarantor, and it shall be a required condition to the occurrence or consummation of any Fundamental Transaction that, the Company or the Parent Guarantor, as applicable, and the Successor Entity or Successor Entities, jointly and severally, shall succeed to the Company or the Parent Guarantor, as applicable, and the Company or the Parent Guarantor, as applicable, shall cause any Successor Entity or Successor Entities to jointly and severally succeed to the Company or the Parent Guarantor, as applicable, and be added to the term "Company" or "Parent Guarantor," as applicable, 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" or the "Parent Guarantor," as applicable, shall refer instead to each of the Company or the Parent Guarantor, as applicable, and the Successor Entity or Successor Entities, jointly and severally), and the Successor Entity or Successor Entities, jointly and severally with the Company or the Parent Guarantor, as applicable, may exercise every right and power of the Company or the Parent Guarantor, as applicable, prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company or the Parent Guarantor, as applicable, prior thereto under this Note with the same effect as if the Company or the Parent Guarantor, as applicable, and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company or the Parent Guarantor, as applicable, in this Note. The provisions of this Section 5(a) shall apply similarly and equally to successive Fundamental Transactions.

(b) 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 Parent Guarantor or any of its Subsidiaries, 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 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**") 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) [Reserved]

(7) NONCIRCUMVENTION. Each of the Company and the Parent Guarantor hereby covenants and agrees that such Person 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.

(a) 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 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.

(b) Redemption by Other Holders. Upon the Company's or the Parent Guarantor's receipt of notice from or on behalf of 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) or Section 5(b) 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 or the Parent Guarantor (as applicable) 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 or the Parent Guarantor 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 such Person's receipt of the Holder's Redemption Notice and ending on and including the date which is three (3) Business Days after such Person'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 or the Parent Guarantor during such seven (7) Business Day period.

(9) SECURITY. This Note and the Other Notes are secured to the extent and in the manner set forth in the Security Documents.

(10) COVENANTS.

(a) Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock .

(i) The Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor or any of its Subsidiaries of Indebtedness under any Credit Facilities in an aggregate principal amount outstanding at any time not to exceed the lesser of (i) $100.0 million and (ii) the Available Amount Basket;

(2) the Incurrence by the (i) Company of Indebtedness represented by the Notes, Other Notes and the Additional Company Notes, (ii) Parent Guarantor of Indebtedness represented by the Additional Parent Guarantor Notes and (iii) 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 Parent Guarantor 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; provided that any such payment shall be deemed to be an Investment;

(6) Indebtedness of the Parent Guarantor to the Company or 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 a Guarantor or the Company) shall be deemed, in each case to be an Incurrence of such Indebtedness;

(7) shares of Preferred Stock of the Company or a Guarantor issued to the Company or a Guarantor; provided that any subsequent issuance or transfer of any Capital Stock or any other event that results in the Company or 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 the Company or 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 Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor or any Subsidiary) and upon such assumption, retirement or other repayment, such Indebtedness is non-recourse to the Parent Guarantor or any Subsidiary;

(21) Indebtedness in respect of an acquisition permitted hereunder, which Indebtedness is not incurred in connection with such acquisition by the Parent Guarantor or any Subsidiary in contemplation of such acquisition and such Indebtedness is existing at the time such Person becomes a Subsidiary of the Parent Guarantor or a Guarantor (other than Indebtedness incurred solely in contemplation of such Person becoming a Subsidiary of the Parent Guarantor 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 $10,000,000 in the aggregate

(ii) 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 and Parent Guarantor shall, in their 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.

(b) Limitation on Restricted Payments.

(i) The Parent Guarantor 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 Parent Guarantor's or any of its Subsidiaries' Equity Interests, including any payment made in connection with any merger or consolidation involving the Parent Guarantor (other than (A) dividends, payments or distributions by the Parent Guarantor payable solely in Equity Interests (other than Disqualified Stock) of the Parent Guarantor 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 Parent Guarantor that is a Wholly Owned Subsidiary of the Parent Guarantor, the Parent Guarantor 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 Parent Guarantor held by any Person other than the Parent Guarantor 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**").

(ii) 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 Parent Guarantor 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 Parent Guarantor or contributions to the equity capital of the Parent Guarantor (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 Parent Guarantor 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 Parent Guarantor or to an employee stock ownership plan or any trust established by the Parent Guarantor 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 Parent Guarantor held by any future, present or former employee, director or consultant of the Parent Guarantor or any Subsidiary of the Parent Guarantor (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 Parent Guarantor or Disqualified Stock or Preferred Stock of the Company or 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 since the Original Issuance Date 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 Parent Guarantor or from the substantially concurrent sale (other than to a Subsidiary of the Parent Guarantor) of, Equity Interests (other than Disqualified Stock) of the Parent Guarantor; 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 Parent Guarantor or in connection with the issuance of any dividend otherwise permitted to be made.

(iii) 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 and the Parent Guarantor 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.

(c) Guarantees. The Parent Guarantor may cause any 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.

(d) Limitation on Liens.

(i) Neither the Parent Guarantor 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 Parent Guarantor 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).

(ii) 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 and the Parent Guarantor 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.

(e) 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, the Parent Guarantor shall 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.

(f) Minimum Cash Covenants. The Parent Guarantor (not including its Subsidiaries) shall maintain on deposit unrestricted and unencumbered cash and/or Marketable Securities in an aggregate amount equal to not less than $25,000,000. In addition, Subsidiaries of the Parent Guarantor, other than (x) Acacia Research Group, LLC ("**ARG**") and (y) the Subsidiary of the Parent Guarantor, other than ARG, that holds the greatest amount of unrestricted and unencumbered cash and or Marketable Securities, shall maintain on deposit unrestricted and unencumbered cash and/or Marketable Securities in an aggregate amount equal to not less than $25,000,000.

(g) Non-Guarantor Subsidiaries.

(i) The Parent Guarantor shall not permit any of its Subsidiaries that are not Guarantors (" **Non-Guarantor Subsidiaries**") to, directly or indirectly;

(1) Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock and the Parent Guarantor shall not permit any of the Non-Guarantor Subsidiaries to issue any shares of Preferred Stock;

(2) assume or guarantee any Indebtedness secured by a Lien upon any asset or property of such Non-Guarantor Subsidiary or on any evidences of Indebtedness or shares of Capital Stock of, or other ownership interests in, any Non-Guarantor Subsidiary (regardless of whether the asset, property, Indebtedness, Capital Stock or ownership interests were acquired before or after the date hereof);

(3) hire any employees or enter into any leases, except (i) if done by ARG in the ordinary course of business or (ii) if required by applicable law; and

(4) Except for ARG, engage in any business activities or have any material properties or liabilities, other than (i) activities related to the maintenance of its corporate existence, (ii) activities related to their ordinary course activities of purchasing Intellectual Property, (iii) activities related to their ordinary course activities of retaining legal counsel to represent such non-guarantor subsidiary as a plaintiff in Intellectual Property litigation, (iv) activities to comply with applicable law, (v) transactions among the Parent Guarantor and its Subsidiaries in their ordinary course of business and (vi) activities, liabilities and properties incidental to the foregoing clauses (i) through (v), with all such liabilities in total not to exceed an aggregate of $5,000,000 among all non-guarantor subsidiaries as a whole and $1,000,000 for each non-guarantor subsidiary individually, excluding legal and professional fees and royalty sharing arrangements accrued in the ordinary course of the patent assertion business.

(ii) ARG may maintain a balance of Cash and Marketable Securities of no more than $10,000,000 solely in order to conduct its ordinary course business activities.

(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 Company 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 Company Notes. No consideration shall be offered or paid to any of the holders of Notes or Additional Company Notes to amend or waive or modify any provision of the 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.

(a) 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.

(b) 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.

(c) 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.

(d) 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 or the Parent Guarantor to comply with the terms of this Note. The Company and the Parent Guarantor covenant 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 Parent Guarantor (or the performance thereof). Each of the Company and the Parent Guarantor 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 and the Parent Guarantor therefore agree 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 the Parent Guarantor or other proceedings affecting Company creditors' rights or the Parent Guarantor creditors' rights and involving a claim under this Note, then the Company shall pay (and the Parent Guarantor shall cause the Company to 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 the Parent Guarantor 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.

(a) 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 or the Parent Guarantor (as applicable) 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 or the Parent Guarantor (as applicable) shall give written notice to the Holder at least ten (10) Business Days prior to the date on which the Company or the Parent Guarantor (as applicable) 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.

(b) 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 and the Parent Guarantor hereby waive 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. Each of the Company and the Parent Guarantor hereby irrevocably (i) 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, and (ii) 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 and the Parent Guarantor at the address set forth with respect to the Parent Guarantor 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 or the Parent Guarantor in any other jurisdiction to collect on the Company's or the Parent Guarantor'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. **EACH OF THE COMPANY AND PARENT GUARANTOR 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, the Parent Guarantor 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, the Parent Guarantor or the Holder or the practical realization of the benefits that would otherwise be conferred upon the Company, the Parent Guarantor or the Holder. The Company, the Parent Guarantor 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 Parent Guarantor of any notice in accordance with the terms of this Note, unless the Parent Guarantor has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Parent Guarantor or any of its Subsidiaries, the Parent Guarantor 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 Parent Guarantor believes that a notice contains material, nonpublic information relating to the Parent Guarantor or any of its Subsidiaries, the Parent Guarantor 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 Parent Guarantor or any of 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:

(a) "**Acquired Indebtedness**" means, with respect to any specified Person:

(i) 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 Parent Guarantor or any Subsidiary) or (b) became a Subsidiary of such specified Person, and

(ii) 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.

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

(c) "**Additional Company 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).

(d) "**Additional Notes**" means the Additional Company Notes and the Additional Parent Guarantor Notes.

(e) "**Additional Parent Guarantor Notes**" means: (i) all Senior Secured Notes, if any, issued by the Parent Guarantor 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 Parent Guarantor in an Exchange (as defined in the Certificate of Designations) and (iii) all Stockholders Notes.

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

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

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

(i) "**Available Amount Basket**" means an amount equal to (i) $100,000,000 minus (ii) the amount of (A) Permitted Debt then outstanding incurred pursuant to Section 10(a)(i)(1) or Section 10(a)(i)(22), (B) the cumulative amount of all liabilities of any Non-Guarantor Subsidiaries, including any liabilities of such Non-Guarantor Subsidiaries appearing on the balance sheet of the Parent Guarantor as of the latest date for which financial statements are available and any liabilities of any Non-Guarantor Subsidiaries to the Parent Guarantor or any other Subsidiary of the Parent Guarantor and (C) the aggregate amount of cash, Cash Equivalents and Marketable Securities held by Non-Guarantor Subsidiaries.

(j) "**Board**" means the Board of Directors of the Parent Guarantor.

(k) "**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.

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

(m) "**Capital Stock**" means:

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

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

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

(iv) 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.

(n) "**Cash Equivalents**" means:

(i) 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;

(ii) 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;

(iii) 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);

(iv) 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;

(v) commercial paper issued by a corporation (other than an Affiliate of the Parent Guarantor) 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;

(vi) 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;

(vii) 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

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

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

(p) "**Change of Control**" means any Fundamental Transaction, other than (i) an Approved Investment, (ii) any reorganization, recapitalization or reclassification of Common Stock in which holders of the Parent Guarantor'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 Parent Guarantor; 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.

(q) "**Collateral**" shall have the meaning ascribed to such term in the Security Documents.

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

(s) "**Common Stock**" means (i) the Parent Guarantor'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.

(t) "**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.

(u) "**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.

(v) "**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.

(w) "**Designee**" means Starboard Value LP or any of its Affiliates.

(x) "**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:

(i) 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)),

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

(iii) 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 Notes; provided, 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 Parent Guarantor, the Company or any of their respective 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 Parent Guarantor or 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.

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

(z) "**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).

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

(bb) "**Exchange Agreement**" means that certain Exchange Agreement dated as of June [30], 2020 by and among the Company, the Parent Guarantor and the Designee.

(cc) "**Exchanged Notes**" means those certain senior secured notes issued by the Parent Guarantor pursuant to the Securities Purchase Agreement on the Original Issuance Date that were exchanged for the Notes by the holders thereof on the Issuance Date.

(dd) "**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.

(ee) "**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.

(ff) "**Fundamental Transaction**" means (A) that the Parent Guarantor or 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 Parent Guarantor or 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 Parent Guarantor, the Company or any of their respective "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 Parent Guarantor or 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 Parent Guarantor or 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 Parent Guarantor or the Company, as applicable, sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Parent Guarantor or the Company, as applicable, to surrender their shares of Common Stock without approval of the stockholders of the Parent Guarantor or the Company, as applicable, or (C) that the Parent Guarantor or 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.

(gg) "**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.

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

(ii) "**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.

(jj) "**Guarantee**" shall have the meaning ascribed to such term in the Securities Purchase Agreement.

(kk) "**Guarantor**" shall have the meaning ascribed to such term in the Securities Purchase Agreement. For the avoidance of doubt, as of the Issuance Date the Parent Guarantor is the sole Guarantor.

(ll) "**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.

(mm) "**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.

(nn) "**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.

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

(pp) "**Intellectual Property**" has the meaning ascribed to such term in the Security Agreement.

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

(rr) "**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.

(ss) "**Investment Grade Securities**" means:

(i) 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,

(ii) 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,

(iii) 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

(iv) 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.

(tt) "**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.

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

(vv) "**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.

(ww) "**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 Parent Guarantor or any Subsidiary of any material, nonpublic information about the issuer of such equity securities, (iv) with respect to which the Parent Guarantor or any Subsidiary 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 Parent Guarantor or any Subsidiary 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.

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

(yy) "**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.

(zz) "**Obligors**" means the Company, the Guarantors and the Pledged Subsidiaries.

(aaa) "**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.

(bbb) "**Officer's Certificate**" means a certificate signed on behalf of the Company and the Parent Guarantor by an Officer of the Company and an Officer of the Parent Guarantor and delivered to the Holder.

(ccc) "**Original Issuance Date**" means June 4, 2020.

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

(eee) "**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.

(fff) "**Parent Guarantee**" means that certain guarantee agreement entered into by the Parent Guarantor as of the Issuance Date.

(ggg) "**Parent Guarantor**" means Acacia Research Corporation, a Delaware corporation.

(hhh) "**Permitted Investments**" means:

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

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

(iii) any Approved Investment;

(iv) 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;

(v) any Investment acquired by the Parent Guarantor or any of its Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Parent Guarantor or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the Parent Guarantor 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 Parent Guarantor or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(vi) 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;

(vii) Investments the payment for which consists of Equity Interests of the Parent Guarantor (other than Disqualified Stock);

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

(ix) any Investment by (A) the Company in the Parent Guarantor, (B) Guarantors in other Guarantors or (C) Pledged Subsidiaries (other than the Company and any Guarantor) in other Pledged Subsidiaries; provided that such Pledged Subsidiary into which such Investment is made has no material third-party liabilities and is not engaging in any activities or aware of any event that would reasonably be expected to lead to a material third-party liability;

(x) Investments consisting of purchases and acquisitions of (i) inventory, supplies, materials and equipment by a Guarantor, (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 since the Original Issuance Date not to exceed $50,000,000;

(xi) 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;

(xii) 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;

(xiii) Investments in receivables owing to the Parent Guarantor or any Subsidiary created or acquired in the ordinary course of business;

(xiv) 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;

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

(xvi) 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;

(xvii) 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; and

(xviii) 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 Parent Guarantor.

(iii) “**Permitted Liens**” means, with respect to any Person:

(i) Liens existing on the Subscription Date;

(ii) 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 Parent Guarantor 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 the Parent Guarantor or any Subsidiary other than property of the entity so acquired or which becomes a Subsidiary);

(iii) 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 Parent Guarantor or any of its Subsidiaries other than the property so acquired);

(iv) Liens on any property acquired, developed, constructed or otherwise improved by the Parent Guarantor or any Subsidiary of the Parent Guarantor (including Liens on the Equity Interests of any Subsidiary of the Parent Guarantor 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;

(v) Liens which secure Indebtedness or other obligations of a Guarantor owing to a Guarantor 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;

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

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

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

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

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

(xi) Liens required by an escrow agreement in connection with the incurrence of Indebtedness otherwise permitted under this Agreement;

(xii) 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;

(xiii) 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;

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

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

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

(xvii) 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;

(xviii) Liens securing the Securities and the Guarantees;

(xix) 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;

(xx) (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;

(xxi) 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;

(xxii) Liens securing Indebtedness permitted under clause (22) of the definition of Permitted Debt; and

(xxiii) 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 (xxii).

(jjj) "**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.

(kkk) "**Pledged Subsidiaries**" means those certain Subsidiaries whose Equity Interests (as defined in the Security Documents) are Pledged Shares (as defined in the Security Documents).

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

(mmm) "**Principal Market**" means The Nasdaq Global Select Market.

(nnn) "**Purchase Money Note**" means a promissory note of a Receivables Subsidiary evidencing a line of credit, which may be irrevocable, from the Parent Guarantor or any Subsidiary of the Parent Guarantor 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.

(ooo) "**Qualified Receivables Financing**" means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

(i) 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 Parent Guarantor and the Receivables Subsidiary,

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

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

(ppp) "**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.

(qqq) "**Receivables Financing**" means any transaction or series of transactions pursuant to which the Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor or any such Subsidiary in connection with such accounts receivable.

(rrr) "**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.

(sss) "**Receivables Subsidiary**" means a Wholly Owned Subsidiary of the Parent Guarantor (or other Person formed for the purposes of engaging in a Qualified Receivables Financing with the Parent Guarantor or any of its Subsidiaries in which the Parent Guarantor or such Subsidiary makes an Investment and to which the Parent Guarantor 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:

(i) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (x) is guaranteed by the Parent Guarantor 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 Parent Guarantor 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 Parent Guarantor or any of its Subsidiaries, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

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

(iii) to which neither the Parent Guarantor 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.

(iv) 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.

(ttt) "**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.

(uuu) "**Redemption Dates**" means, collectively, each Event of Default Redemption Date and each Change of Control Redemption Date, each of the foregoing, individually, a "**Redemption Date**".

(vvv) "**Redemption Notices**" means, collectively, each Event of Default Redemption Notice and each Change of Control Redemption Notice, each of the foregoing, individually, a "**Redemption Notice**".

(www) "**Redemption Prices**" means, collectively, each Event of Default Redemption Price and each Change of Control Redemption Price, each of the foregoing, individually, a "**Redemption Price**".

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

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

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

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

(bbbb) "**Required Holders**" means the holders of Notes and Additional Company Notes representing at least a majority of the aggregate principal amount of the Notes and Additional Company 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 Company Notes.

(cccc) "**Restricted Investment**" means an Investment other than a Permitted Investment.

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

(eeee) "**SEC**" means the United States Securities and Exchange Commission.

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

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

(hhhh) "**Security Documents**" shall have the meaning ascribed to such term in the Securities Purchase Agreement, and shall include the New Pledge Agreement, the New Security Agreement and the Parent Guarantee, each as defined in the Exchange Agreement.

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

(jjjj) "**Series A 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.

(kkkk) "**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.

(llll) "**SPA Notes**" means all Senior Secured Notes issued by the Parent Guarantor or any Subsidiary pursuant to the Securities Purchase Agreement on an Additional Closing Date.

(mmmm) "**Standard Securitization Undertakings**" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Parent Guarantor and its Subsidiaries which the Parent Guarantor 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.

(nnnn) "**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.

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

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

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

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

(ssss) "**Subscription Date**" means November 18, 2019.

(tttt) "**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 Parent Guarantor.

(uuuu) "**Successor Entity**" means one or more Person or Persons (or, if so elected by the Required Holders, the Parent Guarantor 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 Parent Guarantor or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(vvvv) "**Supplemental Agreement**" means that certain Supplemental Agreement dated as of June 4, 2020 by and between the Parent Guarantor and the Designee.

(wwww) "**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.

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

(yyyy) "**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).

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

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

(bbbbb) "**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.

(ccccc) "**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.

(ddddd) "**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.

(eeeee) "**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 and the Parent Guarantor have caused this Note to be duly executed as of the Issuance Date set out above.

ACACIA RESEARCH CORPORATION

By:_____
Name:
Title:

MERTON ACQUISITION HOLDCO LLC

By:_____
Name:
Title:

Exhibit 10.3

STOCK PLEDGE AGREEMENT

This STOCK PLEDGE AGREEMENT (this "**Agreement**"), dated as of June 30, 2020, **Acacia Research Group LLC**, a Delaware limited liability company, **Advanced Skeletal Innovations LLC**, a Texas limited liability company and **Saint Lawrence Communications LLC**, a Texas limited liability company (the foregoing entities together with each other Person that executes a joinder and becomes a "Grantor" hereunder, each a "**Pledgor**" and, collectively, the "**Pledgors**"), in favor of Starboard Value Intermediate Fund LP, in its capacity as collateral agent (in such capacity, the " **Collateral Agent**") for the Holders.

WHEREAS, Acacia Research Corporation, a Delaware corporation (the "**Company**"), and each party listed as a "Buyer" on the Schedule of Buyers attached thereto (as such schedule may be amended, restated or otherwise modified from time to time, each a "**Buyer**", and collectively, the "**Buyers**") are parties to the Securities Purchase Agreement, dated as of November 18, 2019 (as amended, restated or otherwise modified from time to time, the "**Securities Purchase Agreement**"), pursuant to which, among other things, certain Buyers purchased from the Company certain senior secured notes issued on June 4, 2020 (as such senior secured notes were amended, restated, replaced, exchanged or otherwise modified from time to time on or prior to the date of the Exchange Agreement, the "**June 4 Notes**");

WHEREAS, pursuant to that certain Exchange Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Exchange Agreement**"), by and between the Company, Merton Acquisition HoldCo LLC, a Delaware limited liability company ("**Merton**"), and Starboard Value LP, each of the June 4 Notes shall be exchanged and replaced in their entirety by new notes (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Notes"**) issued by Merton in favor of each of the Holders, in the original aggregate principal amount of $115,000,000, to the same Starboard Funds and in the same respective amounts as the June 4 Notes;

WHEREAS, each Holder (collectively, the "**Holders**") has requested and the Pledgors have agreed, that in connection with the Holders extending credit evidenced by the Notes, the Pledgors execute and deliver to the Collateral Agent this Agreement providing for the grant to the Collateral Agent, for the benefit of the Holders, of a security interest in the Collateral described below;

WHEREAS, each Pledgor is part of an integrated operation that reports on a consolidated basis and, at times, a Pledgor may receive credit provided through financing obtained by another Pledgor or Transaction Party; and

WHEREAS, each Pledgor has determined that the execution, delivery and performance of this Agreement directly benefit, and are in the best interests of the Pledgors.

NOW, THEREFORE, in consideration of the above premises and the agreements herein and for other consideration, the sufficiency of which is hereby acknowledged, each Grantor agrees with the Collateral Agent, for the benefit of the Holders, as follows:

1. Definitions.

(a) Reference is hereby made to the Securities Purchase Agreement and the Notes for a statement of the terms thereof. All terms used in this Agreement and the recitals hereto which are defined in the Securities Purchase Agreement, the Notes or in Articles 8 or 9 of the Uniform Commercial Code (the "**UCC**") as in effect from time to time in the State of New York, and which are not otherwise defined herein shall have the same meanings herein as set forth therein, as applicable; provided that terms used herein which are defined in the UCC as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as the Collateral Agent may otherwise determine. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. When a reference is made in this Agreement to an Appendix, Exhibit, Introduction, Recital, Section or Schedule, such reference shall be to an Appendix, an Exhibit, the Introduction, a Recital or a Section of, or a Schedule to, this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) The following terms shall have the respective meanings provided for in the UCC: "Cash Proceeds", "Instruments", "Investment Property", "Noncash Proceeds", "Proceeds", "Promissory Notes", and "Securities Account".

(c) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"**Collateral**" has the meaning set forth in Section 2.

"**Control Agreement**" means a Securities Account Control Agreement, to be entered into by and among the applicable Pledgor, the Collateral Agent and Securities Intermediary pursuant to which the Collateral Agent will have "control" (as defined in Articles 8 and 9 of the applicable Uniform Commercial Code) over that part of the Collateral that is Investment Property (as defined in Article 9 of the Uniform Commercial Code).

"**Note Transaction Documents**" means the Securities Purchase Agreement, the Notes and the Security Documents.

"Obligations" means all "Obligations" as defined in the Notes, whether due or to become due, and whether now existing or hereafter arising or incurred.

"**Pledged Shares**" means (a) the shares of capital stock or other Equity Interests described in Schedule I hereto, whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, issued by the Persons described in such Schedule I (the "Existing Issuers"), (b) the shares of capital stock or other Equity Interests at any time and from time to time acquired by a Pledgor of any and all Persons now or hereafter existing (such Persons, together with the Existing Issuers, being hereinafter referred to collectively as the "Pledged Issuers" and each individually as a "Pledged Issuer"), whether or not evidenced or represented by any stock certificate, certificated security or other Instrument, and (c) the certificates representing such shares of capital stock, all options and other rights, contractual or otherwise, in respect thereof and all dividends, distributions, cash, Instruments, Investment Property, financial assets, securities, capital stock, other Equity Interests, stock options and commodity contracts, notes, debentures, bonds, Promissory Notes or other evidences of indebtedness and all other property (including, without limitation, any stock dividend and any distribution in connection with a stock split) from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

"**Securities Account**" means a securities account in the name of the applicable Pledgor maintained at a Securities Intermediary.

"**Securities Intermediary**" means a nationally recognized "securities intermediary" (as defined in Article 8 of the UCC) mutually agreed upon by the applicable Pledgor and the Collateral Agent that will maintain the Securities Account and be a party to the Control Agreement.

2. Non-Recourse Pledge. Subject to Section 16 hereof, each Pledgor hereby agrees that such Pledgor is jointly and severally liable for, and absolutely and unconditionally guarantees to Holders on a non-recourse basis as set forth in Section 16 hereof, the prompt payment and performance when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, all of the Obligations. To secure such guaranty and the payment and performance of the Obligations, each Pledgor hereby pledges to Holders and grants to Holders, a security interest in, any and all right, title and interest in and to the following (the "**Collateral**"):

(a) the Pledged Shares;

(b) all Proceeds, securities, moneys or property representing dividends or interest paid on any of the Pledged Shares, or representing a distribution in respect of the Pledged Shares, or resulting from a split-up, stock split, revision, reclassification, merger, consolidation, reorganization or other like change of the Pledged Shares or otherwise received in exchange therefor, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Shares; and

(c) all equity interests or other property now owned or hereafter acquired by such Pledgor in exchange for or related to the Pledged Shares, exchange offers, conversions, recapitalizations of any type, contributions to capital, warrants, options or other rights relating to the Pledged Shares.

3. [Reserved]

4. Perfection of Security Interest; Authority to File.

(a) The Pledgors shall, from time to time, as may be required by the Collateral Agent with respect to all Collateral, immediately take all actions as may be reasonably requested by the Collateral Agent to perfect the security interest of the Collateral Agent in the Collateral, including, without limitation, any actions in order to establish or maintain control with respect to all Collateral over which control may be obtained within the meaning of Section 8-106 of the UCC. All of the foregoing shall be at the sole cost and expense of the Pledgors.

(b) The Pledgors hereby irrevocably authorize the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, without the signature of any Pledgor where permitted by law and without referencing any restrictions on the Pledged Shares as of the date hereof. The Pledgors agree to provide all information required by the Collateral Agent pursuant to this Section promptly to the Collateral Agent upon request.

(c) If and when the Pledged Shares are certificated, each Pledgor agrees (in its sole discretion) to (i) promptly deliver the share certificates to the Collateral Agent for the possession by the Collateral Agent thereof in the State of New York, together with executed undated stock powers and assignments in blank, or (ii) promptly establish a Securities Account with a Securities Intermediary promptly following the parties' decision as to the agreed upon Securities Intermediary. Promptly following the establishment of the Securities Account, each Pledgor will deliver the Pledged Shares, along with executed assignments in blank, to the Securities Intermediary for deposit into the Securities Account. If applicable, each Pledgor agrees to do all things necessary to ensure that the Control Agreement is executed and delivered by all parties thereto within 30 Business Days from the date the Pledged Shares are certificated by Issuer. Collateral Agent agrees to instruct the Securities Intermediary to take all actions required to accomplish the intent of this Agreement.

(d) If the Pledged Shares are uncertificated securities registered in a Pledgor's name on Issuer's books and records, upon Collateral Agent's request, such Pledgor will do all things necessary, including entering into this Agreement and any other agreement reasonably necessary so that the Collateral Agent will have "control" (as defined in Articles 8 and 9 of the applicable UCC) over the Pledged Shares.

5. Representations and Warranties. Each Pledgor represents and warrants as follows:

(a) The Pledged Shares have been duly authorized and validly issued, and are fully paid and non-assessable and subject to no options to purchase or similar rights. All information set forth in Schedule 1 attached hereto relating to the Pledged Shares is accurate and complete.

(b) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body, or any other Person, is required for (i) the grant by such Pledgor, or the perfection, of the security interest purported to be created hereby in the Collateral, (ii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, or (iii) the exercise by the Collateral Agent of any of its rights and remedies hereunder, other than (A) those that have been obtained or will be obtained and/or made and filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on or contemporaneously with the Issuance Date, (B) any immaterial authorization, approval, other action or notice of filing and (C) solely in the case of this clause (iii), except as may be required in connection with any sale of any Pledged Shares by laws affecting the offering and sale of securities generally. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or any other Person, is required for the perfection of the security interest purported to be created hereby in the Collateral, except (A) filings pursuant to the UCC in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of the Pledgors, (B) delivery of Collateral consisting of certificates (if any) evidencing Equity Interests required to be pledged hereunder, and (C) entering into Control Agreements with respect to any Collateral which is certificated (subclauses (A) -- (C), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**"). Notwithstanding anything to the contrary contained herein, no Perfection Requirement shall be required to be undertaken with respect to the laws of any non-U.S. jurisdiction to create or perfect a security interest in the Collateral (and no security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction shall be required in respect of such assets) to the extent (i) it would reasonably be expected to cause any material adverse tax consequences to any Transaction Party or Pledgor or (ii) the Collateral Agent and the Transaction Parties reasonably determine that the cost of creating or perfecting such security interest is excessive in relation to the benefits to the Collateral Agent and the Holders therefrom.

(c) This Agreement creates in favor of the Collateral Agent a legal, valid and enforceable security interest in the Collateral secured thereby, as security for the Obligations, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity or (ii) the laws of any non-U.S. jurisdiction. The compliance with the Perfection Requirements will result in the perfection of such security interests. Such security interests in the Collateral are, or in the case of Collateral in which such Pledgor obtains rights after the date hereof, will be, perfected, first priority security interests, subject only to Permitted Liens and the recording of such instruments of assignment. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for (i) the other filings and recordations and actions described in Section 5(b) hereof and (iii) any other Perfection Requirements that the Collateral Agent agrees may be made or taken after the date of this Agreement.

(d) [Reserved]

(e) There is no pending or written notice threatening any action, suit, proceeding or claim adversely affecting such Pledgor before any governmental authority or any arbitrator, or any order, judgment or award by any governmental authority or arbitrator, that may adversely affect the grant by such Pledgor, or the perfection, of the security interest purported to be created hereby in the Collateral, or the exercise by the Collateral Agent of any of its rights or remedies hereunder.

(f) Except with the respect to the laws of any non-U.S. jurisdiction, the exercise by the Collateral Agent of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting such Pledgor or any of its properties and will not result in or require the creation of any Lien, upon or with respect to any of its properties (other than as set forth in this Agreement or a Permitted Lien).

(g) Such Pledgor has title to the Pledged Shares of such Pledgor (as set forth on Schedule I) and will have title to each other item of Collateral hereafter acquired by such Pledgor, free of all Liens except the security interest of the Collateral Agent and Permitted Liens. No financing statement covering all or any part of the Collateral is on file in any public office (except for any financing statements filed by the Collateral Agent). Without limiting the foregoing, all certificates, agreements or instruments representing or evidencing the Pledged Shares in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank.

6. Dividends and Voting Rights.

(a) So long as no Event of Default has occurred and is continuing, each Pledgor shall be entitled to vote or consent with respect to the Pledged Shares in any manner so long as such vote or consent is not inconsistent with this Agreement or not materially adverse to the Collateral Agent. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall, after providing written notice to such Pledgor, have the exclusive right to vote or give consents with respect to the Pledged Shares. Each Pledgor hereby grants to the Collateral Agent an irrevocable proxy to vote the Pledged Shares, which proxy shall be effective immediately upon the occurrence of and during the continuance of an Event of Default, and, upon request of the Collateral Agent, such Pledgor agrees to deliver to the Collateral Agent such further evidence of such irrevocable proxy or such further irrevocable proxy to vote the Pledged Shares as the Collateral Agent may request.

(b) The Collateral Agent agrees that each Pledgor may, unless an Event of Default shall have occurred and be continuing, receive and retain all cash dividends and other distributions with respect to the Pledged Shares.

7. Further Assurances.

(a) Each Pledgor shall, use its commercially reasonable efforts to defend title to and ownership of the Collateral of such Pledgor at its own reasonable cost and expense against the claims and demands of all other parties claiming an interest therein.

(b) Each Pledgor agrees that at any time and from time to time, at the expense of such Pledgor, such Pledgor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that the Collateral Agent may request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral.

(c) Each Pledgor will give the Collateral Agent prompt written notice of any change to its legal name, identity, type of organization, jurisdiction of organization, corporate structure, location of its chief executive office or its principal place of business or its organizational identification number. Each Pledgor will, in connection with any change described in the preceding sentence, take all actions requested by the Collateral Agent to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral.

(d) Each Pledgor hereby agrees to take any or all reasonable action that may be necessary or desirable or that the Collateral Agent may request in order for the Collateral Agent to obtain control in accordance with Sections 9-105 – 9-107 of the UCC with respect to the Collateral.

8. Transfers and Other Liens. Each Pledgor agrees that it will not create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

9. Collateral Agent Appointed Attorney-in-Fact. Each Pledgor hereby appoints the Collateral Agent such Pledgor's attorney-in-fact, with full authority in the place and stead of such Pledgor and in the name of such Pledgor or otherwise, from time to in the Collateral Agent's discretion, and, in each case to be exercisable only upon the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument which the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, endorse and collect all instruments made payable to such Pledgor representing any dividend, interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same (but the Collateral Agent shall not be obligated to and shall have no liability to such Pledgor or any third party for failure to do so or take action). Such appointment, being coupled with an interest, shall be irrevocable. Each Pledgor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

10. Collateral Agent May Perform. If any Pledgor fails to perform any agreement or obligation contained herein to protect the Collateral Agent's interest in the Collateral, the Collateral Agent may itself perform, or cause performance of, such agreement or obligation, in the name of such Pledgor or the Collateral Agent, and the reasonable and documented expenses of the Collateral Agent incurred in connection therewith shall be payable by such Pledgor pursuant to Section 13 hereof and secured by the Collateral; provided that the Collateral Agent shall not be required to perform or discharge any obligation of such Pledgor.

11. Remedies Upon Default. If any Event of Default shall have occurred and be continuing:

(a) The Collateral Agent may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein or otherwise available to it, all of the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Collateral Agent's name or into the name of its nominee or nominees (to the extent the Collateral Agent has not theretofore done so) and thereafter receive, for the benefit of the Collateral Agent, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Pledgor to, and each Pledgor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of its respective Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place or places to be designated by the Collateral Agent that is reasonably convenient to both parties, and the Collateral Agent may enter into and occupy any premises owned or leased by such Pledgor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Collateral Agent's rights and remedies hereunder or under law, without obligation to such Pledgor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable and/or (B) dispose of the Collateral or any part thereof upon such terms as the Collateral Agent may deem commercially reasonable. Each Pledgor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to such Pledgor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives any claims against the Collateral Agent and the Holders arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree, and waives all rights that such Pledgor may have to require that all or any part of such Collateral be marshalled upon any sale (public or private) thereof. Each Pledgor hereby acknowledges that (i) any such sale of its respective Collateral by the Collateral Agent shall be made without warranty, (ii) the Collateral Agent may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral.

(b) Any cash held by the Collateral Agent as Collateral and all Cash Proceeds received by the Collateral Agent in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral may, in the discretion of the Collateral Agent, be held by the Collateral Agent as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Collateral Agent pursuant to Section 13 hereof) in whole or in part by the Collateral Agent against, all or any part of the Obligations in such order as the Collateral Agent shall elect, consistent with the provisions of the Securities Purchase Agreement. Any surplus of such cash or Cash Proceeds held by the Collateral Agent and remaining after the indefeasible payment in full in cash of all Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations) shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which the Collateral Agent and the Holders are legally entitled, each Pledgor shall be liable for the deficiency, together with interest thereon at the highest rate specified in any of the applicable Note Transaction Documents for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the reasonable and documented out-of-pocket costs of collection and the reasonable and documented out-of-pocket fees, costs, expenses and other client charges of any attorneys employed by the Collateral Agent to collect such deficiency.

(d) Each Pledgor hereby acknowledges that if the Collateral Agent complies with any applicable state, provincial, or federal law requirements in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(e) The Collateral Agent shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Collateral Agent's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that each Pledgor lawfully may, such Pledgor hereby agrees that it will not, invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Collateral Agent's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, such Pledgor hereby irrevocably waives the benefits of all such laws.

12. [Reserved]

13. Indemnity and Expenses.

(a) Each Pledgor agrees, jointly and severally, to defend, protect, indemnify and hold the Collateral Agent and each of the Holders, jointly and severally, harmless from and against any and all Indemnified Liabilities to the extent that they arise out of or otherwise result from this Agreement (including, without limitation, enforcement of this Agreement), except actions, causes of action, suits, claims, damages, losses, liabilities, penalties, fees, costs or expenses resulting solely and directly from such Person's gross negligence or willful misconduct or a material breach of this Agreement, as determined by a final judgment of a court of competent jurisdiction.

(b) With respect to costs, expenses and fees, Section 4(g) of the Securities Purchase Agreement is hereby incorporated herein by reference as if fully stated herein and shall apply to this Agreement *mutatis mutandis*.

14. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, postage prepaid and return receipt requested), telecopied or delivered in accordance with Section 9(f) of the Securities Purchase Agreement at the addresses set forth below. All such notices and other communications shall be effective (a) if sent by certified mail, return receipt requested, when received or five days after deposited in the mails, whichever occurs first, (b) if telecopied or sent by electronic mail, when transmitted (during normal business hours), or (c) if delivered, upon delivery.

15. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Pledgor affected thereby and the Collateral Agent, and no waiver of any provision of this Agreement, and no consent to any departure by a Pledgor therefrom, shall be effective unless it is in writing and signed by the Collateral Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right hereunder or under any of the other Note Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Collateral Agent or any Holder provided herein and in the other Note Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Collateral Agent or any Holder under any of the other Note Transaction Documents against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any of the other Note Transaction Documents against such party or against any other Person, including but not limited to, any Pledgor.

(c) To the extent permitted by applicable law, each Pledgor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations and this Agreement and any requirement that the Collateral Agent exhaust any right or take any action against any other Person or any Collateral. Each Pledgor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 15(c) is knowingly made in contemplation of such benefits. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(d) No Pledgor may exercise any rights that it may now or hereafter acquire against any other Pledgor that arise from the existence, payment, performance or enforcement of any Pledgor's obligations under this Agreement, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Collateral Agent against any Pledgor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Pledgor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until the indefeasible payment in full in cash of all Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations). If any amount shall be paid to a Pledgor in violation of the immediately preceding sentence at any time prior to the indefeasible payment in full in cash of all Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), such amount shall be held in trust for the benefit of the Collateral Agent and shall forthwith be paid to the Collateral Agent to be credited and applied to the Obligations and all other amounts payable under the Transaction Documents, whether matured or unmatured, in accordance with the terms of the Transaction Documents, or to be held as Collateral for any Obligations or other amounts payable under the Transaction Documents thereafter arising.

(e) With respect to severability, Section 9(d) of the Securities Purchase Agreement is hereby incorporated herein by reference as if fully stated herein and shall apply to this Agreement *mutatis mutandis*.

(f) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the indefeasible payment in full in cash of all Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), and (ii) be binding on each Pledgor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the UCC and shall inure, together with all rights and remedies of the Collateral Agent and the Holders hereunder, to the benefit of the Collateral Agent and the Holders and their respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence the Collateral Agent and the Holders may assign or otherwise transfer their rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person pursuant to the terms of the Notes and the Securities Purchase Agreement and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent and the Holders herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Collateral Agent or any such Holder shall mean the assignee of the Collateral Agent or such Holder. None of the rights or obligations of any Pledgor hereunder may be assigned or otherwise transferred without the prior written consent of the Collateral Agent, and any such assignment or transfer without the consent of the Collateral Agent shall be null and void.

(g) Upon the indefeasible payment in full in cash of all Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), (i) subject to paragraph (f) above, this Agreement and the security interests and licenses created hereby shall automatically terminate and all rights to the Collateral shall revert to the Pledgors and (ii) the Collateral Agent will, upon the Pledgors' request and at the Pledgors' expense, without any representation, warranty or recourse whatsoever, (A) return to the Pledgors (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to the Pledgors such documents as the Pledgors shall reasonably request to evidence such termination.

(h) ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTIONS) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTIONS OTHER THAN THE STATE OF NEW YORK.

(i) 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 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.

(j) EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(k) Each party hereby irrevocably waives personal service of process and consents to process being served in any suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

(l) Each party hereto irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

(m) Section headings herein are included for convenience of reference only and shall not form part of, or affect the interpretation of, this Agreement.

(n) With respect to counterparts, Section 9(b) of the Securities Purchase Agreement is hereby incorporated herein by reference as if fully stated herein and shall apply to this Agreement *mutatis mutandis*.

16. Notwithstanding anything to the contrary contained in this Agreement, the sole recourse of Collateral Agent for any obligations of any Pledgor under this Agreement (except for obligations set forth in Section 13) shall be to the Collateral.

[SIGNATURE PAGE FOLLOWS]

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

PLEDGORS:

ACACIA RESEARCH GROUP LLC

By: Marc Booth
Name: Marc Booth
Title: Chief Executive Officer

Address for Notices:

SAINT LAWRENCE COMMUNICATIONS LLC

By: Marc Booth
Name: Marc Booth
Title: Chief Executive Officer

Address for Notices:

ADVANCED SKELETAL INNOVATIONS LLC

By: Marc Booth
Name: Marc Booth
Title: Chief Executive Officer

Address for Notices:

ACCEPTED BY:

STARBOARD VALUE INTERMEDIATE FUND LP,
as Collateral Agent

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

Address:

SCHEDULE I
PLEDGED SHARES

Issuer	Percentage of Ownership (%)	Type	Number	Value	Certificate Number	Percentage Pledged (%)	Certificated

Exhibit 10.4

GUARANTY (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this " **Guaranty**"), dated as of June 30, 2020, made by each of the undersigned (together with each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder, each a "**Guarantor**", and collectively, the " **Guarantors**"), in favor of the Holders.

W I T N E S S E T H :

WHEREAS, **Acacia Research Corporation**, a Delaware corporation, (the " **Company**"), and each party listed as a "Buyer" on the Schedule of Buyers (as such schedule may be amended, restated or otherwise modified from time to time) attached to the Securities Purchase Agreement (each a "**Buyer**", and collectively, the "**Buyers**") are parties to that certain Securities Purchase Agreement, dated as of November 18, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Securities Purchase Agreement**"), pursuant to which, among other things, certain Buyers purchased from the Company certain senior secured notes issued on June 4, 2020 (as such senior secured notes were amended, restated, replaced, exchanged or otherwise modified from time to time on or prior to the date of the Exchange Agreement, the "**June 4 Notes**");

WHEREAS, pursuant to that certain Exchange Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Exchange Agreement**"), by and between the Company, Merton Acquisition HoldCo LLC, a Delaware limited liability company ("**Merton**"), and Starboard Value LP, each of the June 4 Notes shall be exchanged and replaced in their entirety by new notes (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Notes'**") issued by Merton in favor of each of the Holders, in the original aggregate principal amount of $115,000,000, to the same Starboard Funds and in the same respective amounts as the June 4 Notes;

WHEREAS, the Holders have requested, and the Guarantors have agreed, that the Guarantors shall execute and deliver to the Holders a guaranty guaranteeing all of the Obligations;

WHEREAS, pursuant to that certain Pledge and Security Agreement, dated as of June 30, 2020, (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Merton Security Agreement**"), the Company and Merton and have granted to Starboard Value Intermediate Fund LP, as collateral agent for the Buyers (in such capacity, the "**Collateral Agent**"), a security interest in and lien on certain assets to secure the Secured Obligations (as defined in the Security Agreement);

WHEREAS, pursuant to that certain Stock Pledge Agreement, dated as of June 30, 2020, (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**" and together with the Merton Security Agreement, the " **Security Agreements**", and each, a "**Security Agreement**"), certain Subsidiaries of the Company have granted to the Collateral Agent a security interest in and lien on certain assets to secure the Secured Obligations (as defined in the Pledge Agreement); and

WHEREAS, each Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefits, and is in the best interest of, such Guarantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and for other consideration, the sufficiency of which is hereby acknowledged, each Guarantor hereby agrees with each Holder as follows:

SECTION 1. Definitions. Reference is hereby made to the Securities Purchase Agreement and the Notes for a statement of the terms thereof. All terms used in this Guaranty which are defined in the Securities Purchase Agreement or the Notes and not otherwise defined herein shall have the same meanings as set forth therein, as applicable.

SECTION 2. Guaranty. The Guarantors, jointly and severally, hereby unconditionally and irrevocably, guarantee the punctual payment, as and when due and payable, by stated maturity or otherwise, of all Obligations now or hereafter existing under the Notes (including, without limitation, all interest that accrues after the commencement of any proceeding commenced by or against Merton or any Guarantor under any provision of the Bankruptcy Code (Chapter 11 of Title 11 of the United States Code) or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief (an "**Insolvency Proceeding**")), whether or not the payment of such interest is unenforceable or is not allowable due to the existence of such Insolvency Proceeding, and all fees, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under the Notes (such obligations, to the extent not paid by Merton, being the "**Guaranteed Obligations**"). Without limiting the generality of the foregoing, each Guarantor's liability hereunder shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by Merton to the Holders under the Notes but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving Merton.

SECTION 3. Guaranty Absolute; Continuing Guaranty; Assignments .

(a) Except as set forth herein to the contrary, the Guarantors, jointly and severally, guarantee that the Guaranteed Obligations will be paid strictly in accordance with the terms of the applicable Transaction Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Holders with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce such obligations, irrespective of whether any action is brought against Merton and any of the Guarantors (each, a "**Transaction Party**") or whether any Transaction Party is joined in any such action or actions. The liability of any Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by law, any defenses it may now or hereafter have (other than payment in full of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations)) in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any applicable Transaction Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any applicable Transaction Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Transaction Party or otherwise;

(iii) any taking, exchange, release or non-perfection of any Collateral (as defined in the applicable Security Agreement) with respect to the Guaranteed Obligations, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations; or

(iv) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Transaction Party.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by any Holder or any other Person upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made.

(b) This Guaranty is a continuing guaranty and shall remain in full force and effect until the payment in full of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations).

SECTION 4. Waivers. To the extent permitted by applicable law, each Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Holders or the Collateral Agent exhaust any right or take any action against any Transaction Party or any other Person or any Collateral (as defined in applicable Security Agreement). Each Guarantor acknowledges that it will receive direct and/or indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 4 is knowingly made in contemplation of such benefits. The Guarantors hereby waive any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

SECTION 5. Subrogation. Until the payment in full of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), each Guarantor subordinates any rights that it may now or hereafter acquire against any Transaction Party or any other guarantor that arise from the existence, payment, performance or enforcement of any Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Holders or the Collateral Agent against any Transaction Party or any other guarantor or any Collateral (as defined in the applicable Security Agreement), whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Transaction Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right. If any amount shall be paid to a Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full of all Guaranteed Obligations (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), such amount shall be held in trust for the benefit of the Holders and shall forthwith be paid ratably to the Holders to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the applicable Transaction Documents, or to be held as Collateral (as defined in the applicable Security Agreement) for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If any Guarantor shall make indefeasible payment in full in cash of all Guaranteed Obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations), the Holders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty (in each case, solely with respect to such evidence of transfer by subrogation), necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 6. Representations, Warranties and Covenants.

(a) Each Guarantor hereby represents and warrants as of the date first written above as follows:

(i) Such Guarantor is an entity duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed, and has the requisite power and authorization to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Such Guarantor is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect.

(ii) Such Guarantor has the requisite power and authority to enter into and perform its obligations under each applicable Transaction Document to which it is a party. The execution and delivery by such Guarantor of such applicable Transaction Documents and the consummation by such Guarantor of the transactions contemplated thereby have been duly authorized by such Guarantor's board of directors (or other applicable governing body). The applicable Transaction Documents to which such Guarantor is a party have been duly executed and delivered by such Guarantor, and constitute the legal, valid and binding obligations of such Guarantor, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(iii) The execution, delivery and performance of the applicable Transaction Documents to which it is a party by such Guarantor and the consummation of the transactions contemplated hereby and thereby will not (i) result in a violation of any organizational documents of such Guarantor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Guarantor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree applicable to such Guarantor or by which any property or asset of such Guarantor is bound or affected, other than, in the cases of the foregoing clauses (ii) and (iii), such conflicts, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) No Guarantor is required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any federal or state regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the applicable Transaction Documents, in each case in accordance with the terms hereof or thereof, other than pursuant to the exceptions expressly provided for in any of the applicable Transaction Documents or to the extent failure to obtain such consent, authorization or order of, or to make any filing or registration, would not reasonably be expect to have a Material Adverse Effect.

(v) Except with respect to any matters related to Intellectual Property Rights that occur in the ordinary course of the Guarantor's business as a purchaser, seller and enforcer of Intellectual Property Rights, there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of such Guarantor, threatened against or adversely affecting such Guarantor, or any of such Guarantor's officers or directors, whether of a civil or criminal nature or otherwise, in their capacities as such, except as set forth in Schedule 3(w) to the Securities Purchase Agreement and Schedule 1 hereto. The matters set forth in Schedule 3(w) and Schedule 1 hereto would not reasonably be expected to have a Material Adverse Effect.

(vi) Such Guarantor (A) has read and understands the terms and conditions of the Securities Purchase Agreement, the Notes and the other applicable Transaction Documents, and (B) now has and will continue to have independent means of obtaining information concerning the affairs, financial condition and business of Merton and the other Transaction Parties, and has no need of, or right to obtain from the Collateral Agent or any Holder, any credit or other information concerning the affairs, financial condition or business of Merton or the other Transaction Parties that may come under the control of the Collateral Agent or any Holder.

(b) Each Guarantor covenants and agrees that until the indefeasible payment in full in cash of all obligations under the Notes (together with any matured indemnification obligations as of the date of such payment, but excluding any inchoate or unmatured contingent indemnification obligations) and payment of all other amounts payable under this Guaranty (excluding any inchoate or unmatured contingent indemnification obligations), it will comply with each of the covenants (except to the extent applicable only to (1) a public company or (2) the Company or Merton (and not its Subsidiaries)) which are set forth in Section 10 of the Notes as if such Guarantor were a party thereto.

SECTION 7. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent and any Holder may, and is hereby authorized to, at any time and from time to time, without prior notice to the Guarantors (any such notice being expressly waived by each Guarantor) and to the fullest extent permitted by law, set-off and apply any and all deposits (general or special, time or demand, provisional or final, but excluding (a) accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments or for the benefit of any Guarantor's employees, (b) trust or tax withholding accounts and (c) any other Excluded Account (as defined in applicable Security Agreement)) at any time held and other Indebtedness at any time owing by any Holder to or for the credit or the account of any Guarantor against any and all Guaranteed Obligations of the Guarantors now or hereafter existing under this Guaranty, irrespective of whether or not the Collateral Agent or any Holder shall have made any demand under this Guaranty. Collateral Agent and each Holder agrees to notify the relevant Guarantor promptly after any such set-off and application made by such Holder, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Collateral Agent or any Holder under this Section 7 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Collateral Agent or such Holder may have under this Guaranty in law or otherwise.

SECTION 8. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, postage prepaid and return receipt requested), telecopied or delivered in accordance with Section 9(f) of the Securities Purchase Agreement at the addresses set forth below. All such notices and other communications shall be effective (a) if set by certificated mail, return receipt requested, when received or five days after deposited in the mails, whichever occurs first, (b) if telecopied or sent by electronic mail, when transmitted (during normal business hours), or (c) if delivered personally, upon receipt.

SECTION 9. GOVERNING LAW; CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE . ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS GUARANTY 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 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 SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF TO SUCH PARTY AT THE ADDRESS FOR SUCH NOTICES TO IT UNDER THIS GUARANTY 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.

SECTION 10. WAIVER OF JURY TRIAL, ETC. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED HEREBY.

SECTION 11. Miscellaneous.

(a) Each Guarantor will make each payment hereunder in lawful money of the United States of America and in immediately available funds to each Holder, at such address specified by such Holder from time to time by notice to the Guarantors.

(b) Provisions of this Guaranty may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of each Guarantor and the Required Holders. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon each Holder and each Guarantor. Any consideration offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Guaranty shall be subject to the terms of the Securities Purchase Agreement.

(c) No failure on the part of the Collateral Agent or any Holder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Collateral Agent and the Holders provided herein are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Collateral Agent and the Holders under this Guaranty against any party hereto are not conditional or contingent on any attempt by the Collateral Agent or any Holder to exercise any of their respective rights under any other applicable Transaction Document against such party or against any other Person.

(d) With respect to severability, Section 9(d) of the Securities Purchase Agreement is hereby incorporated herein by reference as if fully stated herein and shall apply to this Guaranty *mutatis mutandis*.

(e) This Guaranty shall (i) be binding on each Guarantor and its respective successors and permitted assigns, and (ii) inure, together with all rights and remedies of the Collateral Agent and the Holders hereunder, to the benefit of the Collateral Agent and the Holders and their respective successors, permitted transferees and permitted assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, the Collateral Agent and any Holder may assign or otherwise transfer its rights and obligations under this Guaranty to any other Person in accordance with the terms of the Notes and Securities Purchase Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Collateral Agent or such Holder, as the case may be, herein or otherwise. None of the rights or obligations of any Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of the Required Holders; provided that the prior written consent of each Holder shall be required for the assignment or transfer of all or substantially all of the obligations of any Guarantor hereunder.

(f) This Guaranty reflects the entire understanding of the transaction contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.

(g) Section headings herein are included for convenience of reference only and shall not form part of, or affect the interpretation of, this Guaranty.

(h) With respect to counterparts, Section 9(b) of the Securities Purchase Agreement is hereby incorporated herein by reference as if fully stated herein and shall apply to this Guaranty *mutatis mutandis*.

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IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed by its respective duly authorized officer, as of the date first above written.

ACACIA RESEARCH CORPORATION

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

Address for Notices:

Exhibit 10.5

RELEASE OF SECURITY INTEREST IN PATENTS

WHEREAS, pursuant to that certain Patent Security Agreement (the "Patent Security Agreement"), dated as of June 4, 2020, and recorded in the United States Patent and Trademark Office at Reel 052853, Frame 0153, each Grantor on the signature pages hereto (each a "Releasee" and, together, the "Releasees") granted to Starboard Value Intermediate Fund LP ("Releasor"), as Collateral Agent for itself and various other financial institutions, a security interest in all right, title and interest of Releasee in and to the patents and patent applications listed on Schedule A attached hereto (the "Patents"); and

WHEREAS, each Releasee has requested, and Releasor wishes to provide a document suitable for recording in the United States Patent and Trademark Office for purposes of recording the release, relinquishment and discharge of its security interest in the Patents.

NOW, THEREFORE, in consideration of and in exchange for good and valuable consideration, Releasor hereby agrees as follows:

1. Defined Terms. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Patent Security Agreement.

2. Release of Security Interest. Releasor, without representation, warranty or recourse, hereby terminates the Patent Security Agreement and releases, relinquishes, terminates, cancels and discharges its continuing security interest in the Collateral, including without limitation, its continuing security interest in the Patents, including, without limitation, all applications, registrations and recordings thereof, as applicable, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement, misappropriation or other violation thereof and any and all damages arising from past, present and future infringements, misappropriations or other violations thereof.

3. Recordation. The Releasor authorizes the Commissioner for Patents and any other government officials to record and register this Release of Security Interest in Patents upon written request by any Releasee.

IN WITNESS WHEREOF, the parties have caused this Release of Security Interest in Patents to be duly executed as of June 30, 2020.

STARBOARD VALUE INTERMEDIATE FUND LP

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

SCHEDULE A

Patent and Patent Applications