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

FORM 8-K

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

Date of Report (Date of earliest event reported): June 1, 2021

KALEYRA INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

No. 001-38320
(Commission
File Number)

82-3027430
(I.R.S. Employer
Identification Number)

Via Marco D'Aviano, 2
Milano MI, Italy 20131
(Address of principal executive offices)

20131
(Zip Code)

Registrant's telephone number, including area code: +39 02 288 5841

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation to 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:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	KLR	NYSE American LLC
Warrants, at an exercise price of \$11.50 per share of Common Stock	KLR WS	NYSE American 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.

Introductory Note

On June 1, 2021, Kaleyra Inc., a Delaware corporation (the “Company” or “Parent”) completed its acquisition (the “Acquisition”) of Vivial Inc. (“Vivial”), and the business owned by Vivial known as mGage (“mGage”), a leading global mobile messaging provider. Pursuant to that certain Agreement and Plan of Merger (the “Merger Agreement”), dated as of February 18, 2021, by and among the Company, its wholly-owned subsidiary, Volcano Merger Sub, Inc. (“Merger Sub”), Vivial and GSO Special Situations Master Fund LP, solely in its capacity as the Stockholder Representative (the “Stockholder Representative”), Vivial was merged (the “Merger”) with and into Merger Sub, with Vivial surviving as a wholly-owned subsidiary of the Company. The name of Vivial was changed to mGage Group Holdings, Inc. (“mGage Group Holdings”) as a result of the Merger. A copy of the Merger Agreement and the other agreements entered into (and certain agreements to be entered into) in connection with the Merger was filed as an exhibit to our Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on February 23, 2021.

In connection with the Merger, Vivial formed a wholly-owned subsidiary (“SpinCo”), into which it transferred two other wholly-owned subsidiaries, Vivial Mobile LLC, a Delaware limited liability company, and Vivial Media LLC, a Colorado limited liability company, and its subsidiaries (the “Reorganization”). Following the Reorganization, Vivial caused its stockholders to receive on a pro rata basis 100% of the shares of SpinCo common stock (the “Distribution”, and the Distribution together with the Reorganization is referred to as the “Separation”). As a result of and following the Separation, Vivial solely owned the business of mGage immediately prior to the consummation of the Merger. The Separation and Distribution have been effectuated pursuant to a Separation and Distribution Agreement entered into in connection with the closing of the Acquisition on June 1, 2021, a copy of which is filed as Exhibit 10.4 to this Current Report on Form 8-K and incorporated herein.

In support of the consummation of the Merger, on February 18, 2021, the Company entered into subscription agreements (the “PIPE Subscription Agreements”), each dated February 18, 2021, with certain institutional investors (the “PIPE Investors”), pursuant to which, among other things, the Company agreed to issue and sell, in private placements to close immediately prior to the closing of the Merger, an aggregate of 8,400,000 shares (the “PIPE Shares”) of the Company’s common stock to the PIPE Investors at \$12.50 per share, and the Company also entered into convertible note subscription agreements (the “Convertible Note Subscription Agreements”), each dated February 18, 2021, with certain institutional investors (the “Convertible Note Investors”), pursuant to which the Company agreed to issue and sell, in private placements to close immediately prior to the closing of the Merger, \$200,000,000 aggregate principal amount of 6.125% unsecured convertible notes (the “Convertible Notes”). The issuance of the Convertible Notes, together with the issuance of the PIPE Shares, constitutes the sources of the cash funds used for the Acquisition and expenses pertaining to the Acquisition. Copies of the form of PIPE Subscription Agreement and the form of Convertible Note Subscription Agreement were filed as exhibits to our Current Report on Form 8-K filed with the SEC on February 23, 2021.

This Current Report on Form 8-K contains forward-looking statements that reflect the current judgment of the Company on certain issues, including the Company’s use of the businesses acquired by it in the Acquisition. Because these statements apply to future events, they are subject to risks and uncertainties that could cause the actual results to differ materially. Important factors which could cause actual results to differ materially include the ability of the Company successfully to operate the mGage business through the Company’s separate subsidiary, mGage Group Holdings, the intense competition the Company faces, and the other risks described in Item 1 and Item 7 of the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2021, on file with the SEC, which factors are incorporated herein by reference.

Item 1.01 Entry into a Material Definitive Agreement

Unsecured Convertible Notes and Indenture

In connection with the issuance of the Convertible Notes pursuant to the terms of the Convertible Note Subscription Agreements, the Company entered into an indenture (the “Indenture”) with Wilmington Trust, National Association, a national banking association, in its capacity as trustee thereunder (the “Indenture Trustee”), in respect of the \$200,000,000 of Convertible Notes that were issued to the Convertible Note Investors. The terms of the Convertible Notes are set forth in the Convertible Note Subscription Agreements, the Indenture and the form of Global Note attached as Exhibit A to the Indenture (the “Global Note”). The Convertible Notes bear interest at a rate of 6.125% per annum, payable semi-annually, and are convertible into 11,851,852 shares of Parent Common Stock at a conversion price of \$16.875 per share of Parent Common Stock in accordance with the terms of the Indenture, and mature five years after their issuance. The Company may, at its election, force conversion of the Convertible Notes after (i) the first anniversary of the issuance of the Convertible Notes, subject to a holder’s prior right to convert, if the last reported sale price of the Parent Common Stock exceeds 150% of the conversion price for at least 20 trading days during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter and (ii) the second anniversary of the issuance of the Convertible Notes, subject to a holder’s prior right to convert, if the last reported sale price of the Parent Common Stock exceeds 130% of the conversion price for at least 20 trading days during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter. Following certain corporate events that occur prior to the maturity date or if the Company forces a mandatory conversion, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Convertible Notes in connection with such a corporate event or has its Convertible Notes mandatorily converted, as the case may be. In addition, in the event that a holder of the Convertible Notes elects to convert its Convertible Notes prior to the third anniversary of the issuance of the Convertible Notes, the Company will be obligated to pay an amount equal to twelve months of interest, or if on or after such third anniversary of the issuance of the Convertible Notes, any remaining amounts that would be owed to, but excluding, the fourth anniversary of the issuance of the Convertible Notes (the “Interest Make-Whole Payment”). The Interest Make-Whole Payment will be payable in cash or shares of Parent Common Stock as set forth in the Indenture.

The foregoing description of the Convertible Note Subscription Agreements, the Indenture and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to the text of the Convertible Note Subscription Agreements, the form of which is included as Exhibit 10.4 to our Current Report on Form 8-K filed on February 23, 2021, and the Indenture, including the form of Global Note attached as Exhibit A thereto, which is included as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein.

Escrow Agreement

In connection with the closing of the Merger, the Company, the Stockholder Representative and Citibank, N.A., as the escrow agent thereunder (the “Escrow Agent”) entered into an escrow agreement dated as of June 1, 2021 (the “Escrow Agreement”) which provides for an escrow fund to secure payment of post-closing adjustments to the purchase price paid by the Company at the time of closing of the Acquisition. The escrow fund was funded by the Company at the closing through the payment of immediately available funds in the amount of \$2,000,000, and will be distributed by the Escrow Agent in accordance with the terms of the Escrow Agreement and the Merger Agreement.

The foregoing description of the Escrow Agreement is not complete and is subject to, and qualified in its entirety by reference to the Escrow Agreement, a copy of which is included as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein.

Transition Services Agreement

In connection with the closing of the Acquisition, mGage Group Holdings and SpinCo entered into a Transition Services Agreement dated as of June 1, 2021 (the “Transition Services Agreement”) pursuant to which SpinCo will agree to provide certain services in support of the Acquisition of the mGage business up through at most March 31, 2022, with such services being in order to facilitate the transactions contemplated by the Merger Agreement, including human resources, information technology support, and finance and accounting. mGage Group Holding has further agreed to pay a service fee specified for each service provided.

The foregoing description of the Transition Services Agreement and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the Transition Services Agreement, a copy of which is included as Exhibit 10.3 to this Current Report on Form 8-K.

Separation and Distribution Agreement

In connection with, and immediately prior to, the closing of the Acquisition, Vivial and SpinCo entered into a Separation and Distribution Agreement dated as of June 1, 2021 (the "Separation and Distribution Agreement") which sets forth the various rights and obligations of such parties in connection with the Separation. Pursuant to the Separation and Distribution Agreement, Vivial and SpinCo agreed, among other things, to (i) allocate and transfer those assets used in the SpinCo business and separately identified by such parties, along with any liabilities relating to, arising out of or resulting from the operation of the SpinCo business along with specified liabilities relating to operation of SpinCo's business prior to the Distribution, and (ii) terminate certain intercompany contracts and liabilities and settle all intercompany receivables at the time of the Distribution. The Distribution occurred immediately prior to Closing, after completion of the Reorganization.

The foregoing description of the Separation and Distribution Agreement and the transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the Separation and Distribution Agreement, a copy of which is included as Exhibit 10.4 to this Current Report on Form 8-K.

Item 2.01 Acquisition or Disposition of Assets

The information set forth in the Introductory Note above is incorporated by reference in response to this Item 2.01. As a result of the Acquisition, the Company acquired Vivial and the business known as mGage on June 1, 2021.

The purchase price for the Acquisition under the Merger Agreement was \$215 million. At the effective time of the Merger (the "Effective Time"), each share of Vivial common stock, par value \$0.01 per share (collectively, the "Vivial Common Stock") that was issued and outstanding immediately prior to the Effective Time (including shares of Vivial Common Stock resulting from the conversion of restricted stock units prior to the Effective Time) was cancelled and converted into and thereafter represents the right to receive, without interest, in accordance with a schedule that was delivered by Vivial prior to the closing of the Merger, (i) the Estimated Per Share Merger Consideration plus (ii) such share's Allocable Share of any Adjustment Amount distributed pursuant to the Merger Agreement and Adjustment Escrow Amount in accordance with the Escrow Agreement that was established for the Adjustment Escrow Amount plus (iii) its Allocable Share of any amount from the Stockholder Representative Expense Fund distributed. "Allocable Share" means with respect to each share of Vivial Common Stock that was issued and outstanding immediately prior to the Effective Time (other than shares held in Vivial's treasury or by the Company or Merger Sub and such amount of shares that are repurchased in accordance with Vivial's existing Investor Rights Agreement), a fraction (a) the numerator of which is one and (b) the denominator of which is the aggregate number of shares of Vivial Common Stock issued and outstanding immediately prior to the Effective Time (other than shares held in Vivial's treasury or by the Company or Merger Sub). The "Adjustment Amount" means the Final Merger Consideration minus the Estimated Merger Consideration.

The "Merger Consideration" means an amount equal to (a) \$195,000,000 minus (b) the amount of the Closing Debt plus (c) the amount of the Closing Cash plus (d) if the Closing Net Working Capital exceeds \$7,500,000 (the "Net Working Capital Target"), the amount of such excess minus (e) if the Net Working Capital Target exceeds the Closing Net Working Capital, the amount of such excess minus (f) the Closing Company Transaction Expenses plus (g) \$20,000,000 (the "Parent Common Stock Consideration Amount"); provided, however, in no event shall Closing Cash exceed \$7,000,000 (the "Maximum Closing Cash Amount"). At the Closing, the estimated Closing Cash was approximately \$2,531,704 and the Closing Net Working Capital was estimated to exceed the Net Working Capital Target by approximately \$1,667,161. The "Estimated Merger Consideration" is the estimated calculation of the Merger Consideration that will be made by Vivial two business days prior to the anticipated date of closing of the Merger (the "Closing Date") using the formula set forth in the prior sentence. The "Estimated Per Share Merger Consideration" means an amount equal to (x) the Closing Payment divided by (y) the aggregate number of shares of Vivial Common Stock issued and outstanding immediately prior to the Effective Time (other than shares held in Vivial's treasury or by the Company or Merger Sub). The "Closing Payment" means the Estimated Merger Consideration minus \$2,000,000 (the "Adjustment Escrow Amount") minus \$500,000 (the "Stockholder Representative Expense Fund"). "Final Merger Consideration" means the Merger Consideration finally determined by the parties following the adjustment process specified in the Merger Agreement. The Estimated Merger Consideration was approximately \$96,685,509.

The “Closing Cash” means the cash outstanding of Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation at 11:59 p.m. (New York time) on the date immediately preceding the Closing Date. The “Closing Debt” means the aggregate indebtedness outstanding of Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation at 11:59 p.m. (New York time) on the date immediately preceding the Closing Date. The estimated Closing Debt at the Closing was approximately \$84,340,396. The “Closing Net Working Capital” means the Net Working Capital of Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation at 11:59 p.m. (New York time) on the date immediately preceding the Closing Date. “Net Working Capital” means: (a) current assets minus (b) current liabilities (including uncleared checks written by Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation), in each case determined in accordance with Vivial’s accounting principles. For the avoidance of doubt, Net Working Capital shall exclude long term assets and liabilities, and any items of Indebtedness, income taxes, deferred tax assets and liabilities, cash, Closing Company Transaction Expenses, and intercompany balances among Vivial, mGage and any of Vivial’s wholly owned subsidiaries that remain following the Separation.

The “Closing Company Transaction Expenses” means the Company Transaction Expenses outstanding on the Closing Date to the extent not paid by Vivial at 11:59 p.m. (New York Time) on the date immediately preceding the Closing Date. “Company Transaction Expenses” means all (a) expense reimbursement payable to any other bidders of the transactions contemplated by the Merger Agreement, (b) fees, costs, charges, expenses and obligations payable to Vivial’s advisors and other fees, costs, charges, expenses and obligations of professional service firms incurred by Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation in connection with the transactions contemplated by the Merger Agreement, the Separation and Distribution Agreement and the Distribution and Reorganization, in each case to the extent unpaid as of the Closing Date, (c) the amount of the aggregate of the Employee Payments, and all employer taxes related thereto, (d) the cost of terminating in full all obligations or liabilities under any advisory or similar affiliate agreements (if any), (e) all transfer taxes allocable to SpinCo under the Merger Agreement, (f) 50% of all other transfer taxes not expressly allocable to SpinCo, (g) 50% of the costs fees and expenses of obtaining, and relating to, a tail director and officer insurance policy, and (h) 50% of the fees to be paid for antitrust review of the Merger; provided, that Company Transaction Expenses shall not include any amounts (i) to the extent included in the calculation of the Adjustment Amount as Closing Debt, (ii) to the extent included as current liabilities in the calculation of Net Working Capital and (iii) any fees or expenses incurred by or on behalf of the Company or Merger Sub in connection with the transactions contemplated by the Merger Agreement or any other transaction document, whether or not billed or accrued (including any fees and expenses of legal counsel, financial advisors, investment bankers, brokers and accountants of the Company or Merger Sub). The “Employee Payments” means, without duplication, in respect of Vivial, mGage and the other subsidiaries of Vivial that remain following the Separation any payments in respect of (a) severance, change in control, retention, transaction or similar bonus, termination or similar amounts payable and (b) any payments in respect of equity-based compensation (including any profits interests), in each case of clause (a) or (b), payable to any person solely in connection with the closing of the Merger to the extent due and payable as of such closing. The estimated Closing Company Transaction Expenses at the Closing was approximately \$38,172,961.

The Parent Common Stock Consideration Amount was paid with the issuance of such number of shares of common stock of the Company, par value \$0.0001 per share (the “Parent Common Stock”) equal to (a) the Parent Common Stock Consideration Amount, divided by (b) \$12.50, or a total of 1,600,000 shares of Parent Common Stock. The remainder of the Merger Consideration was paid in cash in the amount of approximately \$78,776,455.

The Merger will be accounted for as an acquisition of Vivial by the Company under the acquisition method of accounting in accordance with accounting principles generally accepted in the United States.

The terms of the Merger Agreement and the Acquisition were determined on the basis of “arm’s-length” negotiations among the parties. Prior to the execution of the Merger Agreement, none of the Company, its officers or directors or any associate of any such officer or director, or its affiliates had any material relationship with Vivial.

mGage maintains a global footprint with leased facilities located in Los Angeles, Atlanta, The Netherlands and London. The Company believes that the current facilities of mGage are adequate to meet mGage’s ongoing needs and that, if it requires adjusted or additional space, it will be able to obtain additional facilities on commercially reasonable terms, or further consolidate facilities. Going forward, the Company will continue to assess its facilities requirements for mGage and make appropriate adjustments as needed and dictated by the business. mGage operates infrastructure in three (3) third-party data centers under colocation agreements and leverages cloud services operated by Amazon Web Services.

The foregoing discussion of the Merger Agreement does not purport to be complete and is qualified by reference to the full text of the Merger Agreement, which was filed as Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed February 23, 2021 and is incorporated herein by reference.

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

In connection with the Closing, the Company issued \$200,000,000 of Convertible Notes to the Note Investors pursuant to the terms of the Note Subscription Agreements, the Indenture and the Global Note. The disclosure contained in Item 1.01 of this Current Report on Form 8-K ("Report") is also incorporated herein by reference.

This summary is qualified in its entirety by reference to (i) the Convertible Note Subscription Agreements, the form of which is included as Exhibit 10.4 to our Current Report on Form 8-K filed February 23, 2021 and is incorporated herein by reference, and (ii) the Indenture, which is included as Exhibit 10.1 to this Report and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

In support of the consummation of the Acquisition, on February 18, 2021, the Company entered into the PIPE Subscription Agreements with the PIPE Investors, pursuant to which, among other things, the Company agreed to issue and sell, in private placements which closed immediately prior to the closing of the Merger, an aggregate of 8,400,000 shares of the Company Common Stock to the PIPE Investors at \$12.50 per share, and the Company also entered into the Convertible Note Subscription Agreements with the Convertible Note Investors pursuant to which the Company agreed to issue and sell, in private placements to close immediately prior to the closing of the Merger, \$200,000,000 aggregate principal amount of the Convertible Notes. The disclosure contained in Item 1.01 of this Report is also incorporated herein by reference.

This summary is qualified in its entirety by reference to (i) the PIPE Subscription Agreements, the form of which is attached as Exhibit 10.3 to our Current Report on Form 8-K filed on February 23, 2021 and is incorporated herein by reference, (ii) the Convertible Notes Subscription Agreements, the form of which is included as Exhibit 10.4 to our Current Report on Form 8-K filed on February 23, 2021 and is incorporated herein by reference, and (iii) the Indenture, including the form of Global Note attached as Exhibit A thereto, which is included as Exhibit 10.1 to this Report and is incorporated herein by reference.

Item 8.01 Other Events.

On June 1, 2021, the Company announced that it was consummating its previously announced business combination with Vivial Networks, Inc. A copy of the press release issued by the Company announcing the consummation of its business combination is furnished as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(a) *Financial Statements of Businesses Acquired*

The financial statements required by Rule 8-04 of Regulation S-X will be filed by amendment to this Current Report on Form 8-K as soon as practicable, but in no event later than 71 calendar days after the latest date on which this Current Report on Form 8-K was required to be filed.

(b) *Pro Forma Financial Information*

The pro forma financial information required pursuant to Article 11 of RegulationS-X will be filed by amendment to this Current Report on Form 8-K as soon as practicable, but in no event later than 71 calendar days after the date on which this Current Report on Form8-K was required to be filed.

(c) *Exhibits*

The Exhibits filed as part of this Current Report on Form8-K are listed on the Exhibit Index immediately preceding such Exhibits, which Exhibit Index is incorporated herein by reference. Documents listed on such Exhibit Index, except for documents incorporated herein by reference, are attached hereto. Documents identified as incorporated herein by reference are not attached hereto and, pursuant to Rule 12b-32 under the Securities Exchange Act of 1934, as amended, reference is made to such documents as previously filed with the Securities and Exchange Commission.

The exhibits required by this item are set forth on the Exhibit Index attached hereto.

**Exhibit
Number**

- | | |
|------|---|
| 10.1 | <u>Indenture dated as of June 1, 2021 by and between the Company and Wilmington Trust, National Association, a national banking association, in its capacity as trustee thereunder.</u> |
| 10.2 | <u>Escrow Agreement dated as of June 1, 2021 by and among the Company, the Stockholder Representative, and Citibank, N.A., as escrow agent.</u> |
| 10.3 | <u>Transition Services Agreement dated as of June 1, 2021 by and between Vivial Media Holdings, Inc. and Volcano Merger Sub, Inc.</u> |
| 10.4 | <u>Separation and Distribution Agreement dated as of June 1, 2021 by and between Vivial Inc. and Vivial Media Holdings, Inc.</u> |
| 99.1 | <u>Press Release of Kaleyra Inc. dated June 1, 2021 announcing closing of the mGage acquisition.</u> |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document). |

SIGNATURE

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

Dated: June 7, 2021

KAYELRA INC.

By: /s/ Dario Calogero
Name: Dario Calogero
Title: Chief Executive Officer and President

KALEYRA, INC.

AND

WILMINGTON TRUST, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of June 1, 2021

6.125% Convertible Senior Notes due 2026

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INDENTURE dated as of June 1, 2021 between KALEYRA, INC., a Delaware corporation, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 6.125% Convertible Senior Notes due 2026 (the “**Notes**”), initially in an aggregate principal amount not to exceed \$200,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as provided in this Indenture, the valid, binding and legal obligations of the Company, and this Indenture the valid, binding and legal agreement of the Company and the Trustee, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 6.03.

“**Additional Shares**” shall have the meaning specified in Section 14.14(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an “**Affiliate**” of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

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“**Applicable Procedures**” means, with respect to a Depository, as to any matter at any time, the policies and procedures of such Depository, if any, that are applicable to such matter at such time.

“**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the issue date of the Notes, directly or indirectly managed or advised by a Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Common Stock would or could be aggregated with such Holder’s and the other Attribution Parties for purposes of Section 13(d) of the Exchange Act. For clarity, the purpose of the foregoing is to subject collectively such Holder and all other Attribution Parties to the Maximum Percentage.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

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

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity; *provided* that debt securities that are convertible into or exchangeable for Capital Stock shall not constitute Capital Stock prior to their conversion or exchange, as the case may be.

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**close of business**” means 5:00 p.m. (New York City time).

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

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“**Common Stock**” means the Common Stock of the Company, par value \$0.0001 per share, at the date of this Indenture, subject to Section 14.07.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Mandatory Conversion Condition**” means the conditions required for the Company to cause Notes to be converted pursuant to Section 14.03(a).

“**Company Order**” means a written order of the Company, signed on behalf of the Company by an Officer and delivered to the Trustee.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01.

“**Conversion Price**” means as of any time, \$1,000, *divided by* the Conversion Rate as of such time.

“**Conversion Rate**” shall have the meaning specified in Section 14.01.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at Wilmington Trust, National Association, Global Capital Markets, 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, Attention: Kaleyra Notes Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Custodian**” means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

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

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

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“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in Section 2.05(b) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Effective Date**” shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, “**Effective Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Eligible Market**” “**Eligible Market**” means The New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or any of their respective successors).

“**Equity Conditions**” means, with respect to a given date of determination: (i) on each day during the period beginning thirty (30) calendar days prior to such applicable date of determination and ending on and including such applicable date of determination (the “**Equity Conditions Measuring Period**”) either (x) one or more registration statements filed with the Commission pursuant to the Subscription Agreement shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (without regard to any limitations on conversion set forth herein) (a “**Required Minimum Securities Amount**”) or (y) all shares of Common Stock issuable upon conversion of the applicable Notes shall be eligible for sale pursuant to Rule 144 of the Securities Act, without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes) and the Company is then current with its filings with the Commission; (ii) on each day during the Equity Conditions Measuring Period, the Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Notes) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation, as applicable; (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of the Notes on a timely basis in accordance herewith; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Notes being redeemed in the event requiring this determination) may be issued in full without violating Section 14.13 hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the portion of the Notes being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Change (as defined in the Indenture) shall have occurred which has not been abandoned, terminated or consummated; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause (1) any registration statement required to be filed with the Commission pursuant to the Subscription Agreement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of all shares of Common Stock issuable upon conversion of the applicable Notes in accordance with the terms of the Subscription Agreement or (2) any shares of Common Stock issuable upon conversion of the applicable Notes to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes) and the Company is then current with its filings with the Commission, (viii) none of the Holders shall be in possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (ix) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any, Transaction Document; (x) on each Trading Day during the Equity Conditions Measuring Period, there shall not have occurred any Volume Failure as of such applicable date of determination; (xi) on the applicable date of determination all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the portion of this Note being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full from the authorized and available shares of Common Stock of the Company; (xii) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default (as defined in the Indenture) or an event that with the passage of time or giving of notice would constitute an Event of Default; or (xiii) the shares of Common Stock issuable pursuant to the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

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“**Equity Conditions Failure**” means, with respect to any date of determination, the Equity Conditions have not been satisfied (or waived in writing by the applicable Holder).

“**Equity Conditions Measuring Period**” shall have the meaning specified in the definition of “Equity Conditions.”

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

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“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Election**” shall have the meaning specified in Section 14.12.

“**Expiration Date**” shall have the meaning specified in Section 14.04(e).

“**Form of Assignment and Transfer**” means the “**Form of Assignment and Transfer**” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” means the “**Form of Fundamental Change Repurchase Notice**” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Note**” means the “**Form of Note**” attached hereto as Exhibit A.

“**Form of Notice of Conversion**” means the “**Form of Notice of Conversion**” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs prior to the Maturity Date:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company and its Wholly Owned Subsidiaries, files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination or changes solely in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company’s direct or indirect Wholly Owned Subsidiaries; *provided, however*, that neither (x) a transaction described in clause (A) or (B) in which the holders of all classes of the Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction nor (y) any merger of the Company solely for the purpose of changing its jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity shall be a Fundamental Change pursuant to this clause (b);

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

(d) the Common Stock (or other Common Equity underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors);

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provided, however, that a transaction or transactions described in clauses (a) or (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes Reference Property for the Notes, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights (subject to the provisions of Section 14.02(a)). Any event, transaction or series of related transactions that constitute a Fundamental Change under both clause (a) and clause (b) above (determined without regard to the proviso in clause (b) above) shall be deemed to be a Fundamental Change solely under clause (b) above (and, for the avoidance of doubt, shall be subject to the proviso in clause (b) above). If any transaction in which the Common Stock is replaced by the equity securities of another entity occurs, references to the Company in this definition shall instead be references to such other entity.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 15.02(d).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 15.02(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 15.02(c).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 15.02(a).

“**Global Note**” shall have the meaning specified in Section 2.05(b).

“**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.

“**Holder**”, as applied to any Note, or other similar terms, means any Person in whose name at the time a particular Note is registered on the Note Register (and in the case of a Global Note and solely with respect to Section 6.12 and Section 14.13, the indirect holder of Notes held through its participant).

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Interest Make-Whole Amount**” means, with respect to the voluntary conversion of any Note, in an amount denominated in U.S. dollars, the sum of all regularly scheduled interest payments, if any, due on such Note on each Interest Payment Date occurring after the Conversion Date for such conversion and before June 1, 2025; *provided, however*, that for these purposes, the amount of interest due on the Interest Payment Date immediately after such Conversion Date will be deemed to be the following amount: (x) if such Conversion Date is prior to June 1, 2024, an amount equal to twelve months of interest, (y) if such Conversion Date is on or after June 1, 2024, any accrued and unpaid interest, if any, at such Conversion Date, *plus* any remaining amounts that would be owed to, but excluding, June 1, 2025, including all regularly scheduled interest payments and (z) if such Conversion Date is on or after June 1, 2025, an amount equal to zero.

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“**Interest Payment Date**” means each June 1 and December 1 of each year, beginning on December 1, 2021.

“**Last Reported Sale Price**” of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “**Last Reported Sale Price**” shall be the last quoted bid price per share for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the “**Last Reported Sale Price**” shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The “**Last Reported Sale Price**” shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

“**Make-Whole Fundamental Change Period**” shall have the meaning specified in Section 14.14(a).

“**Mandatory Conversion**” means a conversion pursuant to Section 14.03(a).

“**Mandatory Conversion Date**” means the Conversion Date for a Mandatory Conversion, as provided in Section 14.03(c).

“**Market Disruption Event**” means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock. Any suspension or limitation shall exclude any short sale price limitations triggered under Regulation SHO Rule 201 (adopted February 26, 2010) on the Common Stock, in any options Contract or future contracts where applicable.

“**Maturity Date**” means June 1, 2026.

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

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“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Secretary, any assistant Treasurer, any assistant Secretary, General Counsel, any Assistant General Counsel, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “**Vice President**”).

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed on behalf of the Company by an Officer of the Company that meets the requirements of Section 17.05.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, that is delivered to the Trustee.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes surrendered for purchase in accordance with Article 15 for which Paying Agent holds money sufficient to pay the Fundamental Change Repurchase Price, in accordance with Section 15.04(b);

(e) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and

(f) Notes repurchased by the Company pursuant to the last sentence of Section 2.10 after the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in minimum denominations of \$1,000 principal amount and integral multiples in excess thereof.

“**Physical Settlement**” shall have the meaning specified in Section 14.02(a).

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“**Physical Settlement Method**” means, with respect to any conversion of Notes, the Physical Settlement.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Registrable Securities**” shall have the meaning set forth in the Subscription Agreement.

“**Regular Record Date**,” with respect to any Interest Payment Date, means the May 15 or November 15 (whether or not such day is a Business Day) immediately preceding the applicable June 1 or December 1 Interest Payment Date, respectively.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

“**Restricted Securities**” shall have the meaning specified in Section 2.05(c).

“**Restrictive Legend**” shall have the meaning specified in Section 2.05(d).

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Rule 144A**” means Rule 144A as promulgated under the Securities Act.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, “**Scheduled Trading Day**” means a Business Day.

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

“**Settlement Amount**” has the meaning specified in Section 14.02(a)(i).

“**Share Exchange Event**” has the meaning specified in Section 14.07(a).

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“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act as in effect on the date of this Indenture; provided that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless the Subsidiary’s income (or loss) from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds \$20,000,000.

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Stock Price**” shall have the meaning specified in Section 14.14(c).

“**Subscription Agreement**” means, collectively, the Subscription Agreements dated as of the date hereof, each between the Company and the Subscriber defined therein.

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the Common Stock (or such other security) is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day; and *provided, further*, that for purposes of determining amounts due upon conversion only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, “**Trading Day**” means a Business Day.

“**transfer**” shall have the meaning specified in Section 2.05(c).

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “**Trust Indenture Act**” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

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“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

“**Volume Failure**” means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the “**Volume Failure Measuring Period**”), is less than \$2,000,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such Volume Failure Measuring Period.

“**Wholly Owned Subsidiary**” means, with respect to any Person, any direct or indirect Subsidiary of such Person, except that, solely for purposes of this definition, the reference to “more than 50%” in the definition of “**Subsidiary**” shall be deemed replaced by a reference to “100%”, the calculation of which shall exclude nominal amounts of the voting power of shares of Capital Stock or other interests in the relevant Subsidiary not held by such person to the extent required to satisfy local minority interest requirements outside of the United States.

Section 1.02 *References to Interest*. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “6.125% Convertible Senior Notes due 2026.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$200,000,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02 *Form of Notes*. The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

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Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts* (a) The Notes shall be issuable in registered form without coupons in minimum denominations of \$1,000 principal amount and integral multiples in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the contiguous United States, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

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(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c). The Trustee shall have no responsibility for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes*. The Notes shall be signed in the name and on behalf of the Company by the manual, facsimile or other electronic signature of one of its Officers.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

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Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or anyco-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee or Note Registrar and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed on a Holder by the Company, the Trustee, the Note Registrar, anyco-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

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None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 0.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c), all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the Applicable Procedures.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the Restrictive Legend (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(f), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(e), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(d) Each Global Note shall bear a legend in substantially the following form (the “**Restrictive Legend**”) (or any similar legend, not inconsistent with this Indenture, required by the Depository for such Global Note):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “**QUALIFIED INSTITUTIONAL BUYER**” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF KALEYRA, INC. (THE “**COMPANY**”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

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(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restrictive Legend required by this Section 2.05(d) and shall not be assigned (or deemed assigned) a restricted CUSIP number. The Restrictive Legend set forth above and affixed on any Note will be deemed, in accordance with the terms of the certificate representing such Note, to be removed therefrom upon the Company's delivery to the Trustee of written notice to such effect, without further action by the Company, the Trustee, the Holder(s) thereof or any other Person; at such time, such Note will be deemed to be assigned an unrestricted CUSIP number as provided in the certificate representing such Note, it being understood that the Depository of any Global Note may require a mandatory exchange or other process to cause such Global Note to be identified by an unrestricted CUSIP number in the facilities of such Depository. Without limiting the generality of any other provision of this Indenture, the Trustee will be entitled to receive an instruction letter from the Company before taking any action with respect to effecting any such mandatory exchange or other process. The Company and the Trustee reserve the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that any proposed transfer of any Note is being made in compliance with the Securities Act and applicable state securities laws.

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The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the first sentence of the immediately preceding paragraph have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the Restrictive Legend specified in this Section 2.05(e) and shall not be assigned (or deemed assigned) a restricted CUSIP number.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(e)), a Global Note may not be transferred as a whole or in part except (i) by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(d) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

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None of the Company, the Trustee, the Paying Agent, the Conversion Agent or any other agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Company nor the Trustee shall have any responsibility or liability for any act or omission of the Depository. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depository or its nominee in the case of a Global Note).

The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the Applicable Procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(e) Any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “**QUALIFIED INSTITUTIONAL BUYER**” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF KALEYRA, INC. (THE “**COMPANY**”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

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(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(f).

(f) Any Note or Common Stock issued upon conversion or exchange of a Note that is repurchased or owned by the Company or any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months immediately preceding) may not be resold by the Company or such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144).

(g) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Note Registrar shall be responsible for ascertaining whether any transfer complies with the registration provisions of, or exemptions from, the Securities Act, applicable state securities laws or other applicable law.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

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The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes upon the written request of the Company. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

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Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment at maturity, repurchase upon a Fundamental Change, registration of transfer or exchange or conversion (other than any Notes exchanged pursuant to Section 14.12), if surrendered to any Person that the Company controls other than the Trustee, to be surrendered to the Trustee for cancellation and they will no longer be considered outstanding under this Indenture upon their payment at maturity, registration of transfer or exchange or conversion. All Notes delivered to the Trustee shall be canceled promptly by it. Except for any Notes surrendered for registration of transfer or exchange, or as otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation. The Trustee shall dispose of canceled Notes in accordance with its customary procedures. After such cancellation, the Trustee shall deliver a certificate of such cancellation to the Company, at the Company's written request in a Company Order.

Section 2.09 *CUSIP Numbers.* The Company in issuing the Notes may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Note, notice or elsewhere and that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.10 *Additional Notes; Repurchases.* The Company may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue date, the issue price and interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities laws purposes, such additional Notes shall have one or more separate CUSIP, ISIN or other identifying numbers. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Sections 10.05 and 17.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law and without the consent of Holders, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company may, at its option and to the extent permitted by applicable law, reissue, resell, hold or surrender to the Trustee for cancellation in accordance with Section 2.08 any Notes that the Company may repurchase, in the case of a reissuance or resale, so long as such Notes do not constitute "restricted securities" (as defined under Rule 144) upon such reissuance or resale; *provided* that if any such reissued or resold Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such reissued or resold Notes shall have one or more separate CUSIP numbers. Any Notes that the Company may repurchase shall be considered outstanding for all purposes under this Indenture (other than, at any time when such Notes are held by the Company, any of its Subsidiaries or its Affiliates or any Subsidiary of any of such Affiliates, for the purpose of determining whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture) unless and until such time the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08 and, upon receipt of a written order from the Company, the Trustee shall cancel all Notes so surrendered.

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge*. This Indenture and the Notes shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) after the Notes have (x) become due and payable, whether on the Maturity Date, on any Fundamental Change Repurchase Date or otherwise and/or (y) been converted (and the related consideration due upon conversion has been determined), the Company has deposited with the Trustee cash and/or has delivered to Holders shares of Common Stock, as applicable, (in the case of Common Stock, solely to satisfy the Company's Conversion Obligation) sufficient, without consideration of reinvestment, to pay all of the outstanding Notes and all other sums due and payable under this Indenture or the Notes by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest*. The Company covenants and agrees that it will pay or cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable) and premium, if any, of the Settlement Amounts owed upon conversion of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Company or Paying Agent may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal, premium or Interest or Defaulted Amounts payments hereunder.

Section 4.02 *Maintenance of Office or Agency*. The Company will maintain in the contiguous United States an office or agency (which may be an office of the Trustee or an affiliate of the Trustee) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at the Corporate Trust Office.

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The Company may also from time to time designate asco-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the contiguous United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as a place where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (if applicable) or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made; *provided* that no office of the Trustee shall be a place for service of legal process on the Company.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent*. (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) and premium, if any of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust;

provided, that a Paying Agent appointed as contemplated under Section 15.02(f) shall not be required to deliver any such instrument.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or such accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be made in immediately available funds and received by the Paying Agent by 11:00 a.m., New York City time, on such date.

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(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest, if any, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Subject to applicable law, any money deposited with the Trustee, the Conversion Agent or any Paying Agent, or any money and shares of Common Stock then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust and the Trustee shall have no further liability with respect to such funds; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee, the Conversion Agent or such Paying Agent with respect to such trust money, and all liability of the Company as trustee with respect to such trust money and shares of Common Stock, shall thereupon cease.

Section 4.05 *Corporate Existence*. Subject to Article 11, the Company shall do or cause to be done, at its own cost and expense, all things necessary to preserve and keep in full force and effect its corporate existence in accordance with the organizational documents (as the same may be amended from time to time) of the Company.

Section 4.06 *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide without cost to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A.

(b) The Company shall deliver to the Trustee, within 15 days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act (or any successor thereto)). Notwithstanding the foregoing, the Company shall in no event be required to deliver to, or otherwise provide or disclose to, the Trustee or any Holder any information for which the Company is requesting (assuming such request has not been denied), or has received, confidential treatment from the Commission, or any correspondence with the Commission. Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be delivered to the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or such successor); *provided* that the Trustee shall have no obligation to determine whether such documents or reports have been filed via the EDGAR system.

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(c) Delivery of the reports, information and documents described in subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

Section 4.07 *Stay, Extension and Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal or premium of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08 *Compliance Certificate; Statements as to Defaults*. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2021) an Officer's Certificate stating whether the signers thereof have knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee within 30 days after an officer of the Company becomes aware of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof; *provided* that the Company is not required to deliver such notice if such Event of Default or Default has been cured.

Section 4.09 *Registration Rights*. The Company agrees that the Holders from time to time of Registrable Securities are entitled to the benefits of Section 5 of the Subscription Agreement. By its acceptance thereof, the Holder of Registrable Securities will have agreed to be bound by the terms of the applicable Subscription Agreement relating to such Registrable Securities.

Section 4.10. *Compliance with Laws*. The Company shall comply with all applicable statutes, rules, regulations, orders and restrictions of the United States of America, all states and municipalities thereof, and of any governmental department, commission, board, regulatory authority, bureau, agency and instrumentality of the foregoing, in respect of the conduct of its respective businesses and the ownership of its respective properties, except for such non-compliances as could not singly or in the aggregate reasonably be expected to have a material adverse effect on the financial condition or results of operations of the Company.

Section 4.11. *Payment of Taxes and Other Claims*. The Company shall pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges (including withholding taxes and any penalties, interest and additions to taxes) levied or imposed upon it or properties of it and (ii) all material lawful claims for labor, materials and supplies that, if unpaid, might by law become a lien upon the property of the Company.

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Section 4.12. Further Instruments and Acts. Upon request of the Trustee, Paying Agent or Conversion Agent, the Company will execute and deliver such further instruments and do such further acts, at its sole expense, as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 Lists of Holders. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 10 days after each June 1 or December 1 in each year beginning with December 1, 2021, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 10 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02 Preservation and Disclosure of Lists. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 Events of Default. Each of the following events shall be an “**Event of Default**” with respect to the Notes:

- (a) default in any payment of interest on any Note when due and payable, and the default continues for a period of thirty (30) days;
- (b) default in the payment of principal or premium, if any, of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture, and such failure continues for three (3) Business Days;
- (d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(d) when due, and such failure continues for two (2) Business Days;
- (e) failure by the Company to comply with its obligations under Article 11;
- (f) failure by the Company for 60 days after receipt by the Company of written notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

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(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$20,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case, after the expiration of any applicable grace period, if such acceleration shall not have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness shall not have been paid or discharged, as the case may be, within thirty (30) days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with this Indenture;

(h) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(i) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismitted and unstayed for a period of sixty (60) consecutive days.

Section 6.02 *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, premium, if any, of and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

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The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal or interest of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the uncured nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay and/or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to: (i) 2.00% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which such Event of Default is cured or validly waived in accordance with this Article 6 and (y) the 180th day immediately following, and including, the date on which such Event of Default first occurs and (ii) if such Event of Default has not been cured or validly waived prior to the 181st day immediately following, and including, the date on which such Event of Default first occurs, 0.50% per annum of the principal amount of Notes outstanding for each day during the period beginning on, and including, the 181st day immediately following, and including, the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which the Event of Default is cured or validly waived in accordance with this Article 6 and (y) the 360th day immediately following, and including, the date on which such Event of Default first occurs. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes and shall accrue on all outstanding Notes from, and including, the date on which the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) first occurs to, and including, the 360th day thereafter (or such earlier date on which such Event of Default is cured or validly waived in accordance with this Article 6). On the 361st day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) is not cured or validly waived in accordance with this Article 6 prior to such 361st day), such Additional Interest shall cease to accrue and the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company has elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

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In order to elect to pay Additional Interest as the sole remedy during the first 360 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent in an Officer's Certificate of such election on or before the open of business on the Business Day immediately succeeding the date on which such Event of Default first occurs. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02. The Officer's Certificate under this Section 6.03 shall state (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such Officer's Certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

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Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee*. Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee, including its agents and counsel, under Section 7.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of any interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) payable upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Holders based on the aggregate principal amount of Notes held thereby;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

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Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders*. Except to enforce (x) the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price), premium or interest when due, or (y) the right to receive payment or delivery of the consideration due upon conversion and/or the conversion mechanics, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered, and, if requested, provided, to the Trustee such security or indemnity satisfactory to the Trustee against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are prejudicial to any other Holder), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, and the contractual right to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, shall not be amended without the consent of each Holder.

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Section 6.07 *Proceedings by Trustee*. In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing*. Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. The Trustee may maintain a proceeding even if it does not possess any Notes or does not produce any Notes in the proceeding.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders*. The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; *provided, however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability or for which it has not received indemnity or security satisfactory to the Trustee against loss, liability or expense (it being understood that the Trustee does not have an affirmative duty to determine whether any direction is prejudicial to any Holder). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes (x) waive any past Default or Event of Default hereunder and its consequences except any continuing defaults relating to (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected; and (y) rescind any resulting acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default (other than nonpayment of the principal of, and interest on, the Notes that have become due solely by such acceleration) have been cured or waived. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

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Section 6.10 *Notice of Defaults*. The Trustee shall, after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, deliver to all Holders notice of such Default within 90 days after such Responsible Officer obtains such knowledge, unless such Defaults shall have been cured or waived before the giving of such notice; provided that, except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs*. All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

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Section 6.12 *Company's Failure to Timely Convert*. If at any time from and after the issue date of the Notes, the Company shall fail, for any reason or for no reason, on or prior to the second (2nd) Trading Day after receipt of the applicable Conversion Notice (the '**Share Delivery Deadline**'), either (I) if the Company's stock transfer agent (the "**Transfer Agent**") is not participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, to issue and deliver to such Holder (or its designee) a certificate for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit such Holder's or its designee's balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of such portion of the applicable Note or (II) after the initial effective date of the registration statement filed pursuant to the Subscription Agreement, if the registration statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice (the "**Unavailable Conversion Shares**") is not available for the resale of such Unavailable Conversion Shares and the Company fails to promptly, but in no event later than as required pursuant to the Subscription Agreement (x) notify such Holder and (y) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which such Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred to as a "**Notice Failure**" and together with the event described in clause (I) above, a "**Delivery Failure**"), then, in addition to all other remedies available to such Holder, (X) the Company shall pay in cash to such Holder on each day after the Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to such Holder on or prior to the Share Delivery Deadline and to which such Holder is entitled, multiplied by (B) any trading price of the Common Stock selected by such Holder in writing as in effect at any time during the period beginning on the applicable date of such Conversion Notice and ending on the applicable Share Delivery Deadline, and (Y) such Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, all, or any portion, of such Notes that has not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 6.12 or otherwise. In addition to the foregoing, from and after the issue date of the Notes, if on or prior to the Share Delivery Deadline either (A) the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, the Company shall fail to issue and deliver to such Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, the Transfer Agent shall fail to credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (ii) below or (B) a Notice Failure occurs, and if on or after such Share Delivery Deadline such Holder purchases (in an open market transaction or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that such Holder is entitled to receive from the Company and has not received from the Company in connection with such Delivery Failure or Notice Failure, as applicable (a "**Buy-In**"), then, in addition to all other remedies available to such Holder, the Company shall, within two (2) Business Days after receipt of such Holder's request and in such Holder's discretion, either: (I) pay cash to such Holder in an amount equal to such Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit to the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (ii). Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of this Note as required pursuant to the terms hereof. Neither the Trustee nor the Conversion Agent has any duty to determine whether a Notice Failure, Delivery Failure or Buy-In has occurred, calculate or verify the calculations of Buy-In Price or notify Holders of any of the foregoing.

ARTICLE 7
CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee*. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered, and if requested, provided to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

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(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) The Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, judgment, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company. Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel.

(c) The Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance on such advice or Opinion of Counsel.

(d) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine in its reasonable judgment to make such further inquiry or investigation, it shall be entitled, at a reasonable time on any Business Day after reasonable notice, to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

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(e) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder, and the permissive rights of the Trustee enumerated herein shall not be construed as duties.

(f) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(g) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default (except in the case of a Default or Event of Default in payment of scheduled principal of, premium, if any, or interest on, any Note) unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default (and stating the occurrence of a Default or Event of Default) is actually received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture and states that it is a "Notice of Default".

(i) The Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(j) The Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction of the holders of not less than a majority in principal amount of the Notes as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(k) Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

(l) In no event shall the Trustee be responsible or liable for punitive, special, indirect, incidental or any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than any such loss or damage caused by the Trustee's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been actually received by the Trustee at the Corporate Trust Office of the Trustee, from the Company or any Holder of the Notes, and such notice references the Notes and this Indenture and states that is a "Notice of Default."

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(m) Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depository.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes or other transaction documents relating to the Notes and this Indenture. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of this Indenture.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar (in each case, if other than an Affiliate of the Company), in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 7.05 *Monies and Shares of Common Stock to Be Held in Trust* All monies and shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06 *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity hereunder (including the compensation and the reasonable expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense (including attorneys' fees) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, as determined by a final order of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder (whether such claims arise by or against the Company or a third person), including the reasonable costs and expenses of defending themselves against any claim of liability in the premises or enforcing the Company's obligations hereunder. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, the payment or conversion of the Notes and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

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Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07 *Officer's Certificate as Evidence*. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee*. (a) The Trustee may at any time resign by giving written notice of such resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly notify all Holders and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the giving of such notice of resignation to the Company, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders and at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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(a) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(b) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(c) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 Acceptance by Successor Trustee. Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

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Section 7.11 *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

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Section 8.02 *Proof of Execution by Holders*. Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Affiliate of the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

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Section 8.05 *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings*. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee*. The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders*. In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

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Section 9.04 *Qualifications for Voting*. To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations*. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

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Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. Without the consent of any Holder, the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's sole expense, may from time to time and at any time amend or supplement this Indenture or the Notes in writing for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) to make any change that, as determined by the Board of Directors in good faith, does not materially adversely affect the rights of any Holder;
- (g) in connection with any Share Exchange Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07;
- (h) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act to the extent this Indenture is qualified thereunder;
- (i) [reserved];
- (j) provide for the appointment of a successor Trustee, Note Registrar, Paying Agent or Conversion Agent;
- (k) comply with the rules of any applicable securities depository in a manner that does not adversely affect the rights of any Holder;
- (l) [reserved];
- (m) increase the Conversion Rate as provided in this Indenture; or
- (n) to make any change to comply with rules of the Depository, so long as such change does not adversely affect the rights of any Holder, as certified in good faith by the Company in an Officer's Certificate.

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Upon the written request of the Company and subject to Section 10.05, the Trustee is hereby authorized to, and shall, join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders*. With the written consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's sole expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, any supplemental indenture or the Notes or of modifying in any manner the rights of the Holders;

provided, however, that, without the written consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment;
- (b) reduce the rate of or extend the stated time for payment of interest, including any default interest, on any Note;
- (c) reduce the principal amount of any Notes, reduce the premium payable upon the conversion of the Notes, or extend the Maturity Date of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes other than as expressly permitted or required by this Indenture;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency, in a form, or at a place of payment, other than that stated in the Note;
- (g) change the ranking or priority of the Notes;
- (h) impair the right of any Holder to institute suit for the enforcement right to receive payment or delivery, as the case may be, of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest, if any, on, and the consideration due upon conversion of, its Notes, on or after the respective due dates expressed or provided for in the Notes or this Indenture;
- (i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09; or

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(j) provide for the issuance of additional Notes as permitted herein.

Upon the written request of the Company, and upon the delivery to the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated, upon receipt of a Company Order, by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee*. In addition to the documents required by Section 17.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and such Opinion of Counsel shall include a customary legal opinion stating that such supplemental indenture is the valid and binding obligation of the Company, subject to customary exceptions and qualifications.

ARTICLE 11 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture;

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(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture; and

(c) if the Company is not the Successor Company, the Successor Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease complies with this Indenture and that such supplemental indenture is authorized or permitted by this Indenture and an Opinion of Counsel stating that the supplemental indenture is the valid and binding obligation of the Successor Company, subject to customary exceptions and qualifications.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company (if other than the Company), by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery and/or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the Company shall be discharged from its obligations under the Notes and this Indenture (except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole). Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "**Company**" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

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In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 *Opinion of Counsel to Be Given to Trustee*. If a supplemental indenture is required pursuant to this Article 11, no such consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption complies with the provisions of this Article 11.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS,
OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of or accrued and unpaid interest on, or the payment or delivery of consideration due upon conversion of, any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
[INTENTIONALLY OMITTED]

ARTICLE 14
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege*. Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, at an initial conversion rate of 59.2593 shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per \$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

Section 14.02 *Conversion Procedure; Settlement Upon Conversion*.

(a) Subject to this Section 14.02, Section 14.07(a) and Section 14.14(b), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder no later than two (2) Business Days following the applicable conversion of the Notes, (A) in respect of each \$1,000 principal amount of Notes being converted, shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Physical Settlement**") as set forth in this Section 14.02 and (B) the Interest Make-Whole Amount. The Company shall use the Physical Settlement Method for all conversions.

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(i) The shares of Common Stock and cash the Company shall pay and/or deliver, as the case may be, in respect of any conversion of Notes (the “**Settlement Amount**”) shall be computed as follows in respect of each \$1,000 principal amount of Notes being converted: (A) a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (plus cash in lieu of any fractional share of Common Stock issuable upon conversion); plus (B) the Interest Make-Whole Amount, (x) if the arithmetic average of the Daily VWAPs for the 10 Trading Days immediately preceding the Conversion Date (the “**Average VWAP**”) equals or exceeds \$16.875 per share, in the form of a number of shares of Common Stock determined by dividing the Interest Make-Whole Amount by the Average VWAP (plus cash in lieu of any fractional shares of Common Stock), at the Company’s option; or (y) if the Average VWAP is less than \$16.875 per share, in the form of cash.

(ii) Notwithstanding the foregoing, if in connection with any conversion of a Note (i) the Conversion Rate is eligible for adjustment in accordance with Section 14.14 hereof and (ii) the Holder is entitled to receive the Interest Make-Whole Amount with respect to such Note, then one, but not both, of (A) the Conversion Rate adjustment in accordance with Section 14.14 and (B) the payment by the Company of the Interest Make-Whole Amount, shall apply, in each case according to which of (A) or (B) would result in more consideration being paid and/or delivered to the Holder in respect of such conversion.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures of the Depositary in effect at that time and, if required, pay funds equal to the interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and, if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (5) if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03. Notwithstanding anything to the contrary contained herein, to the extent that an indirect holder of a Global Note held indirectly through a participant submits irrevocable instructions to convert any portion of such Note, such Holder shall be deemed for purposes of Regulation SHO to have converted the applicable portion of such Note at the time of delivery of such instructions, regardless of when shares of Common Stock are delivered to such Holder or its participant.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

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(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (ii) above. Except as set forth in Section 14.07(a) and Section 14.14(b), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date. Notwithstanding the foregoing, with respect to the Company’s satisfaction of its Conversion Obligation through Physical Settlement for which the relevant Conversion Date occurs after the Regular Record Date immediately preceding the Maturity Date, the settlement shall occur on the Maturity Date. If any shares of Common Stock are due to a converting Holder, the Company shall issue or cause to be issued, and deliver (if applicable) to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, the full number of shares of Common Stock to which such Holder shall be entitled, in book-entry format through the Depository, in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder’s name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder’s name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company’s settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date but prior to the open of business on the immediately following Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on such Interest Payment Date notwithstanding the conversion. However, Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted on the corresponding Interest Payment Date (regardless of whether the converting Holder was the Holder of record on the corresponding Regular Record Date); *provided* that no such payment shall be required (1) for conversions following the close of business on the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has selected a Mandatory Conversion Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exist at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date and any Fundamental Change Repurchase Date described in clause (2) above shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date in cash regardless of whether their Notes have been converted and/or repurchased, as applicable, following such Regular Record Date.

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(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date.

Section 14.03 *Company's Mandatory Conversion Option.*

(a) (x) On or after June 1, 2022 and prior to the close of business on June 1, 2023, the Company may, at its option, elect to convert the original principal amount of the Notes in whole but not in part if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 150% of the Conversion Price on each applicable Trading Day and (y) after June 1, 2023 and prior to the close of business on April 7, 2026, the Company may, at its option, elect to convert the original principal amount of the Notes in whole but not in part if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day (the "**Company Mandatory Conversion Condition**").

(b) To exercise the Company Mandatory Conversion Right, the Company will send notice of the Company's election (a "**Mandatory Conversion Notice**") to Holders, the Trustee and the Conversion Agent no later than the fifth (5th) Business Day after the last Trading Day of such 30 consecutive Trading Day period.

Such Mandatory Conversion Notice must state:

(i) that the Notes have been called for Mandatory Conversion, briefly describing the Company Mandatory Conversion Right under this Indenture;

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- (ii) the Mandatory Conversion Date;
- (iii) the current Conversion Rate;
- (iv) the name and address of the Paying Agent and the Conversion Agent; and
- (v) the CUSIP and ISIN numbers, if any, of the Notes

(c) If the Company exercises the Company Mandatory Conversion Right in accordance with this Section 14.03, then a Conversion Date will automatically, and without the need for any action on the part of any Holder, the Trustee or the Conversion Agent, be deemed to occur, with respect to each Note then outstanding, on the Mandatory Conversion Date. The Mandatory Conversion Date will be a Business Day of the Company's choosing that is no more than thirty (30), nor less than ten (10), Business Days after the Company sends the Mandatory Conversion Notice; provided that the Mandatory Conversion Date shall be no later than the second Scheduled Trading Day prior to the Maturity Date. The Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the Mandatory Conversion Date.

(d) Each share of Common Stock delivered upon a Mandatory Conversion of any Note will be a newly issued or treasury share and will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim. If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, and has been registered on an effective registration statement with the Commission, then the Company will cause each shares of Common Stock, when delivered upon a Mandatory Conversion of any Note, to be admitted for listing on such exchange or quotation on such system. Notwithstanding anything herein to the contrary, the Company shall not be permitted to effect any Company Mandatory Conversion hereunder unless as of such Mandatory Conversion Date no Equity Conditions Failure then exists.

Section 14.04 *Adjustment of Conversion Rate*. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

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- CR' = the Conversion Rate in effect immediately after the open of business on such Record Date or Effective Date, as applicable;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Record Date or Effective Date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and
- OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines in good faith not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR0 = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such issuance;
- CR' = the Conversion Rate in effect immediately after the open of business on such Record Date;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Record Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

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Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Record Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Record Date for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price per share that is less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors in good faith.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances (including share splits) as to which an adjustment was effected pursuant to Section 14.04(a), Section 14.04(b) or Section 14.04(e), (ii) except as otherwise described in Section 14.11, rights issued pursuant to any stockholders rights plan of the Company then in effect, (iii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 14.04(d) shall apply, (iv) dividends or distributions of Reference Property in exchange for or upon conversion of the Common Stock in a Share Exchange Event, and (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on such Record Date;

SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors in good faith) of the Distributed Property with respect to each outstanding share of the Common Stock on the Record Date for such distribution.

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Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. If the Company issues rights, options or warrants to acquire Capital Stock or other securities that are exercisable only upon the occurrence of certain triggering events, the Company shall not adjust the conversion rate pursuant to the clauses above until the earliest of these triggering events occurs. Notwithstanding the foregoing, if “**FMV**” (as defined above) is equal to or greater than “**SP0**” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the open of business on the Record Date for the distribution. If the Board of Directors determines in good faith the “**FMV**” (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR' = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Record Date of the Spin-Off (the “**Valuation Period**”); and

MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that if the relevant Conversion Date occurs during the Valuation Period, references to “10” in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Record Date of such Spin-Off and the Conversion Date in determining the Conversion Rate. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors determines in good faith not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

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For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "**Record Date**" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Record Date or Effective Date" within the meaning of Section 14.04(a) or "outstanding immediately prior to the open of business on such Record Date" within the meaning of Section 14.04(b).

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(d) If the Company pays or makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Record Date for such dividend or distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Record Date for such dividend or distribution;

SP₀ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Record Date for such dividend or distribution;
and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines in good faith not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP₀" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then-applicable tender offer rules under the Exchange Act (other than an odd lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

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- CR0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires (the date such tender offer or exchange offer expires, the “**Expiration Date**”);
- CR’ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors in good faith) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS’ = the number of shares of Common Stock outstanding immediately after the Expiration Date (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP’ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The increase to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Expiration Date of such tender or exchange offer and the Conversion Date in determining the Conversion Rate. In addition, if the Trading Day next succeeding the date such tender or exchange offer expires is after the 10th Trading Day immediately preceding, and including, the date immediately preceding the relevant Conversion Date in respect of a conversion of Notes, references to “10” or “10th” in the preceding paragraph and this paragraph shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date such tender or exchange offer expires to, and including, the last Trading Day immediately preceding the relevant Conversion Date.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company is, or such Subsidiary is, permanently prevented by applicable law from consummating any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that have been consummated.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Record Date, and a Holder that has converted its Notes on or after such Record Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Record Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Record Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

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(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of The New York Stock Exchange, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines in good faith that such increase would be in the Company's best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of The New York Stock Exchange, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Except as stated in this Indenture, the Company shall not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. For illustrative purposes only and without limiting the generality of the preceding sentence, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open market share repurchase program or other buy-back transaction, including structured or derivative transactions, that is not a tender or exchange offer of the nature described in Section 14.04(e);

(v) solely for a change in the par value (or lack of par value) of the Common Stock; or

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(vi) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-tenth thousandth (1/10,000th) of a share.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a written notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder (with a copy to the Trustee). Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.05 *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices or the Daily VWAPs over a span of multiple days, the Board of Directors shall make appropriate adjustments (without duplication in respect of any adjustment made pursuant to Section 14.04) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Record Date, Effective Date or Expiration Date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices or the Daily VWAPs are to be calculated.

Section 14.06 *Shares to Be Fully Paid*. The Company shall reserve, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 14.03).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes in par value or resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, or

(iv) any statutory share exchange,

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in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “**Share Exchange Event**”), then at and after the effective time of such Share Exchange Event, the right to convert each \$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive (the “**Reference Property**,” with each “**unit of Reference Property**” meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Share Exchange Event and, prior to or at the effective time of such Share Exchange Event, the Company or the successor or acquiring Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(g) providing for such change in the right to convert each \$1,000 principal amount of Notes; *provided, however*, that at and after the effective time of the Share Exchange Event (A) the Company or the successor or acquiring company, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, in respect of the Interest Make-Whole Amount upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Share Exchange Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Share Exchange Event (A) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.14), *multiplied by* the price paid per share of Common Stock in such Share Exchange Event and (B) the Company shall satisfy the Conversion Obligation by paying such cash amount to converting Holders on the second Business Day immediately following the relevant Conversion Date. The Company shall notify in writing Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as reasonably practicable after such determination is made.

If the Reference Property in respect of any Share Exchange Event includes, in whole or in part, shares of common equity, such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 14 with respect to the portion of the Reference Property consisting of such common equity. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (including any combination thereof), other than cash and/or cash equivalents, of a Person other than the Company or the successor or purchasing corporation, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person, if such other Person is an affiliate of the Company or the successor or acquiring company, and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 0.

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(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly deliver to the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into shares of Common Stock, as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 14.08 *Certain Covenants*. (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and use its commercially reasonable efforts to keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto.

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Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to deliver to the Trustee prior to the execution of any such supplemental indenture) with respect thereto. The Trustee and the Conversion Agent may conclusively rely upon any notice with respect to the commencement or termination of such conversion rights.

Section 14.10 *Notice to Holders Prior to Certain Actions*. In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;

(b) Share Exchange Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture) and to the extent applicable, the Company shall cause to be delivered to the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Share Exchange Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans*. If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, under such stockholder rights plan and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Exchange in Lieu of Conversion*. When a Holder surrenders its Notes for conversion, the Company may, at its election (an **Exchange Election**), direct the Conversion Agent to deliver, on or prior to the first Trading Day following the Conversion Date, such Notes to a financial institution designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to timely pay and/or deliver, in exchange for such Notes, the shares of Common Stock (plus any cash in lieu of fractional shares) plus the Interest Make-Whole Amount due upon conversion as described in Section 14.02. If the Company makes an Exchange Election, the Company shall, by the close of business on the first Trading Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent and the Holder surrendering its Notes for conversion that it has made the Exchange Election, and the Company shall promptly notify the designated financial institution of the Physical Settlement Method with respect to such conversion and the relevant deadline for payment and/or delivery of shares of Common Stock, any cash in lieu of fractional shares and the Interest Make-Whole Amount due upon conversion.

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Any Notes exchanged by the designated financial institution shall remain outstanding. If the designated financial institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the required shares of Common Stock, any cash in lieu of fractional shares and the any cash and/or Common Stock in respect of the Interest Make-Whole Amount due upon conversion, or if such designated financial institution does not accept the Notes for exchange, the Company shall notify in writing the Trustee, the Conversion Agent and the Holder surrendering its Notes for conversion, and pay and/or deliver the required shares of Common Stock, together with cash in lieu of any fractional shares, plus the Interest Make-Whole Amount due upon conversion to the converting Holder at the time and in the manner required under this Indenture as if the Company had not made an Exchange Election.

The Company's designation of a financial institution to which the Notes may be submitted for exchange does not require that financial institution to accept any Notes (unless the financial institution has separately made an agreement with the Company). The Company may, but shall not be obligated to, enter into a separate agreement with any designated financial institution that would compensate it for any such transaction.

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Section 14.13 *Limits Upon Issuance of Shares of Common Stock Upon Conversion* The Company shall not effect the conversion of any of the Notes held by a Holder, and such Holder shall not have the right to convert any of the Notes held by such Holder pursuant to the terms and conditions of this Indenture and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, such Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the “**Maximum Percentage**”) of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Holder and the other Attribution Parties shall include the number of shares of Common Stock held by such Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of the Notes with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted Notes beneficially owned by such Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes, convertible preferred stock or warrants, including the Notes) beneficially owned by such Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 14.13. For purposes of this Section 14.13, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Notes without exceeding the Maximum Percentage, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives a Conversion Notice from a Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause such Holder’s beneficial ownership, as determined pursuant to this Section 14.13, to exceed the Maximum Percentage, such Holder must notify the Company of a reduced number of shares of Common Stock to be delivered pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of any Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including such Notes, by such Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to a Holder upon conversion of such Notes results in such Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which such Holder’s and the other Attribution Parties’ aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio, and such Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, any Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage of such Holder to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to such Holder and the other Attribution Parties and not to any other Holder that is not an Attribution Party of such Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Indenture in excess of the Maximum Percentage shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert such Notes pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 14.13 to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 14.13 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of such Notes. Neither the Trustee nor the Conversion Agent shall have any responsibility to determine the Maximum Percentage or whether the issuance of any shares results in a Holder or Attribution Party having Excess Shares or otherwise determine or monitor compliance with the terms of this Section 14.13.

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Section 14.14 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or Mandatory Conversion.*

(a) If (i) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or (ii) the Company delivers a Mandatory Conversion Notice as provided under Section 14.03, as the case may be, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the “**Additional Shares**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Conversion Date occurs during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the “**Make-Whole Fundamental Change Period**”).

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or Mandatory Conversion, the Company shall satisfy the related Conversion Obligation by Physical Settlement in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate (including any increase to reflect the Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be determined and paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased for conversions in connection with a Make-Whole Fundamental Change or Mandatory Conversion shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective or the date the Company delivers the Mandatory Conversion Notice, as the case may be (in each case, the “**Effective Date**”) and the price (the “**Stock Price**”) paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or determined with respect to the Mandatory Conversion Notice, as the case may be. If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the applicable Effective Date. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Record Date, Effective Date (as such term is used in Section 14.04) or Expiration Date of the event occurs during such five consecutive Trading Day period. If a Mandatory Conversion would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of any such Notes to be converted will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the Effective Date of the Mandatory Conversion Notice or the Make-Whole Fundamental Change, as applicable, and the later event shall be deemed not to have occurred for purposes of this Section 14.14.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

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(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per \$1,000 principal amount of Notes pursuant to this Section 14.14 for each Stock Price and Effective Date set forth below:

Effective Date	Stock Price									
	\$12.50	\$14.00	\$15.00	\$16.88	\$18.50	\$20.00	\$22.50	\$25.00	\$35.00	\$60.00
June 1, 2021	20.7408	17.7771	16.2067	13.8714	12.3259	11.1680	9.6538	8.5032	5.7820	3.2585
June 1, 2022	20.7408	16.7857	15.1527	12.7618	11.2097	10.0665	8.5991	7.5076	5.0154	2.8067
June 1, 2023	20.7408	15.6214	13.8780	11.3845	9.8114	8.6810	7.2729	6.2608	4.0763	2.2667
June 1, 2024	20.7408	14.2943	12.3413	9.6398	8.0130	6.8930	5.5702	4.6772	2.9349	1.6307
June 1, 2025	20.7408	12.8193	10.3873	7.2127	5.4741	4.3880	3.2573	2.6024	1.5700	0.8865
June 1, 2026	20.7408	12.1693	7.4073	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price and Effective Date may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional Shares by which the conversion rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than \$60.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than \$12.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per \$1,000 principal amount of Notes exceed 80.0000 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

Nothing in this Section 14.14 shall prevent an adjustment to the Conversion Rate that would otherwise be required pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Notwithstanding the foregoing, if in connection with any conversion of a Note (i) the Conversion Rate is eligible for adjustment in accordance with this Section 14.14 and (ii) the Holder is entitled to receive the Interest Make-Whole Amount with respect to such Note, then one, but not both, of (A) the Conversion Rate adjustment in accordance with this Section 14.14 and (B) the payment by the Company of the Interest Make-Whole Amount, shall apply, in each case according to which of (A) or (B) would result in more consideration being paid and/or delivered to the Holder in respect of such conversion.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 *[Intentionally Omitted]*.

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change*

(a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof properly surrendered and not validly withdrawn pursuant to Section 15.03 that is equal to \$1,000 or an integral multiple of \$1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, plus any remaining amounts that would be owed to, but excluding, the Maturity Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest (to, but excluding, such Interest Payment Date) to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 0. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the paying agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Applicable Procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the paying agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the office of the paying agent, or book- entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(iii) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(iv) the portion of the principal amount of Notes to be repurchased, which must be in minimum denominations of \$1,000 or an integral multiple thereof; and

(v) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

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provided, however, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with the Applicable Procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the paying agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the paying agent in accordance with Section 15.03.

The paying agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee, the Conversion Agent (if other than the Trustee) and the paying agent (in the case of a paying agent other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures of the Depository. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 0;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the paying agent and the Conversion Agent, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
- (viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and
- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders’ repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02. Simultaneously with providing such notice, the Company will publish such information on its website or through such other public medium as the Company may use at that time.

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At the Company's written request, given at least five days prior to the date the Fundamental Change Company Notice is to be sent, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders in connection with a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The paying agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 0 (including, without limitation, the requirement to comply with applicable securities laws), and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 0 (including the requirement to pay the Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes); *provided* that the Company shall continue to be obligated to (x) deliver the applicable Fundamental Change Repurchase Notice to the Holders (which Fundamental Change Repurchase Notice shall state that such third party shall make such an offer to purchase the Notes) and to simultaneously with such Fundamental Change Repurchase Notice publish a notice containing such information in a newspaper of general circulation in the City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time, (y) comply with applicable securities laws as set forth in this Indenture in connection with any such purchase and (z) pay the applicable Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes in the event such third party fails to make such payment in such amount at such time.

(f) For purposes of this Article 0, the paying agent may be any agent, depository, tender agent, paying agent or other agent appointed by the Company to accomplish the purposes set forth herein.

Section 15.03 *Withdrawal of Fundamental Change Repurchase Notice* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the office of the paying agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be \$1,000 or an integral multiple thereof,

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- (ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are Global Notes, the notice of withdrawal must comply with appropriate procedures of the Depository.

Section 15.04 *Deposit of Fundamental Change Repurchase Price*

(a) The Company will deposit with the Trustee (or other paying agent appointed by the Company), or if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 4.04 on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date (subject to extension in order to allow the Company to comply with applicable law) an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other paying agent appointed by the Company), payment for Notes surrendered for repurchase (and not validly withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (provided the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other paying agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; provided, however, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other paying agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, or, if extended in order to allow the Company to comply with applicable law, such later date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn in accordance with the provisions of this Indenture and the Applicable Procedures of the Depository, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or paying agent) and (iii) all other rights of the Holders of such Notes with respect to the Notes will terminate on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (other than (x) the right to receive the Fundamental Change Repurchase Price and (y) to the extent not included in the Fundamental Change Repurchase Price, accrued and unpaid interest, if applicable).

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Physical Note in an authorized denomination equal in principal amount to the unreurchased portion of the Physical Note surrendered.

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Section 15.05 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes* In connection with any repurchase offer upon a Fundamental Change pursuant to this Article 15, the Company will, if required:

- (a) comply with the provisions of any tender offer rules under the Exchange Act that may then be applicable;
- (b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply in all material respects with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 0 to be exercised in the time and in the manner specified in this Article 0 subject to postponement in order to allow the Company to comply with applicable law. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions of this Indenture by virtue of such conflict.

ARTICLE 16
NO REDEMPTION

Section 16.01 *No Redemption*. The Notes shall not be redeemable by the Company prior to the Maturity Date, and no sinking fund is provided for the Notes.

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is delivered by the Company to the Trustee) to Kaleyra, Inc., Via Marco D'Aviano, 2, Milano MI, Italy, Attention: General Counsel, with a copy sent to DLA Piper LLP (US), 555 Mission Street, Suite 2400, San Francisco, CA 94105-2933, Attention: Jeffrey C. Selman, Esq. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if it is in writing and actually received by the Trustee at the Corporate Trust Office. In no event shall the Trustee or the Conversion Agent be obligated to monitor any website maintained by the Company or any press releases issued by the Company.

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

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures of the Depository and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04 *Governing Law; Jurisdiction*. THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel, stating that such action is permitted by the terms of this Indenture and that all conditions precedent to such action have been complied with. With respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

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Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent to such action have been complied with.

Section 17.06 *Legal Holidays*. In any case where any Interest Payment Date, any Fundamental Change Repurchase Date or the Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue on any such payment in respect of the delay.

Section 17.07 *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Custodian, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09 *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10 *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

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Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

Section 17.11 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic means shall be deemed to be their original signatures for all purposes. Unless otherwise provided in this Indenture or in any Note, the words "execute," "execution," "signed" and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any Note or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other similar state laws based on the Uniform Electronic Transactions Act; *provided that*, notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to procedures approved by the Trustee.

Section 17.12 *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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Section 17.14 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, pandemics, epidemics, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or the unavailability of the Federal Reserve Bank wire or telex write or communication facility; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations*. The Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, the Daily VWAPs, accrued interest payable on the Notes, any Additional Interest on the Notes, the Conversion Rate of the Notes, Buy-In Price, Maximum Percentage, Excess Shares, . The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any registered Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company. Neither the Trustee nor the Conversion Agent will have any responsibility to make calculations under this Indenture, nor will either of them have any responsibility to monitor the Company's stock or trading price, determine whether the conditions to convertibility of the Notes have been met or determine whether the circumstances requiring changes to the Conversion Rate have occurred.

Section 17.16 *USA PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

Section 17.17 *Tax Withholding*. The Company or the Trustee, as the case may be, shall be entitled to make a deduction or withholding from any payment which it makes under this Indenture for or on account of any present or future taxes, duties or charges if and to the extent so required by any applicable law and any current or future regulations or agreements thereunder or official interpretations thereof or any law implementing an intergovernmental approach thereto, in each case, that a Holder is subject to pursuant to the Indenture ("**Applicable Tax Law**"), or by virtue of the relevant Holder failing to satisfy any certification or other requirements under Applicable Tax Law in respect of the Notes, in which event the Company or the Trustee, as the case may be, shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities for the amount so withheld or deducted and shall have no obligation to gross up any payment hereunder or pay any additional amount as a result of such withholding tax.

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Notwithstanding any other provision of this Indenture, if the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder as a result of an adjustment or the nonoccurrence of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, withhold from or set off such payments against payments of cash and shares of Common Stock on the Note (or any payments on the Common Stock) or sales proceeds received by or other funds or assets of the Holder.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

KALEYRA, INC.

By: /s/ Dario Calogero

Name: Dario Calogero

Title: Chief Executive Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Quinton M. DePompolo

Name: Quinton M. DePompolo

Title: Banking Officer

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “**QUALIFIED INSTITUTIONAL BUYER**” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF KALEYRA, INC. (THE “**COMPANY**”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

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(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE IMMEDIATELY PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.¹

¹ Subject to the procedures of the Depository, the Restrictive Legend shall be deemed removed from the face of this Note without further action by the Company, Trustee or the Holders of this Note at such time and in the manner provided under Section 2.05 of the Indenture.

Kaleyra, Inc.

6.125% Convertible Senior Note due 2026

No. []

[Initially]² \$[200,000,000]

CUSIP No. [483379 AA1]³

Kaleyra, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]⁴ []⁵, or registered assigns, the principal sum [as set forth in the “**Schedule of Exchanges of Notes**” attached hereto]⁶ [of \$[]]⁷, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$[200,000,000] in aggregate at any time, in accordance with the rules and procedures of the Depository, on June 1, 2026, and interest thereon as set forth below.

This Note shall bear interest at the rate of 6.125% per year from June 1, 2021, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until June 1, 2026. Interest is payable semi-annually in arrears on each June 1 and December 1 of each year (or, if such day is not a Business Day, the next succeeding Business Day), commencing on December 1, 2021, to Holders of record at the close of business on the preceding May 15 and November 15 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

² Include if a global note.

³ Subject to the procedures of the Depository, at such time as the Company notifies the Trustee that the Restrictive Legend is to be removed in accordance with the Indenture, the CUSIP number for this Note shall be deemed to be [].

⁴ Include if a global note.

⁵ Include if a physical note.

⁶ Include if a global note.

⁷ Include if a physical note.

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The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and the Corporate Trust Office located in the United States of America as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into shares of Common Stock on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

KALEYRA, INC.

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

KALEYRA, Inc.

6.125% Convertible Senior Note due 2026

This Note is one of a duly authorized issue of Notes of the Company, designated as its 6.125% Convertible Senior Notes due 2026 (the “Notes”), limited to the aggregate principal amount of \$200,000,000 all issued or to be issued under and pursuant to an Indenture dated as of June 1, 2021 (the “Indenture”), between the Company and Wilmington Trust, National Association, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

Notwithstanding any other provision of the Indenture or any provision of this Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, this Note, on or after the respective due dates expressed or provided for in this Note or in the Indenture, and the contractual right to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates, shall not be amended without the consent of each Holder.

The Notes are issuable in registered form without coupons in minimum denominations of \$1,000 principal amount and integral multiples in excess thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

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The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof, into shares of Common Stock at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entirety

JT TEN = joint tenants with right of survivorship and not as tenants in common Additional abbreviations may also be used though not in the above list.

SCHEDULE OF EXCHANGES OF NOTES

Kaleyra, Inc.

6.125% Convertible Senior Notes due 2026

The initial principal amount of this Global Note is TWO HUNDRED MILLION DOLLARS (\$200,000,000). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

⁸ Include if a global note.

[FORM OF NOTICE OF CONVERSION]

To: Wilmington Trust, National Association
Global Capital Markets
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Kaleyra Notes Administrator

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

Signature

Signature Guarantee

Signature(s) must be guaranteed by
an eligible Guarantor Institution
(banks, stock brokers, savings and
loan associations and credit unions)
with membership in an approved
signature guarantee medallion program
pursuant to Securities and Exchange
Commission Rule 17Ad-15 if shares of Common Stock are to
be issued, or
Notes are to be delivered, other than
to and in the name of the registered holder.

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Fill in for registration of shares if to be issued,
and Notes if to be delivered, other than to and in the name
of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):

\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond
with the name as written upon the face of the Note in every particular
without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: Paying Agent

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Kaleyra, Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer Identification Number Principal amount
to be repaid (if less than all):
\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

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Dated: _____

Signature(s)

Signature Guarantee Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is entered into as of June 1, 2021, by and among (i) Kaleyra Inc., a Delaware corporation ("Parent"), (ii) GSO Special Situations Master Fund LP, an exempted limited partnership formed under the laws of the Cayman Islands (the "Representative"), and together with Parent, sometimes referred to individually as a "Party" and collectively as the "Parties"), and (iii) Citibank, N.A., as escrow agent ("Escrow Agent").

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated as of February 18, 2021 (the "Merger Agreement"), by and among (i) Parent, (ii) Volcano Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent ("Merger Sub"), (iii) Vivial Inc., a Delaware corporation (the "Company"), and (iv) Representative (in its capacity as the representative of the holders of Company Common Stock thereunder), Parent and the Representative have agreed to establish an escrow arrangement for the purposes set forth therein;

WHEREAS, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Merger Agreement; *provided, however* that the Escrow Agent shall not be deemed to have any knowledge of or duty to ascertain the meaning of any capitalized term not otherwise defined in this Agreement;

WHEREAS, the Merger Agreement contemplates that at the Closing, Parent will deposit, or cause to be deposited, an amount equal to \$2,000,000 (the "Escrow Amount"), which, together with all products and proceeds of, including all interest, dividends, distributions, gains or other income earned thereon or in respect thereof, if any (the "Escrow Earnings"), shall be referred to herein as the "Escrow Funds") into the Escrow Account which has been established by Escrow Agent hereunder for the purpose of establishing a source of funds to secure and satisfy any potential adjustments to the Merger Consideration following the Closing pursuant to Section 2.5 of the Merger Agreement; and

WHEREAS, the Parties desire that Escrow Agent shall agree to hold and distribute the Escrow Funds in accordance with the terms and conditions of this Agreement, until the Escrow Funds held hereunder have been released in accordance with the terms and conditions of this Agreement and, as between Parent and the Representative, the Merger Agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, each of Parent, the Representative and Escrow Agent hereby agrees as follows:

1. Appointment. The Parties hereby appoint and designate Escrow Agent to acquire and maintain possession of the Escrow Funds and to act as their escrow agent for the purposes set forth herein, and Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein and agrees to assume and perform its duties and obligations pursuant to the terms and conditions set forth herein. Escrow Agent shall hold the Escrow Funds (as defined below) in accordance with, and shall not disburse or release any of the Escrow Funds except in accordance with, the terms and conditions set forth in this Agreement.

2. Fund.

Upon the Closing, in accordance with the terms of the Merger Agreement, Parent shall deposit, or cause to be deposited with Escrow Agent, in each case, to be held by Escrow Agent in a separated, distinct and non-commingled escrow account established by Escrow Agent, the Escrow Amount (the "Escrow Account"). Escrow Agent agrees to keep the Escrow Account separate from all other property held by Escrow Agent and the Escrow Account shall be identified as being held in connection with this Agreement and the Merger Agreement. Escrow Agent shall acknowledge in writing to Parent and the Representative receipt of the Escrow Amount from Parent upon the date of receipt. As agreed by the Parties, the Escrow Funds shall (a) not be subject to set off by Escrow Agent or any of its affiliates, (b) not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party hereto and (c) be held and disbursed solely for the purposes and in accordance with the terms of this Agreement, except as otherwise provided in Section 10 below.

3. Investment of Escrow Funds.

(a) Subject to receipt of a Joint Direction or a Release Order (each as defined below), Escrow Agent shall hold the Escrow Amount and shall invest and reinvest the Escrow Amount and the proceeds thereof in a Citibank noninterest-bearing deposit account insured up to the applicable limits by the Federal Deposit Insurance Corporation (“FDIC”), unless otherwise jointly instructed in writing by the Parties and as shall be reasonably acceptable to Escrow Agent (the “Permitted Investments”). The Parties recognize and agree that instructions to make any other investment (an “Alternative Investment”) must be made by delivery to Escrow Agent of a joint written instruction signed by an Authorized Representative (as defined below) of each Party, and shall specify the type, amount and identity of the investments to be purchased and/or sold, but shall only be permitted if Escrow Agent can accommodate such Alternative Investment. Escrow Agent shall have no obligation to invest or reinvest the Escrow Funds held in the Escrow Account until the following Business Day if all or a portion of the Escrow Funds is deposited with Escrow Agent after 3:00 p.m. New York City time, in which case, Escrow Agent shall invest or reinvest such Escrow Funds on the immediately following Business Day. Requests or instructions received after 3:00 p.m. New York City time by Escrow Agent to liquidate all or any portion of the Escrow Funds will be treated as if received on the following Business Day. Escrow Agent is hereby authorized to execute purchases and sales of Alternative Investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. Escrow Agent or any of its affiliates may receive reasonable and customary compensation with respect to any Alternative Investment jointly directed in writing by the Parties including, without limitation, charging any applicable agency fee in connection with each transaction, which amounts (if any) shall be borne solely by Parent; provided, that Escrow Agent shall obtain the prior written consent of each of the Parties prior to entering into a transaction giving rise to any fees. Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention or other disposition of any investment described herein. Market values, exchange rates and other valuation information (including without limitation, market value, current value or notional value) of any Alternative Investment furnished in any report or statement may be obtained from third party sources and are furnished for the exclusive use of the Parties and any investment funds affiliated with the Parties (including any of such funds’ general partners and management advisors). Escrow Agent has no responsibility whatsoever to determine the market value or other value of any Alternative Investment and makes no representation or warranty, express or implied, as to the accuracy of any such valuations or that any values necessarily reflect the proceeds that may be received on the sale of an Alternative Investment. Escrow Agent shall not have any liability for any loss sustained as a result of any investment decision made pursuant to the terms of this Agreement, pursuant to the terms of any joint written instructions from the Parties to make an Alternative Investment, as a result of any liquidation of any investment prior to its maturity, or for the failure of an Authorized Representative of each of the Parties to give Escrow Agent instructions to invest or reinvest the Escrow Funds. Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement when required to do so pursuant to the terms of this Agreement. Except as expressly provided herein, the Escrow Funds shall not, in any manner, directly or indirectly, be assigned, hypothecated, pledged, alienated, released from escrow or transferred within escrow (or otherwise dealt with in any manner that has the economic effect of any of the foregoing acts, on a current or prospective basis). Notwithstanding anything the contrary herein, the Escrow Funds shall, at all times, remain available for distribution in accordance with Section 4 below.

(b) The Parties acknowledge that non-deposit investment products are not obligations of, or guaranteed by, Citibank, Citigroup or any of their respective affiliates, are not FDIC-insured, and are subject to investment risks, including the possible loss of the principal amount invested. Only deposits in the United States are subject to FDIC insurance. Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominee of any securities depository, and such nominee(s) may sign the name of any Party to whom or to which such securities belong and guarantee such signature in order to transfer securities or certify ownership thereof to tax or other governmental authorities.

(c) The Parties agree that (i) Parent is the owner of the Escrow Account and (ii) any Escrow Earnings (if any) shall be allocated to Parent for U.S. federal and applicable state and local income tax purposes and shall be reported by Escrow Agent to Parent and to the Internal Revenue Service ("IRS"), or any other taxing authority as required by law, on IRS Form 1099 (or other appropriate form) as income earned from the Escrow Funds by Parent for such taxable year, whether or not said income has been distributed during such year. Escrow Agent shall withhold any taxes required to be withheld by applicable Law, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities. The Parties agree that Escrow Agent shall not have any other contractual obligation to file or prepare any tax returns or to prepare any other reports for any taxing authorities concerning the matters covered by this Agreement, except as required by applicable Law. To the extent not previously provided, as soon as practicable following the execution of this Agreement, the Representative and Parent shall each furnish an IRS Form W-8 or W-9 (as applicable) to Escrow Agent. Escrow Agent shall be responsible only for income reporting to the IRS with respect to the Escrow Earnings (if any).

(d) All investments of the Escrow Funds shall be registered and held in the name of Escrow Agent, as Escrow Agent for the Parties. Escrow Agent will send account statements to the Parties on a monthly basis reflecting activity (including a list of all investments) with respect to the Escrow Funds in each Escrow Account for the preceding month. Although each of Parent and the Representative recognize that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of Parent and the Representative hereby agree that confirmations of Permitted Investments are not required to be issued by Escrow Agent for each month in which a monthly account statement is rendered. The Parties agree to notify Escrow Agent of any errors, delays or other problems within thirty (30) days after receiving written notification from Escrow Agent that a transaction has been completed; provided, that the failure to so notify Escrow Agent will not constitute waiver by the Parties of any such error, delay or other problem.

(e) This Agreement (except for the provisions of Section 8 hereto), the duties of Escrow Agent and the Escrow Account shall automatically terminate and shall have no further force or effect upon the first to occur of (i) the distribution in full by Escrow Agent of all of the Escrow Funds in accordance with this Agreement, or (ii) the delivery to Escrow Agent of a written notice of termination executed jointly by Parent and the Representative and the release by Escrow Agent of all of the Escrow Funds.

4. Disposition. Parent and the Representative shall act in accordance with, and Escrow Agent shall hold and release the Escrow Funds as provided in, this Section 4 as follows:

(a) Joint Direction or Release Order. As promptly as practicable, and in any event within two (2) Business Days, following the date on which Escrow Agent receives (i) a Joint Direction, or (ii) a Release Order (as defined below), in each case, with respect to a disbursement from the Escrow Account, in accordance with Section 2.5(h) of the Merger Agreement, then Escrow Agent shall, to the extent directed by such Joint Direction or Release Order, disburse all or part of the Escrow Amount, together with the Escrow Earnings (if any) related thereto, in accordance with such Joint Direction or Release Order (as applicable) to the Persons and accounts specified in the Joint Direction or Release Order (as applicable), by wire transfer of immediately available funds.

(b) Method of Payment. All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds to one or more accounts as designated in advance by Parent or the Representative, as applicable, or as set forth in the Joint Direction or a Release Order, as applicable.

(c) Security Procedures for Fund Transfers. Escrow Agent shall confirm each funds transfer instruction received in the name of Parent or Representative by means of a call back to an Authorized Representative for such Party and communicated to Escrow Agent through a signed certificate in the form of Schedule 1-A, or Schedule 1-B, attached hereto, which upon receipt by Escrow Agent shall become a part of this Agreement. Once delivered to Escrow Agent, Schedule 1-A, or Schedule 1-B, may be revised or rescinded only by a writing signed by one of the designated persons as set forth in Schedule 1-A, or Schedule 1-B, (each an “Authorized Representative”) of the Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford Escrow Agent a reasonable opportunity to act on it. If a revised Schedule 1-A, or Schedule 1-B, or a rescission of an existing Schedule 1-A, or Schedule 1-B, is delivered to Escrow Agent by an entity that is a successor-in-interest to such Party, such document shall be accompanied by additional documentation satisfactory to Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Party under this Agreement. The Parties understand that Escrow Agent’s inability to receive or confirm funds transfer instructions by means of a call back to such Party may result in a delay in accomplishing such funds transfer, and agree that Escrow Agent shall not be liable for any loss caused by any such delay. Escrow Agent shall not be liable to any Party or other person for refraining from acting upon any instruction for or related to the transfer or distribution of the Escrow Funds if delivered to any other fax number or electronic mail (“e-mail”) address of the Escrow Agent not set forth in Section 9, including but not limited to a valid e-mail address of any employee of Escrow Agent.

(d) Certain Definitions. As used herein, the following terms shall have the following definitions:

“Authorized Representative” means a representative of Parent or Representative listed on Schedule 1-A or Schedule 1-B (as applicable) attached hereto.

“Business Day” means any day other than a Saturday, Sunday or a day on which national banking institutions located in any of New York, New York are closed as a result of any federal, state or local holiday or are required to close by a Governmental Entity.

“Joint Direction” means a joint written instruction made by Parent and the Representative, substantially in the form attached hereto as Exhibit A, signed by an Authorized Representative of each of Parent and the Representative.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental authority or any department, agency or political subdivision thereof.

“Release Order” means a final non-appealable order of any court or arbitrator of competent jurisdiction that may be issued ordering Escrow Agent to distribute all or any portion of the Escrow Funds or determining the rights of the Parties with respect to the Escrow Funds, together with (A) a certificate, substantially in the form attached hereto as Exhibit B, signed by an Authorized Representative of the prevailing Party (as between Parent and the Representative) to the effect that such judgment is final and non-appealable and from a court or arbitrator of competent jurisdiction having proper authority and (B) the written payment instructions of the prevailing Party.

5. Escrow Agent. Escrow Agent hereby agrees and covenants with Parent and the Representative that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone, except pursuant to the express terms of this Agreement or as otherwise required by applicable Law. Escrow Agent hereby undertakes to perform only those duties as are specifically and expressly provided herein, which shall be deemed purely ministerial in nature, and no other duties, including but not limited to any fiduciary duties, shall be implied, other than the implied duty of good faith and fair dealing. Escrow Agent has no knowledge of, nor any requirement to comply with, the terms and conditions of any other agreement between the Parties, nor shall Escrow Agent be required to determine if any Party has complied with any other agreement. Escrow Agent may rely upon, and shall not be liable, for acting in accordance with any Joint Direction or Release Order delivered to it by any Party in accordance with Section 9 and reasonably believed by Escrow Agent in good faith to be genuine and to have been signed by an Authorized Representative(s), as applicable, provided that Escrow Agent has fulfilled its obligations under Section 4(c) to confirm any funds transfer instruction received in the name of Parent or Representative. Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such Joint Direction or Release Order. Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that Escrow Agent’s fraud, gross negligence or willful misconduct was the cause of any direct loss to either Party. Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through any of its affiliates or agents, provided however that no such delegation of powers or duties will release Escrow Agent from any of its obligations under this Agreement. In the event that Escrow Agent is uncertain as to its duties or rights hereunder or receives instructions, claims or demands from any Party that conflict with the provisions of this Agreement or conflicting instructions from the Parties, Escrow Agent shall promptly notify the Parties of such uncertainty or apparent conflict and, following delivery of such notice and until such time as the Parties deliver revised instructions to Escrow Agent, Escrow Agent shall be entitled to refrain from taking any action and shall not be liable for refraining to take any action, and its sole obligation shall be to keep safely all property held in escrow until shall be directed otherwise in a Joint Direction or Release Order. Escrow Agent shall have no duty to solicit any payments that may be due to it or the Escrow Account, including, without limitation, the Escrow Amount, nor shall Escrow Agent have any duty or obligation to confirm or verify the accuracy or correctness of any amounts deposited with it hereunder. To the extent practicable, the Parties agree to pursue any redress or recourse in connection with any dispute (other than with respect to a dispute involving Escrow Agent) without making Escrow Agent a party to the same. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL ESCROW AGENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS), EVEN IF ESCROW AGENT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGE AND REGARDLESS OF THE FORM OF ACTION. Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. Escrow Agent shall not be responsible for or under, or chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in this Agreement or in any Joint Direction or Release Order delivered to Escrow Agent hereunder. This Agreement sets forth all of the obligations of Escrow Agent, and no additional obligations shall be implied from the terms of this Agreement or any other agreement, instrument or document.

6. Resignation and Removal; Succession. The Parties, acting jointly, may remove Escrow Agent at any time, with or without cause, by giving to Escrow Agent fifteen (15) calendar days' advance notice in writing of such removal signed by an Authorized Representative of each Party. Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days' advance notice in writing of such resignation to the Parties. Escrow Agent's sole responsibility after such fifteen (15) or thirty (30)-day notice period (as applicable) expires, in the case of either removal or resignation, shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a designated substitute escrow agent, if any, appointed jointly by the Parties, as set forth in a Joint Direction, (ii) to such other Person jointly designated in writing by the Parties, or (iii) in accordance with the directions of a final court order, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate, except for any liability of the Escrow Agent arising out of its fraud, gross negligence or willful misconduct. If prior to the expiration of the fifteen (15) or thirty (30)-day notice period (as applicable), the Parties have failed to appoint a successor escrow agent, or to instruct Escrow Agent in writing to deliver the Escrow Funds to another Person as provided above, at any time on or after the expiration of the fifteen (15) or thirty (30)-day notice period (as applicable), Escrow Agent may petition any court of competent jurisdiction for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto. Escrow Agent shall deliver the Escrow Funds to any appointed successor escrow agent, at which time Escrow Agent's obligations under this Agreement shall cease and terminate, except for any liability incurred prior to delivery of the Escrow Funds. Any entity into which Escrow Agent may be merged or converted or with which it may be consolidated, or any entity to which all or substantially all the escrow business of Escrow Agent may be transferred, shall be Escrow Agent under this Agreement without further act; provided, that Escrow Agent shall use commercially reasonable efforts to provide the Parties with notice in writing of any such merger, conversion or consolidation within a reasonable period of time either prior to or following the consummation thereof.

7. Compensation. The Escrow Agent acknowledges and agrees that the fees and expenses described in Schedule 2 attached hereto are intended as full compensation for the Escrow Agent's services as contemplated by this Agreement and the Parent agrees to pay to Escrow Agent such fees and expenses, upon execution of this Agreement.

8. Indemnification and Reimbursement. The Parties shall jointly and severally indemnify, defend and hold harmless Escrow Agent from and against any and all losses, damages, liabilities and reasonable and documented out-of-pocket costs or expenses (including, without limitation, the reasonable and documented out-of-pocket fees and reasonable and documented out-of-pocket expenses of one outside counsel) (collectively, "Losses"), arising out of or in connection with (a) Escrow Agent's performance of this Agreement, except to the extent that such Losses are determined by a court of competent jurisdiction through a final order to have been caused by the fraud, gross negligence, or willful misconduct, of the Escrow Agent and (b) Escrow Agent's following any instructions or other directions from the Parties (including, for the avoidance of doubt, any instructions or other directions set forth in a Joint Direction or Release Order) received in accordance with this Agreement. It is understood and agreed that the Escrow Agent does not have a contractual right of set off or a contractual security interest under the Agreement; provided, however, that nothing herein shall be construed as a waiver of any statutory or common law rights to which the Escrow Agent may otherwise be entitled with respect thereto. Notwithstanding anything to the contrary herein, each of Parent and the Representative hereby agree between themselves that any obligation for indemnification under this Section 8 shall be borne by Parent or the Representative, as determined by a court of competent jurisdiction to be responsible for causing the Losses, fees or expenses against which Escrow Agent is entitled to indemnification or payment or, if no such determination is made, then to each pay fifty percent (50%) of any such indemnification claims or payments. The provisions set forth in this Section 8 shall survive the resignation, replacement or removal of Escrow Agent or the termination of this Agreement.

9. Notices. All communications hereunder shall be in writing or set forth in a PDF attached to an e-mail, and all instructions from a Party or the Parties to Escrow Agent shall be executed by an Authorized Representative of such Party or Parties, and shall be deemed to have been delivered in accordance with the terms of this Agreement (a) on the day of delivery by e-mail, if delivered by e-mail prior to 5 p.m. New York City time (and otherwise on the first Business Day thereafter) or (b) when actually delivered, if delivered by hand, by certified mail return receipt requested, or by courier or express delivery service (with receipt showing signature or similar confirmation) to the appropriate e-mail address, or notice address set forth for each party hereto as follows:

if to Parent,

Kaleyra Inc.
Via Marco D'Aviano, 2,
Milano MI, Italy
Attention: Dario Calogero
Email: dario.calogero@kaleyra.com

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

DLA Piper LLP (US)
555 Mission Street
Suite 2400
San Francisco, CA 94105
Attention: Jeffrey C. Selman
Email: jeffrey.selman@us.dlapiper.com

and

DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, NY 10020
Attention: James L. Kelly
Ilya A. Bubel
Email: james.kelly@us.dlapiper.com
ilya.bubel@us.dlapiper.com

if to the Representative,

GSO Special Situations Master Fund LP
345 Park Avenue
New York, NY 10154
Attention: David Posnick, Eric Nadan, BXC Legal
Email: David.Posnick@Blackstone.com; Eric.Nadan@Blackstone.com;
Creditlegal@Blackstone.com

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Ackneil M. Muldrow III
Email: trey.muldrow@weil.com

If to Escrow Agent,

Citibank, N.A.
Citi Private Bank
388 Greenwich Street, 29th Floor
New York, NY 10013
Attention: William T. Lynch
E-mail: william.lynch@citi.com

Any party hereto may provide notice in accordance with this Section 9 of any change of the notice information in this Section 9.

10. Compliance with Court Orders. In the event that any of the Escrow Funds shall be attached, garnished, levied upon, or otherwise be subject to any final court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all such final orders so entered or issued, which it is advised in writing by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, provided that Escrow Agent shall provide a written notice thereof to the Parties as soon as reasonably practicable, and in the event that Escrow Agent obeys or complies with any such order it shall not be liable to any of the Parties or to any other Person by reason of such compliance notwithstanding such order be subsequently reversed, modified, annulled, set aside or vacated.

11. Miscellaneous.

(a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by Escrow Agent and each of the Parties. No waiver of any provision of this Agreement will be valid unless the waiver is in writing and signed by the waiving parties. The failure of a party hereto at any time to require performance of any provision of this Agreement will not affect such party's rights at a later time to enforce such provision. No waiver by any party hereto of any breach of this Agreement will be deemed to extend to any other breach hereunder or affect in any way any rights arising by virtue of any other breach.

(b) Parent and the Representative may assign any right or interest hereunder, but not any obligation, to the same extent they are permitted to assign their rights and interests under the Merger Agreement. No assignment of the interest of either Party shall be binding on Escrow Agent unless and until written notice of such assignment is filed with and acknowledged in writing by Escrow Agent. To comply with federal law including USA Patriot Act requirements, assignees shall provide to Escrow Agent the appropriate form W-9 or W-8 (as applicable) and such other forms and documentation that Escrow Agent may request to verify identification and authorization to act.

(c) This Agreement, all questions concerning the construction, interpretation and validity of this Agreement, the rights and obligations of the parties hereto, all claims or causes of action (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter this Agreement) shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, including its statutes of limitations, without giving effect to any choice or conflict of law provision or rule (whether in the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware and without regard to any borrowing statute that would result in the application of the statute of limitations of any other jurisdiction. In furtherance of the foregoing, the laws of the State of Delaware will control even if under such jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily or necessarily apply.

(d) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware sitting in Wilmington, Delaware (or, if such court lacks jurisdiction, any federal or state court sitting in the State of Delaware in Wilmington, Delaware) over all claims or causes of action (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) and each Party hereby irrevocably agrees that all claims in respect of any such Action related thereto may be heard and determined in such courts. The parties hereto hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection that they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(e) Neither Party nor Escrow Agent shall be liable to any other party hereto for losses due to, or for any delay in performance of its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, electrical outages or unavailability of Federal Reserve Bank wire services, or other causes reasonably beyond its control; it being understood that Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

(f) This Agreement and any Joint Direction from the Parties, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument or instruction, as applicable. All signatures of the parties to this Agreement and in any Joint Direction or other instruction, instrument or notice delivered hereunder may be transmitted by facsimile (including PDF) or e-mail, and such transmission will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

(g) If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable Law of a jurisdiction, then such provision shall, as to such jurisdiction, be revised as mutually agreed by the parties hereto so as to as nearly as possible reflect the intent of the parties hereto without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

(h) Nothing in this Agreement, whether express or implied, shall be construed to give to any Person or entity other than Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of the Escrow Funds or this Agreement.

(i) The Parties acknowledge that the Escrow Funds are not and shall not be subject to any lien, security interest or encumbrance of any kind.

(j) EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE RESPECTING ANY MATTER ARISING UNDER THIS AGREEMENT.

(k) No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name, or the rights, powers, or duties of Escrow Agent under this Agreement, shall be issued by the Parties, or on their behalf, without the prior written consent of Escrow Agent, except to the extent such disclosure is required by applicable Law.

(l) This Agreement and the Merger Agreement taken together shall constitute the entire agreement among the parties hereto with respect to the subject matter of this Agreement and supersede all prior agreements (whether written or oral and whether express or implied) by or among the parties hereto to the extent related to the subject matter of this Agreement. The terms and conditions of this Agreement will control the actions, duties, and obligations of Escrow Agent. To the extent there is a conflict between the terms and provisions of this Agreement and the Merger Agreement, (i) as between the Parties, the terms and provisions of the Merger Agreement will control and (ii) to the extent governing the actions of Escrow Agent, the terms and conditions of this Agreement shall control.

(m) Know Your Client Requirements. The Parties hereby acknowledge that, in order to help fight the funding of terrorism and money laundering activities, federal law may require certain financial institutions to obtain, verify and record information that identifies each person or corporation who opens an account and/or enters into a business relationship. The Parties hereby agree that they shall provide the Escrow Agent with such information as the Escrow Agent may reasonably request in order to comply with applicable anti-money laundering rules and regulations, including each Party's name, physical address, tax identification number and other information that is reasonably required to assist the Escrow Agent in identifying and verifying each Party's identity in order to comply with applicable anti-money launder rules and regulations, such as organizational documents, certificates of good standing, licenses to do business or other pertinent identifying information.

(n) Patriot Act Disclosure. Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act") requires Escrow Agent to implement reasonable procedures to verify the identity of any Person that opens a new account with it. Accordingly, the Parties acknowledge that Section 326 of the USA PATRIOT Act and Escrow Agent's internal policies require Escrow Agent to follow reasonable procedures to verify the identity of the Parties, including, without limitation, each Parties' name, address and organizational documents ("identifying information"). The Parties agree to provide Escrow Agent with and consent to Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by Escrow Agent in connection with the transactions contemplated hereby.

[Signature Pages Follow]

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

PARENT:

Kaleyra Inc.

By: /s/Dario Calogero

Name: Dario Calogero

Title: Chief Executive Officer

[SIGNATURE PAGE TO ESCROW AGREEMENT]

REPRESENTATIVE:

GSO Special Situations Master Fund LP

By: Blackstone Alternative Credit Advisors LP, its
investment manager

By: /s/ Marisa Beeney

Name: Marisa Beeney

Title: Authorized Signatory

[SIGNATURE PAGE TO ESCROW AGREEMENT]

ESCROW AGENT:

CITIBANK, N.A.

By: /s/ William T. Lynch

Name: William T. Lynch

Title: Director

[SIGNATURE PAGE TO ESCROW AGREEMENT]

SCHEDULE 1-A
SCHEDULE OF PARENT'S AUTHORIZED REPRESENTATIVES

Telephone Numbers and Authorized Signatures for
Person(s) Designated to Give Joint Directions and Confirm Funds Transfer Instructions

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Parent, and are authorized to initiate and approve transactions for the Escrow Account established under this Agreement on behalf of Parent. The below listed Persons have also been designated as contacts for confirmation of funds transfer instructions as provided for in Section 4(c) to this Agreement, and will be notified by Escrow Agent upon the release of any Escrow Funds from the Escrow Account.

<u>Name</u>	<u>Business/Cellphone Telephone Numbers</u>	<u>Signature</u>
1.		
2.		

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an e-mail, must include the signature of at least one Authorized Representative authorizing said funds transfer on behalf of each Party.

[SCHEDULE 1-A TO ESCROW AGREEMENT]

SCHEDULE 1-B
SCHEDULE OF REPRESENTATIVE'S AUTHORIZED REPRESENTATIVES

Telephone Numbers and Authorized Signatures for
Person(s) Designated to Give Joint Directions and Confirm Funds Transfer Instructions

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Representative, and are authorized to initiate and approve transactions for the Escrow Account established under this Agreement on behalf of the Representative. The below listed Persons have also been designated as contacts for confirmation of funds transfer instructions as provided for in Section 4(c) to this Agreement, and will be notified by Escrow Agent upon the release of any Escrow Funds from the Escrow Account.

<u>Name</u>	<u>Business/Cellphone Telephone Numbers</u>	<u>Signature</u>
1.		
2.		

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an e-mail, must include the signature of at least one Authorized Representative authorizing said funds transfer on behalf of each Party.

[SCHEDULE 1-B TO ESCROW AGREEMENT]

SCHEDULE 2
SCHEDULE OF ESCROW AGENT FEES

Acceptance Fee

To cover the acceptance of the Escrow Agency appointment, the study of the Escrow Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

Fee: WAIVED

Administration Fee

The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the Escrow Account, normal administrative functions of Escrow Agent, including maintenance of Escrow Agent's records, follow-up of the Escrow Agreement's provisions, and any other safekeeping duties required by Escrow Agent under the terms of the Escrow Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits:

Fee: WAIVED

Tax Preparation Fee

To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

Fee: WAIVED

Transaction Fees

To oversee all required disbursements or release of property from the Escrow Account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by Escrow Agent as required under the terms and conditions of the Escrow Agreement:

Fee: WAIVED

Other Fees

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

EXHIBIT A

JOINT DIRECTION

TO: Citibank, N.A.
as Escrow Agent
388 Greenwich Street, 29th Floor
New York, NY 10013
Attn: William T. Lynch

This certificate is issued as of the [•] day of [•], [•], pursuant to Section 4 of that certain Escrow Agreement, dated as of [•], 2021 (the "Escrow Agreement"), by and among Kaleyra Inc., a Delaware corporation ("Parent"), GSO Special Situations Master Fund LP, (the "Representative") and Citibank, N.A., as Escrow Agent ("Escrow Agent"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Escrow Agreement.

Parent and the Representative hereby jointly instruct Escrow Agent to pay to [RECIPIENT] an amount equal to \$[•] out of the Escrow Account, by wire transfer to:

[INSERT WIRE INSTRUCTIONS]

Each of the undersigned hereby represents and warrants that it has been authorized to execute this certificate. This certificate may be signed in counterparts.

PARENT:

Kaleyra Inc.

By: _____
Name: _____
Title: _____

REPRESENTATIVE:

GSO Special Situations Master Fund LP

By: _____
Name: _____
Title: _____

EXHIBIT B

CERTIFICATE OF RELEASE ORDER

TO:
Citibank, N.A.
as Escrow Agent
388 Greenwich Street, 29th Floor
New York, NY 10013
Attn: William T. Lynch

Pursuant to, and in accordance with, Section 4 of that certain Escrow Agreement, dated as of [•], 2021 (the "Escrow Agreement"), by and among GSO Special Situations Master Fund LP, an exempted limited partnership formed under the laws of the Cayman Islands (the "Representative"), Kaleyra Inc., a Delaware corporation ("Parent") and Citibank, N.A., as escrow agent ("Escrow Agent"), the undersigned hereby certifies to Escrow Agent and [Parent]/[Representative] that:

1. attached is a Release Order pursuant to which Escrow Agent is authorized to promptly disburse \$[•] from the Escrow Funds to [name of applicable recipient] to [insert wire instructions] and Escrow Agent is instructed to comply with such Release Order;
2. the Release Order is final and from a court of competent jurisdiction;
3. Escrow Agent shall be entitled to conclusively rely on the attached Release Order without further investigation; and
4. [Parent]/[Representative] [are/is] delivering a copy of this Certificate of Order simultaneously to [Parent]/[Representative].

Capitalized terms not defined herein shall have the meanings ascribed to them in the Escrow Agreement.

Dated:

PARENT:

Kaleyra Inc.

By: _____
Name: _____
Title: _____

REPRESENTATIVE:

GSO Special Situations Master Fund LP

By: _____
Name: _____
Title: _____

TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

VIVIAL MEDIA HOLDINGS, INC.

AND

VOLCANO MERGER SUB, INC.

DATED AS OF JUNE 1, 2021

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Schedules

Schedule A Services Provided by SpinCo to Merger Sub for the Acquired Businesses

TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (“Agreement”) is dated as of June 1, 2021 (the “Effective Date”), by and between Vivial Media Holdings, Inc., a Delaware corporation (“SpinCo”), and Volcano Merger Sub, Inc., a Delaware corporation (“Merger Sub”). SpinCo and Merger Sub may each be referred to herein individually as a “Party” and together as the “Parties.” As used herein, SpinCo shall include the SpinCo Entities providing Services pursuant to this Agreement, and Merger Sub shall include the Acquired Entities receiving Services pursuant to this Agreement, in each case as the context so requires. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed to such terms in the Merger Agreement (as defined below).

RECITALS

WHEREAS, Vivial Inc., a Delaware corporation (the “Company”), and SpinCo have entered into that certain Separation and Distribution Agreement, dated as of May 31, 2021 (the “Separation Agreement”), pursuant to which (i) the SpinCo Subsidiaries were transferred to SpinCo and (ii) the Company caused the Stockholders to receive on a *pro rata* basis all the shares of SpinCo Common Stock;

WHEREAS, Kaleyra Inc., a Delaware corporation (“Parent”), Merger Sub, the Company and GSO Special Situations Master Fund LP, an exempted limited partnership formed under the laws of the Cayman Islands, solely in its capacity as the Stockholder Representative, have entered into that certain Agreement and Plan of Merger, dated as of February 18, 2021 (as amended, the “Merger Agreement”), pursuant to which Merger Sub will be merged with and into the Company (the “Merger”), with the Company continuing as the surviving entity and with Parent becoming the Company’s sole stockholder; and

WHEREAS, the Separation Agreement and the Merger Agreement provide that, in connection with the consummation of the Merger, the Parties will enter into this Agreement to provide for certain services and other arrangements among the Parties and their respective Subsidiaries following the Separation, all as more fully described herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, and for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I SERVICES AND SCOPE OF SERVICES

1.1 Services. Merger Sub hereby engages SpinCo to provide or cause to be provided, and SpinCo hereby agrees to provide or cause to be provided to Merger Sub, solely for the Acquired Business, the services as set forth in Schedule A attached hereto and made a part hereof (as amended, modified or supplemented from time to time in accordance with this Agreement, the “Services”), in each case for the period of time and upon the terms and conditions contained in this Agreement (including Schedule A). Subject to Section 1.2, it is understood that the Services do not include, and SpinCo will not be obligated hereunder to perform or provide to any Service Recipient, any services not expressly set forth in Schedule A hereto.

1.2 Omitted/Modified Services. The Parties acknowledge that for the sake of expediency Schedule A has been mutually prepared using general descriptions of services and if a Service Recipient, within three (3) months of the Effective Date, (x) reasonably determines that in order to operate its business, it is necessary for SpinCo to (i) provide, or cause to be provided, any services not referenced in Schedule A that were provided by the Company and/or its Affiliates in respect of such Service Recipient's business as of the day immediately prior to the Separation and are not readily available from a third party at a comparable cost ("Omitted Services"), or (ii) make any modifications to those Services listed in Schedule A ("Modified Services"), and (y) requests in writing that SpinCo provide an Omitted Service or Modified Service in the manner conducted during the twelve (12)-month period immediately preceding the Effective Date (the "Reference Period"), then the Parties will promptly negotiate in good faith the terms governing any such Omitted Service or Modified Service with respect to (i) the nature and description of such Omitted Service or Modified Service, which shall be consistent with the descriptions of the Services set forth in Schedule A (to the extent applicable to such Omitted Service or Modified Service), (ii) the duration such Omitted Service or Modified Service will be provided, which shall not be longer than the Term, and (iii) the fees for such Omitted Service or Modified Service, which shall be set in the same manner as for the other Services and shall be limited to the actual cost to SpinCo of performing such Omitted Service or Modified Service and any reasonable and documented out-of-pocket expenses. In the event the Parties agree to such terms, the Parties will enter into an amendment to this Agreement amending Schedule A, as applicable, to reflect such Omitted Service or Modified Service, and such Omitted Service or Modified Service shall be deemed to be part of this Agreement and shall be deemed "Services" hereunder from and after the date of such amendment. Notwithstanding the foregoing, SpinCo shall not be required to provide any Omitted Service or Modified Service to the extent that the provision of any such software or service would result in (x) a breach of Contract (in which case, SpinCo will use commercially reasonable efforts to obtain a waiver or consent, if appropriate, the costs of which shall be borne by the applicable Service Recipient), (y) a violation of Law or (z) a waiver of the attorney-client privilege, attorney work product doctrine or any other privilege or immunity.

1.3 Service Recipient. References to a "Service Recipient" herein shall mean Merger Sub or the other Acquired Entities with respect to the Services being provided to it by SpinCo or the other SpinCo Entities.

1.4 Services Standards.

(a) SpinCo shall use commercially reasonable efforts to provide or cause to be provided each of the Services required to be provided by SpinCo in the manner and at a relative nature and quality of service that is equivalent in all material respects to the Company's and/or its Affiliates' provision of such Services or other similar services for itself or themselves, as applicable, during the Reference Period with the same standard of care that SpinCo provides its own business. In addition, to the extent the Services involve the collection, use, maintenance, disclosure, or destruction of Personally Identifiable Information, as defined below, such Services shall be performed in a manner consistent with Article IX. The foregoing standards shall be referred to herein as the "Services Standards." To the extent specified on Schedule A, SpinCo agrees to commit at least the level of personnel staffing designated therein to the provision of such Service (but in any event a level of personnel staffing sufficient to meet the Services Standards). Notwithstanding the foregoing, each Party acknowledges (x) that SpinCo is not in the business of providing the Services (or services of a like nature) to third parties, (y) that the Services are being provided to the applicable Service Recipient by SpinCo solely to facilitate the transactions contemplated by the Merger Agreement and (z) unless mutually agreed to by the Parties in writing, that SpinCo shall not be required to provide the Services beyond the Term. Each Service Recipient agrees that the Services are for the sole use and benefit of such Service Recipient, in each case, solely with respect to the Acquired Business. Each Service Recipient and its Affiliates shall not resell any of the Services to any Person whatsoever and shall not permit the receipt or use of the Services by any Person other than for the conduct of the Acquired Business. For the avoidance of doubt, except as set forth in Schedule A or as expressly provided herein, neither SpinCo nor any of its Affiliates shall be obligated to provide any other services to Service Recipient or any of its Affiliates.

(b) Notwithstanding the foregoing, unless otherwise provided in Schedule A, SpinCo and its Affiliates will not be required to stay in business (or any line of business), replace employees who voluntarily terminate their employment with SpinCo or such Affiliates or take other measures solely to provide any Services to a Service Recipient; provided that any such attrition of employees (due to voluntary termination) shall not relieve SpinCo of its obligation to meet the Service Standard. If such attrition of employees causes SpinCo to be unable to perform any Service or meet the Service Standard, then Merger Sub shall have the right to terminate the affected Services without payment of any Termination Fee, and SpinCo shall refund any Service Fees paid in advance for any Services not performed due to such attrition. Notwithstanding anything to the contrary, SpinCo shall promptly provide Merger Sub with written notice upon (i) a material number of terminations of employees performing Services to a Service Recipient (regardless whether such terminations were voluntary or involuntary), or (ii) SpinCo having a reasonable expectation that Services will not be provided to Service Recipient in the timeline agreed to by the parties. Each Service shall be provided at the location or locations specified in Schedule A, or, if not specified in Schedule A, then at the location or locations at which such Service has been provided by the Company and/or its Affiliates during the Reference Period. Unless otherwise agreed by the Parties in Schedule A, neither SpinCo nor any of its Affiliates shall be required to provide any Service in a location other than where such Service was performed prior to the Closing.

(c) In the event that SpinCo is unable to provide any such Services or sub-service, sub-task or sub-function thereof in a manner consistent with the Services Standards, the Parties shall collaborate in good faith to obtain equivalent replacement services, which shall be reasonably acceptable to the applicable Service Recipient; provided, that until such time as a replacement service is adopted by Merger Sub, SpinCo shall retain responsibility for the provision to the Service Recipients of the Services in a manner consistent with the Services Standards.

(d) Except with respect to quarterly close periods and financial reporting Services as required under Schedule A, SpinCo shall have the right to shut down temporarily for routine scheduled maintenance purposes (which shall be substantially consistent with the operations and maintenance policies of the Company and/or its Affiliates during the Reference Period) the operation of the networks and/or systems providing any Service whenever in SpinCo's judgment, reasonably exercised, such action is necessary; provided, that such shutdown is planned to take place outside normal business hours, or if not so possible, be planned so that such shutdown does not unduly and adversely affect a Service Recipient's operations to which the provision of such Service relates. In the event nonscheduled maintenance is reasonably necessary, SpinCo shall notify a Service Recipient as much in advance as reasonably practicable under the circumstances (except where not feasible due to the nature of the event giving rise to such nonscheduled maintenance (e.g., emergency security patches)). SpinCo shall be relieved of its obligations to provide Services that require the use of such networks or systems only for the period of time that such networks and/or systems are so shut down but shall use commercially reasonable efforts to minimize each period of shutdown for such purpose and to schedule such shutdown so as not to disrupt the conduct of the business of Recipient in the ordinary course.

(e) SpinCo may use reasonably qualified subcontractors to provide some or all of the Services. If SpinCo delegates any of its responsibilities under this Agreement to any of its subsidiaries or uses subcontractors in the performance thereof, then the SpinCo shall remain fully responsible for the actions and performance of such subsidiary or subcontractor to the extent the SpinCo would be responsible hereunder if performing such obligations itself and such subsidiary or subcontractor shall be deemed to be the SpinCo hereunder for purposes of defining its performance obligations with respect to such delegated Service(s).

1.5 Third-Party Consents. Subject to the terms and conditions of the Merger Agreement, in the event there is any restriction or limitation of any kind on SpinCo under an existing Contract with a third party that would restrict or limit the nature, quality, standard of care, or ability to provide any Services, SpinCo shall, as promptly as practicable, (a) obtain, keep, and maintain in effect any necessary waivers, consents, licenses, permissions or similar approvals from such third party or to modify such existing Contract to enable SpinCo to provide such Services to the applicable Service Recipient at the Services Standards set forth herein, or (b) if any such waiver, consent, license, permission, approval or modification cannot be obtained as a result of such efforts, adopt such alternative approaches as are commercially reasonable to allow SpinCo to provide the Services to the applicable Service Recipient without such required consent; provided, that such alternative approaches do not adversely impact the Service Standards in any material respect; provided, further, that no waiver, consent, license, permission, approval or modification required with respect to the Service Recipient and any Shared Contract (as defined in, and set forth on Schedule 1.1(b) to the Separation Agreement) shall be borne by SpinCo other than those expressly set forth on Schedule A. The Parties acknowledge and agree that there can be no assurance that SpinCo's efforts pursuant to this Section 1.5 will be successful or that SpinCo will be able to obtain such consents on acceptable terms or at all and the Parties acknowledge that such Contracts may preclude partial transfer or assignments or operation of a Service on behalf of unaffiliated entities.

1.6 Forwarding of Correspondence.

(a) For a period of twelve (12) months from the Effective Date, SpinCo shall forward to Merger Sub any e-mail, facsimile, postal mail or telephone inquiries that any SpinCo Entity receives relating to the Acquired Business or the Acquired Entities and shall promptly after the Effective Date file complete and adequate forwarding notices with the postal officials and appropriate telephone utilities provided by Merger Sub for the forwarding to Merger Sub of all mail and telephone calls relating to the Acquired Business or the Acquired Entities. In addition, to the extent any SpinCo Entity receives any payments attributable to the Acquired Business, SpinCo shall cause such SpinCo Entity to forward the same, as well as all material supporting documents including copies of checks documenting such payments and any documentation provided by customers for payment deductions taken by customers, to Merger Sub as promptly as practicable.

(b) For a period of twelve (12) months from the Effective Date, Merger Sub shall forward to SpinCo any e-mail, facsimile, postal mail or telephone inquiries that any Acquired Entity receives relating to the SpinCo Business or the SpinCo Entities and shall promptly after the Effective Date file complete and adequate forwarding notices with the postal officials and appropriate telephone utilities provided by SpinCo for the forwarding to SpinCo of all mail and telephone calls relating to the SpinCo Business or the SpinCo Entities. In addition, to the extent any Acquired Entity receives any payments attributable to the SpinCo Business, Merger Sub shall cause such Acquired Entity to forward the same, as well as all material supporting documents including copies of checks documenting such payments and any documentation provided by customers for payment deductions taken by customers, to SpinCo as promptly as practicable.

(c) The provisions of this Section 1.6 are not intended to, and shall not, be deemed to constitute a disclosure of (i) Privileged Communications or waiver of attorney-client privilege, or (ii) SpinCo Confidential Information or Merger Sub Confidential Information.

ARTICLE II. TERM AND TERMINATION

2.1 Term of Services. The Services to be provided under this Agreement shall commence as of the Effective Date and, with respect to each Service, shall continue until the "Service Termination Date" for such Service, which shall be the last day of the applicable transition period for such Service as specified in Schedule A (or such later or earlier time the Parties mutually agree in writing) provided, however, that any Service provided hereunder may be terminated in accordance with Section 2.3.

2.2 Term of Agreement. This Agreement shall remain in full force and effect until the earlier of (a) the last Service Termination Date and (b) the date on which this Agreement is effectively terminated in accordance with Section 2.3 (the "Term").

2.3 Termination.

(a) Any Service Recipient may terminate, in its sole and absolute discretion, in whole or in part, one or more of the Services provided to such Service Recipient pursuant to this Agreement (i) in accordance with Sections 10.2, 12.2, 13.3 and 14.5; and (ii) for convenience as of the end of any calendar month upon at least sixty (60) days advance written notice to SpinCo and, only in the case of termination for convenience pursuant to clause (ii) above, payment of the Termination Fee pursuant to Section 3.2; provided, that no termination for convenience pursuant to clause (ii) above or the termination provision set forth in Schedule A shall be effective in the event that SpinCo demonstrates that a proposed termination of any part of the Services will materially and adversely affect SpinCo's ability to provide any part of the other Services provided by SpinCo, in which case the Parties shall meet and discuss such proposed termination in order to reach an amicable conclusion.

(b) SpinCo may terminate, in its sole and absolute discretion, one or more of the Services provided SpinCo pursuant to this Agreement, in accordance with Sections 4.1, 10.2, 12.2, 13.3 and 14.5.

(c) If either Party materially breaches any of its material obligations under this Agreement and such Party does not cure such breach within thirty (30) days (or such other period as the Parties agree in writing) after receiving written notice thereof from the non-breaching Party, the non-breaching Party may terminate this Agreement, in whole or in part (with respect to the Services to which the breach relates), by providing written notice of termination to the Party in breach (it being understood that this Section 2.3(c) shall not limit the Parties' obligations pursuant to ARTICLE XIII).

(d) This Agreement or any Service may be terminated by the mutual written agreement of the Parties.

(e) Notwithstanding anything to the contrary herein, upon termination of any of the Services provided pursuant to this Agreement, SpinCo shall have no further obligation to provide such terminated Service(s) and SpinCo shall cease and shall cause its Affiliates to cease providing such terminated Service(s). A Party's obligation to pay monies owed to another Party for Services provided prior to the effective date of such termination shall (i) survive the termination or expiration of such Services and (ii) shall be paid in compliance with Section 4.1. Any termination or expiration with respect to any Service shall not terminate the applicability of this Agreement to any other Service then being provided under this Agreement, except with respect to those Services where the provision of such Service is dependent on any terminated Services as designated in Schedule A, in which case the termination or expiration of such Service shall also terminate all Services that are so dependent thereon.

(f) A Party's obligations to another Party under this ARTICLE II (Term and Termination), ARTICLE III (Services Fee), ARTICLE IV (Billing and Payment), ARTICLE VII (Books and Records), ARTICLE VIII (Confidential Information), ARTICLE IX (Personally Identifiable Information), ARTICLE X (Compliance with Laws and Regulations), ARTICLE XI (Indemnification and Limited Liability), ARTICLE XII (Force Majeure), ARTICLE XIII (Disputes) and ARTICLE XIV (Miscellaneous) shall survive the termination of this Agreement.

ARTICLE III. SERVICES FEE

3.1 Service Fees. Merger Sub agrees, in consideration for the Services actually rendered to the Service Recipients pursuant to this Agreement, to pay the applicable amounts set forth for such Services in Schedule A (such amounts, the "Service Fees"). Pricing for the Omitted Services and Modified Services shall be established on the same basis and methodology as that used to set the amounts in Schedule A as of the Effective Date. Except as otherwise set forth in Schedule A, the Service Fees shall be paid in accordance with and subject to Section 4.1. Unless otherwise set forth in Schedule A or otherwise agreed in writing, the pricing of any Service provided during the Term hereunder shall be based on SpinCo's reasonable direct costs of providing such Service (which cost shall not include any allocation of overhead), including the salary of individuals providing the Services, any benefits paid or provided to such employees prior to the applicable Service Termination Date, cost of any materials reasonably required to perform the Service, any incidental documented out-of-pocket costs and expenses reasonably incurred by SpinCo in providing such Service including but not limited to, air fare (coach class), lodging, meals, mileage, parking and ground transportation, in each case in accordance with such SpinCo's standard policies with respect to such incidental costs and expenses.

3.2 Termination Fee. If this Agreement is terminated by Merger Sub pursuant to Section 2.3(a)(ii), then Merger Sub shall pay to SpinCo in connection with any such termination, a fee in an amount equal to fifty percent (50%) of the sum of (x) each Service Fee for each Service as specified in Schedule A multiplied by (y) the number of remaining months until the Service Termination Date for such Service as specified in Schedule A (the "Termination Fee") by wire transfer of immediately available funds in U.S. dollars to an account designated in writing by SpinCo within five (5) Business Days after written notice of such termination is provided to SpinCo.

3.3 Adjustment of Service Fees. Subject to Section 3.2, to the extent that the Parties mutually agree to modify, amend, delete or add to the Services, or a Party terminates any Service in accordance with Section 2.3, the Appointed Representatives shall determine in good faith an equitable adjustment to the amounts paid by the Parties pursuant to Section 3.1.

ARTICLE IV. BILLING AND PAYMENT

4.1 Payment Terms. Merger Sub shall pay SpinCo the aggregate Service Fee (calculated in accordance with Schedule A and this Agreement) in advance prior to the start of the month in which SpinCo will provide the Services. If Merger Sub fails to timely pay the aggregate Service Fee when due and payable in accordance with Schedule A and this Agreement, SpinCo has the right to immediately terminate this Agreement, in whole or in part, by providing written notice of termination to Merger Sub.

4.2 Survival of Payment Obligations. Notwithstanding the expiration or earlier termination of this Agreement, the Parties' obligations to each other under this ARTICLE IV regarding events or obligations occurring or arising during the Term shall survive such expiration or earlier termination until fulfilled.

ARTICLE V. INTELLECTUAL PROPERTY

5.1 Ownership and Licensing of Intellectual Property.

(a) As between the Parties, Merger Sub (or the applicable Service Recipient) shall be the sole owner of all financial data deliverables delivered by SpinCo to Merger Sub or such Service Recipient as part of the Services performed under this Agreement (e.g., financial reports, financial documents or financial data).

(b) If, in connection with the provision of any of the Services, any Service Recipient provides, or provides access to, any documents, information, data or other items containing or comprising, or otherwise requiring the use of, any Intellectual Property owned by such Service Recipient, Service Recipient hereby grants to SpinCo, during the period prior to the Service Termination Date of the applicable Service, a non-exclusive, revocable, non-transferable, non-sublicensable, royalty-free, fully paid-up license with respect to such Intellectual Property to copy, display, perform, transmit, create derivative works from and otherwise modify, make, use and otherwise exploit such documents, information, data and other items containing or comprising, or otherwise requiring the use of, such Intellectual Property, solely to the extent necessary to provide or receive the applicable Services in accordance with this Agreement.

(c) SpinCo hereby grants the applicable Service Recipient anon-exclusive, perpetual, irrevocable, royalty-free, fully paid-up license to use any Intellectual Property owned by SpinCo or its subcontractors that is embedded in any financial data deliverable delivered by SpinCo to such Service Recipient as part of the Services performed under this Agreement, solely to the extent necessary for such Service Recipient to receive and use such financial data deliverable.

(d) Except as otherwise expressly provided in this Agreement, the Merger Agreement or the Separation Agreement, (i) no Party shall have any rights or licenses with respect to any Intellectual Property of the other Party and (ii) each Party shall retain all right, title and interest in and to all Intellectual Property owned by such Party and used in connection with the performance or receipt of the Services under this Agreement. All rights and licenses not expressly granted in this Agreement, the Separation Agreement or the Merger Agreement are expressly reserved by the relevant Party.

ARTICLE VI. LIMITED WARRANTY

6.1 Limited Warranty. SpinCo represents, warrants, and agrees (a) to perform the Services in a manner consistent with the Services Standards, (b) that, subject to and in accordance with Section 1.5 (Third Party Consents), it has all permits, licenses, approvals, and consents required to perform the Services, and (c) to perform the Services in accordance with applicable Law. THE LIMITED WARRANTY PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE IS THE SOLE WARRANTY WITH RESPECT TO THE SERVICES. EACH OF THE PARTIES, ON BEHALF OF ITSELF AND EACH OF ITS AFFILIATES, EXPRESSLY DISCLAIMS (A) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, WORKMANSHIP, DESIGN, FITNESS FOR A PARTICULAR PURPOSE AND INFRINGEMENT; AND (B) THAT THE SERVICES PROVIDED HEREUNDER WILL YIELD ANY GIVEN OR STATED ECONOMIC, FINANCIAL, PROFIT OR BUSINESS RESULT TO A SERVICE RECIPIENT OR WILL RESULT IN A SERVICE RECIPIENT HAVING ANY GIVEN STANDING OR POSITION IN ANY BUSINESS, MARKET OR PRODUCT.

ARTICLE VII. BOOKS AND RECORDS

7.1 Access to Books and Records. For a period commencing on the Effective Date and ending on the sixth anniversary of the Effective Date, the Parties shall use commercially reasonable efforts to maintain all books and records relating to the provision of the Services hereunder and shall make them, and any individuals responsible for the preparation and maintenance of such books and records, available to the other Party, as reasonably requested; provided, that such request is provided with a minimum of fifteen (15) days' prior written notice. If at any time after the Effective Date, any Party requires copies of such books and records, the other Party shall provide a copy thereof (at the expense of the requesting Party) as promptly as reasonably practicable.

7.2 Survival of Books and Records Obligations. Notwithstanding the expiration or earlier termination of this Agreement, the Parties' obligations to each other under this ARTICLE VII shall survive such expiration or earlier termination until fulfilled.

ARTICLE VIII. CONFIDENTIAL INFORMATION

8.1 SpinCo Confidential Information. From and after the Effective Time, subject to Section 8.3 and except as contemplated by this Agreement, any other Transaction Document or the Merger Agreement, Merger Sub shall not, and shall cause the Acquired Entities and their respective officers, directors, employees, agents and representatives, including attorneys, advisors and other representatives of any Person providing financing (collectively, "Representatives"), not to, directly or indirectly, disclose to any Person, other than Representatives of Merger Sub or the Acquired Entities who reasonably need to know such information in providing services to any Acquired Entity, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any SpinCo Confidential Information. Merger Sub shall use the same degree of care to prevent the unauthorized use or disclosure of the SpinCo Confidential Information by any of its Representatives as it currently uses for its own confidential information, but in no event less than a reasonable standard of care. "SpinCo Confidential Information" means any information, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, accountant's work papers, contracts, instruments, surveys, designs, samples, flow charts, data, computer data, disks, diskettes, tapes, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), other communications containing information not generally known to the public, memoranda and other materials prepared by attorneys and accountants or under their direction (including attorney work product), and all other technical, financial, employee or business information or data ("Information") to the extent relating to the SpinCo Business furnished or made available to or accessible by, or otherwise in the possession of, any Acquired Entity, including as a result of or in connection with the provision of any Services hereunder or the performance of any Transaction Document or the Merger Agreement irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by any Acquired Entity or their respective Representatives, to the extent they contain or otherwise reflect such Information; provided, that SpinCo Confidential Information does not include, and there shall be no obligation under this Agreement with respect to, Information that: (a) is Personally Identifiable Information, which shall be handled in accordance with the terms and conditions set forth in ARTICLE IX, (b) is or becomes generally available to the public, other than as a result of any use or disclosure by any Acquired Entity or any of its Representatives not otherwise permissible under this Section 8.1 or any other Transaction Document, (c) Merger Sub can demonstrate was or became available to Merger Sub or any of its Representatives after the Effective Time from a source other than SpinCo or its Representatives, provided, that such source was not known by Merger Sub to be bound by a contractual, legal or fiduciary obligation of confidentiality to any SpinCo Entity with respect to such Information or (d) is developed independently by any Acquired Entity or any of its Representatives without use or reference to the SpinCo Confidential Information.

8.2 Merger Sub Confidential Information. From and after the Effective Time, subject to Section 8.3 and except as contemplated by this Agreement, any other Transaction Document or the Merger Agreement, SpinCo shall not, and shall cause the SpinCo Entities and their respective Representatives not to, directly or indirectly, disclose to any Person, other than Representatives of SpinCo or the SpinCo Entities who reasonably need to know such information in providing services to any SpinCo Entity, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any Merger Sub Confidential Information. If any disclosures are made in connection with providing services to any SpinCo Entity under this Agreement, any other Transaction Document or the Merger Agreement, then the Merger Sub Confidential Information so disclosed shall be used only as required to perform the services. SpinCo shall use the same degree of care to prevent the unauthorized use or disclosure of the Merger Sub Confidential Information by any of its Representatives as it currently uses for its own confidential information, but in no event less than a reasonable standard of care. “Merger Sub Confidential Information” means any Information to the extent relating to the Acquired Business furnished or made available to or accessible by, or otherwise in the possession of, any SpinCo Entity as a result of or in connection with the provision of any Service hereunder or the performance of any Transaction Document or the Merger Agreement, irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by any SpinCo Entity or their respective Representatives, to the extent they contain or otherwise reflect such Information; provided, that Merger Sub Confidential Information does not include, and there shall be no obligation under this Agreement with respect to, Information that (a) is Personally Identifiable Information, which shall be handled in accordance with the terms and conditions set forth in ARTICLE IX, (b) is or becomes generally available to the public, other than as a result of any use or disclosure by any SpinCo Entity or any of its Representatives not otherwise permissible under this Section 8.2 or any other Transaction Document, (c) SpinCo can demonstrate was or became available to SpinCo or any of its Representatives after the Effective Time from a source other than Merger Sub or its Representatives; provided, that such source was not known by SpinCo to be bound by a contractual, legal or fiduciary obligation of confidentiality to any Acquired Entity with respect to such Information or (d) developed independently by any SpinCo Entity or any of its Representatives without use or reference to the Merger Sub Confidential Information.

8.3 Permitted Disclosure. Notwithstanding the provisions of Section 8.1 and Section 8.2, Merger Sub or its Representatives may disclose SpinCo Confidential Information, and SpinCo and its Representatives may disclose Merger Sub Confidential Information: (a) to the extent such Party or such Representative is required or compelled to disclose any such Merger Sub Confidential Information or SpinCo Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule, (b) as required in connection with any (i) an Action by any Acquired Entity, on the one hand, against any SpinCo Entity, on the other hand, or (ii) an Action by any SpinCo Entity, on the one hand, against any Acquired Entity, on the other hand, (c) as necessary in order to permit a Party to prepare and disclose its financial statements in connection with any regulatory filings or Tax Returns, (d) as necessary for a Party to enforce its rights or perform its obligations under this Agreement, the Merger Agreement or any other Transaction Document or (e) to Governmental Entities in accordance with applicable procurement regulations and contract requirements. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Merger Sub Confidential Information or SpinCo Confidential Information is made pursuant to clause (a), (c) or (e) above (other than with respect to any such Information furnished pursuant to the provisions of ARTICLE VII), as applicable, the Person receiving such request or demand or other disclosure requirement shall use commercially reasonable efforts to provide the other Party with written notice of such request or demand as promptly as practicable so that such other Party shall have an opportunity to seek an appropriate protective order. The Party receiving such request or demand shall take, and cause its Representatives to take, at the requesting Party’s expense, all other reasonable steps necessary to obtain confidential treatment by the recipient. Subject to the foregoing, the Party or any of its Representatives that received such request or demand may thereafter disclose or provide any SpinCo Confidential Information or Merger Sub Confidential Information, as the case may be, to the extent required by such Governmental Entity, stock exchange or applicable Law (as so advised by counsel); provided, that such disclosing Party shall furnish only that portion of such SpinCo Confidential Information or Merger Sub Confidential Information which is legally required to be furnished.

8.4 Destruction of Confidential Information. Each Party shall, at the request of the other Party upon termination of this Agreement, as soon as practicable and except as required to be maintained to comply with provisions of the Merger Agreement, the Separation Agreement or applicable Law, (a) return to the other Party originals of all Confidential Information of such other Party or any of its Affiliates in a tangible form and (b) destroy all copies thereof and all notes, extracts or summaries based thereon. Each Party shall, at the other Party's request, confirm compliance with this Section 8.4 in a writing signed by one of such Party's authorized officers.

8.5 Survival of Confidentiality and Nondisclosure Obligations. The confidentiality and nondisclosure obligations of this ARTICLE VIII shall survive the expiration or termination of this Agreement.

ARTICLE IX.
PERSONALLY IDENTIFIABLE INFORMATION

9.1 Personally Identifiable Information. As it is used in this Agreement, the term "Personally Identifiable Information" means information about an individual that either (a) contains data elements that identify the individual or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. Personally Identifiable Information includes, but is not limited to, all information concerning or related to customer accounts, or prospects of such accounts, that is disclosed to a Party or any of its Affiliates (or to which a Party or any of its Affiliates gains access pursuant to the transactions contemplated under this Agreement, the Merger Agreement or the Separation Agreement), regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form, and shall specifically include but not be limited to (i) personal identifiers such as name, address, Social Security Number, date of birth, driver's license number or state identification number, and passport number, (ii) health information, including any information relating to treatment or conditions, (iii) financial information, including credit or debit card numbers, account numbers, access codes, credit report information, insurance policy number and (iv) demographic information.

9.2 Limitations on Collection, Use and Disclosure.

(a) With respect to any Personally Identifiable Information owned by SpinCo or any of the SpinCo Entities and in the possession of, or received or otherwise accessed by or for, Merger Sub or any of the Acquired Entities (collectively, "SpinCo Personally Identifiable Information"), Merger Sub shall not, and shall cause the Acquired Entities and its and their respective Representatives not to, collect, use, or disclose such SpinCo Personally Identifiable Information in any manner that violates this Agreement or applicable Law. Merger Sub shall, and shall cause the Acquired Entities and its and their respective Representatives to, collect, use, disclose, and maintain such SpinCo Personally Identifiable Information in accordance with SpinCo's policies, procedures and customer and consumer notifications concerning Personally Identifiable Information (the "SpinCo Policies and Procedures"). SpinCo shall provide copies of the SpinCo Policies and Procedures, and any changes therein, upon request. For the avoidance of doubt, none of Merger Sub or any Acquired Entity or any of its or their respective Representatives shall use any portion of such SpinCo Personally Identifiable Information for any purpose not authorized herein.

(b) With respect to any Personally Identifiable Information owned by Merger Sub or any of the Acquired Entities and in the possession of, or received or otherwise accessed by or for, SpinCo or any of the SpinCo Entities (collectively, "Merger Sub Personally Identifiable Information"), SpinCo shall not, and shall cause the SpinCo Entities and its and their respective Representatives not to, collect, use, or disclose such Merger Sub Personally Identifiable Information in any manner that violates this Agreement or applicable Law. SpinCo shall, and shall cause the SpinCo Entities and its and their respective Representatives to, collect, use, disclose, and maintain such Merger Sub Personally Identifiable Information in accordance with Merger Sub's policies, procedures and customer and consumer notifications concerning Personally Identifiable Information (the "Merger Sub Policies and Procedures"). Merger Sub shall provide copies of the Merger Sub Policies and Procedures, and any changes therein, upon request. For the avoidance of doubt, none of SpinCo or any of the SpinCo Entities or any of its or their respective Representatives shall use any portion of such Merger Sub Personally Identifiable Information for any purpose not authorized herein.

9.3 Permitted Collection, Use and Disclosure.

(a) Merger Sub shall be permitted to: (i) collect, use, and disclose SpinCo Personally Identifiable Information to the Acquired Entities and its and their respective Representatives, but only to the extent reasonably necessary in order for Merger Sub and the Acquired Entities to perform their respective obligations and exercise their respective rights and remedies under this Agreement to the extent not prohibited by applicable Law, and Merger Sub shall, and shall cause the Acquired Entities to, take all such action as shall be necessary or desirable in order to ensure that each of such persons maintains the privacy and security of any SpinCo Personally Identifiable Information that is so collected, used or disclosed and shall be responsible for any breach of this ARTICLE IX by any such person; and (ii) disclose any SpinCo Personally Identifiable Information if Merger Sub (A) determines (on the advice of its counsel) that it is required to disclose such SpinCo Personally Identifiable Information pursuant to applicable Law or (B) receives any demand under lawful process or from any Governmental Authority to disclose or provide such SpinCo Personally Identifiable Information; provided, that, in the case of this subclause (B), Merger Sub shall notify SpinCo prior to disclosing or providing such SpinCo Personally Identifiable Information and shall cooperate, at SpinCo's expense, in seeking any reasonable protective arrangements requested by SpinCo. In any event, Merger Sub shall furnish only that portion of such SpinCo Personally Identifiable Information which is legally required to be furnished and shall exercise its commercially reasonable efforts to obtain protective treatment of such SpinCo Personally Identifiable Information.

(b) SpinCo shall be permitted to: (i) collect, use, and disclose Merger Sub Personally Identifiable Information to the SpinCo Entities and its and their respective Representatives, but only to the extent reasonably necessary in order for SpinCo and the other SpinCo Entities to perform their respective obligations and exercise their respective rights and remedies under this Agreement to the extent not prohibited by applicable Law, and SpinCo shall, and shall cause the SpinCo Entities to, take all such action as shall be necessary or desirable in order to ensure that each of such persons maintains the privacy and security of any Merger Sub Personally Identifiable Information that is so collected, used or disclosed and shall be responsible for any breach of this ARTICLE IX by any such person; and (ii) disclose any Merger Sub Personally Identifiable Information if SpinCo (A) determines (on the advice of its counsel) that it is required to disclose such Merger Sub Personally Identifiable Information pursuant to applicable Law or (B) receives any demand under lawful process or from any Governmental Authority to disclose or provide such Merger Sub Personally Identifiable Information; provided, that, in the case of this subclause (B), SpinCo shall notify Merger Sub prior to disclosing or providing such Merger Sub Personally Identifiable Information and shall cooperate, at Merger Sub's expense, in seeking any reasonable protective arrangements requested by Merger Sub. In any event, SpinCo shall furnish only that portion of such Merger Sub Personally Identifiable Information which is legally required to be furnished and shall exercise its commercially reasonable efforts to obtain protective treatment of such Merger Sub Personally Identifiable Information.

9.4 Protection of Personally Identifiable Information.

(a) With respect to any SpinCo Personally Identifiable Information, Merger Sub shall, and shall cause the Acquired Entities to, at all times implement and maintain reasonable and appropriate privacy measures and administrative, physical and technical security measures to safeguard the confidentiality, integrity, and availability of such SpinCo Personally Identifiable Information. Such privacy and security measures shall be compliant with applicable Law and applicable privacy policies and customer and consumer notifications. Merger Sub shall, and shall cause the Acquired Entities to, limit access to such SpinCo Personally Identifiable Information to those of its and the Acquired Entities' Representatives who have a specific need for such access in order for Merger Sub and the Acquired Entities to perform their respective obligations and exercise their respective rights and remedies under this Agreement or to otherwise perform a legitimate business purpose, and shall not transfer or give access to any third party (other than any such Representative for such purposes) without the other party's approval (not to be unreasonably withheld, conditioned or delayed).

(b) With respect to any Merger Sub Personally Identifiable Information, SpinCo shall, and shall cause the SpinCo Entities to, at all times implement and maintain reasonable and appropriate privacy measures and administrative, physical and technical security measures to safeguard the confidentiality, integrity, and availability of such Merger Sub Personally Identifiable Information. Such privacy and security measures shall be compliant with applicable Law and applicable privacy policies and customer and consumer notifications. SpinCo shall, and shall cause the SpinCo Entities to, limit access to such Merger Sub Personally Identifiable Information to those of its and the SpinCo Entities' Representatives who have a specific need for such access in order for SpinCo and the SpinCo Entities to perform their respective obligations and exercise their respective rights and remedies under this Agreement or to otherwise perform a legitimate business purpose, and shall not transfer or give access to any third party (other than any such Representative for such purposes) without the other party's approval (not to be unreasonably withheld, conditioned or delayed).

9.5 Breaches of Personally Identifiable Information.

(a) Immediately upon discovery of an actual or suspected breach of the privacy or security of SpinCo Personally Identifiable Information, Merger Sub shall provide notice to SpinCo explaining the nature and scope of the incident. In such cases, Merger Sub shall cooperate in any investigation SpinCo deems reasonably necessary (including without limitation any forensic investigation) and Merger Sub shall pay all costs relating to breach notification, breach remediation, and identity protection services that SpinCo reasonably determines need to be furnished to affected customers and consumers.

(b) Immediately upon discovery of an actual or suspected breach of the privacy or security of Merger Sub Personally Identifiable Information, SpinCo shall provide notice to Merger Sub explaining the nature and scope of the incident. In such cases, SpinCo shall cooperate in any investigation Merger Sub deems reasonably necessary (including without limitation any forensic investigation) and SpinCo shall pay all costs relating to breach notification, breach remediation, and identity protection services that Merger Sub reasonably determines need to be furnished to affected customers and consumers.

9.6 Destruction of Personally Identifiable Information.

(a) Upon the request of SpinCo, Merger Sub shall, as soon as practicable and except as required to be maintained by Law, securely destroy, and cause to be securely destroyed all copies of SpinCo Personally Identifiable Information made available to Merger Sub or any of the Acquired Entities, and, at SpinCo's request, such destruction shall be confirmed in writing by one of Merger Sub's authorized officers. At all times, SpinCo Personally Identifiable Information that is destroyed shall be disposed of in a manner consistent with Payment Card Industry Data Security Standards requirements and all other applicable Laws and industry standards to ensure that data cannot be read or reconstructed from any records of any kind. Nothing in this Section 9.6 shall authorize Merger Sub to destroy information that is required to be maintained or retained under applicable Law.

(b) Upon the request of Merger Sub, SpinCo shall, as soon as practicable and except as required to be maintained by Law, securely destroy, and cause to be securely destroyed all copies of Merger Sub Personally Identifiable Information made available to SpinCo or any of the SpinCo Entities, and, at Merger Sub's request, such destruction shall be confirmed in writing by one of SpinCo's authorized officers. At all times, Merger Sub Personally Identifiable Information that is destroyed shall be disposed of in a manner consistent with Payment Card Industry Data Security Standards requirements and all other applicable Laws and industry standards to ensure that data cannot be read or reconstructed from any records of any kind. Nothing in this Section 9.6 shall authorize SpinCo to destroy information that is required to be maintained or retained under applicable Law.

9.7 Survival of Personally Identifiable Information and Nondisclosure Obligations. The protections and obligations set forth in this Article shall survive the expiration or termination of this Agreement.

ARTICLE X. COMPLIANCE WITH LAWS AND REGULATIONS

10.1 Compliance with Laws. Each Party shall give all notices and obtain all Permits necessary for the provision of the Services required by applicable Laws and shall comply, at its own expense, with all Laws applicable to such Party in the operation of its business and performance of its obligations under this Agreement, including all applicable Laws concerning privacy and data protection.

10.2 Cooperation.

(a) *Cooperation Generally.* The Parties will cooperate in good faith in all matters relating to the provision and receipt of the Services and to minimize expense, distraction and disturbance to the other Party in performance of their respective obligations hereunder. Without limiting the generality of the foregoing and subject to ARTICLE IX, Service Recipient will provide to SpinCo in a timely manner, access to personnel and information required or reasonably requested by SpinCo in connection with providing the Services; provided, however, Service Recipient shall not be required to provide access to information that (x) is competitively sensitive or would waive legal privilege (provided, that in such case Service Recipient shall use commercially reasonable efforts to provide SpinCo with such information in a form and/or manner that would not result in competitive harm or waive legal privilege), (y) requires a third-party consent, which Service Recipient, despite using commercially reasonable efforts, is not able to obtain or (z) would be in violation of applicable Law; provided, that, in each case of clause (x) and (y), SpinCo will not be liable for breach of this Agreement for a failure to provide a Service to the extent that such failure resulted from the failure of Service Recipient to provide access to such information.

(b) *Third-Party Notice.* If a Service results in either Party or any of their respective Affiliates being given notice from a third party alleging that it is in material violation of the rights of such third party, the Parties will refer such matter to the Appointed Representatives and, to the extent deemed necessary or appropriate by the Appointed Representatives, the Parties will cooperate in an effort to provide the Service in a manner that does not materially violate the rights of the third party. In the event that the Appointed Representatives are unable to agree about how to proceed, or determines that the Parties are unable to provide the Service in a manner that does not materially violate the rights of the third party, either Party may immediately terminate such Service upon written notice to the other Party.

(c) *Governmental Authority Notice.* If a Service results in either Party or any of their respective Affiliates being given notice from a Governmental Authority that it is in violation of a Law, the Parties will cooperate to provide the Service in a manner that is not in violation of such Law. In the event that the Parties are unable to do so, either Party may immediately terminate such Service upon written notice to the other Party.

(d) *Advice of Counsel.* If either Party receives advice of counsel from which the Party concludes, within its reasonable discretion, that the provision of a Service may result in an unreasonable business risk (including with respect to either the violation of a Law or the material violation of the rights of a third party), the Parties will refer such matter to the Appointed Representatives and, to the extent deemed necessary or appropriate by the Appointed Representatives, the Parties will cooperate to provide the Service in a way that avoids such unreasonable business risk. In the event that the Parties are unable to do so, either Party may immediately terminate such Service upon written notice to the other Party.

(e) *Code of Conduct and Ethics.* (i) Each of Merger Sub and SpinCo shall, and shall cause each of their respective subsidiaries and its and their respective officers, directors, employees, agents and representatives, to comply with their own respective Code of Conduct and Ethics in connection with the Services and communications and interactions with the other party and (ii) each Service Recipient shall, and shall cause its officers, directors, employees, agents and representatives to, provide clear instructions and reasonable deadlines with respect to instructions and requests relating to the Services.

ARTICLE XI. INDEMNITY AND LIMITED LIABILITY

11.1 Indemnification.

(a) SpinCo agrees to release, discharge, defend, indemnify, save and hold harmless Merger Sub, the Acquired Entities and its and their respective members, stockholders, directors, managers, officers, employees and agents, and each of the foregoing's respective heirs, executors, successors and permitted assigns (collectively, the "Merger Sub Indemnified Parties") from and against any and all claims, demands, suits, losses (including reasonable attorney's fees and expenses), liabilities, penalties, actions and damages ("Claims") imposed on, sustained by, incurred or suffered by, or asserted against, any of the Merger Sub Indemnified Parties, whether in respect of third-party claims, claims between the Parties, or otherwise, to the extent, directly or indirectly, arising from or related to the fraud, gross negligence, willful misconduct or violation of Law by SpinCo, and its employees, subcontractors, and third-party providers, except to the extent such Claims are caused by the fraud, gross negligence, willful misconduct or violation of Law by any of the Merger Sub Indemnified Parties.

(b) Merger Sub agrees to release, discharge, defend, indemnify, save and hold harmless SpinCo, the SpinCo Entities and its and their respective members, stockholders, directors, managers, officers, employees and agents, and each of the foregoing's respective heirs, executors, successors and permitted assigns (collectively, the "SpinCo Indemnified Parties"), from and against any and all Claims imposed on, sustained by, incurred or suffered by, or asserted against, any of the SpinCo Indemnified Parties, whether in respect of third-party claims, claims between the Parties, or otherwise, to the extent, directly or indirectly, arising from or related to (i) SpinCo's performance of this Agreement or (ii) fraud, gross negligence, willful misconduct or violation of Law by Merger Sub, and its employees, subcontractors, and third-party providers, except in the case of clauses (i) and (ii), to the extent such Claims are caused by the fraud, gross negligence, willful misconduct or violation of Law by any of the SpinCo Indemnified Parties.

11.2 Limitation on Liability(a) .

(a) No Party or any of its Affiliates shall be liable under this Agreement, or otherwise in connection with the Services to be provided hereunder, for any amount in excess of the aggregate amount of Service Fees received by such Party and its Affiliates from the other Party and its Affiliates pursuant to ARTICLE III and ARTICLE IV of this Agreement.

(b) EXCEPT AS SET FORTH IN THIS ARTICLE XI, IN NO EVENT SHALL ANY PARTY, ITS AFFILIATE(S) OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR AGENTS BE LIABLE TO THE OTHER PARTY WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT, THE PROVISION OR THE FAILURE TO PROVIDE THE SERVICES, THE TERMINATION OF THIS AGREEMENT OR ANY SERVICE OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT, FOR LOSS OF USE, INTERRUPTION OF BUSINESS, ANY INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (IN EACH CASE, OTHER THAN FOR DIRECT CLAIMS BY THIRD PARTIES), REGARDLESS OF THE LEGAL BASIS OF LIABILITY OR LEGAL OR EQUITABLE PRINCIPLE INVOLVED (INCLUDING VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, INDEMNIFICATION, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY, LIABILITY WITHOUT FAULT, OTHER TORT, PERSONAL INJURY, DEATH, DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT, BUSINESS INTERRUPTION OR DOWNTIME COSTS, LOSS OF PROFITS, LOSS OF REVENUES OR OTHERWISE).

11.3 Sole and Exclusive Remedy. The Parties' right to indemnification under this ARTICLE XI shall be the sole and exclusive remedy at Law for a breach of this Agreement.

11.4 Procedures. Any claim for indemnification or defense under this Agreement shall be made in accordance with the procedures set forth in ARTICLE XIII of this Agreement. This ARTICLE XI will survive any expiration or termination of this Agreement.

**ARTICLE XII.
FORCE MAJEURE**

12.1 Force Majeure. SpinCo and its Affiliates shall not be liable to any Service Recipient or any of its Affiliates for any loss, cost or damage for delay or non-performance of any of its obligations hereunder resulting from any requirement or intervention of civil or military authorities or other agencies of the government, or by reason of any other causes whatsoever not reasonably within the control of SpinCo or its Affiliates, including, but not limited to, acts of God, war, riot, insurrection, civil violence or disobedience, blockages, embargoes, sabotage, epidemics, fire, strikes, lock-outs or other industrial or labor disturbances occurring with respect to those sites for which the Services are being provided hereunder, lightning, hurricanes, explosions and delay of carriers (all of the foregoing referred to hereinafter as a “Force Majeure”). Upon the occurrence of a Force Majeure, SpinCo shall notify Merger Sub promptly of the cause of the Force Majeure, and the estimated time that such Force Majeure shall continue. SpinCo shall thereafter use its reasonable efforts to overcome the Force Majeure; provided, however, that the settlement of strikes, lock-outs and other industrial or labor disturbances shall be entirely within the discretion of SpinCo and its Affiliates, and SpinCo and its Affiliates shall not be required to make settlement of strikes, lock-outs and other industrial or labor disturbances by acceding to the demands of any opposing third party or parties when such course is unfavorable in the judgment of SpinCo and its Affiliates. No Service Recipient shall be required to pay for any disrupted Services during the period in which it is not being provided such Services. SpinCo agrees that if it or any of its Affiliates experiences any shortage, interruption, delay, inadequacy or limitation in the availability of any of the Services (by reason of Force Majeure or otherwise) and is unable to fulfill the applicable Service Recipient’s requirements for such Services, SpinCo shall ensure that the applicable Service Recipient is treated no less favorably than any other business of SpinCo in the allocation by SpinCo between such businesses and the applicable Service Recipient of such affected Services. Upon the cessation of Force Majeure, SpinCo will use commercially reasonable efforts to resume its performance with the least possible delay.

12.2 Termination on Force Majeure. If SpinCo’s performance under this Agreement is suspended or rendered impractical by reason of Force Majeure for a period in excess of thirty (30) days during the Term, the applicable Service Recipient shall have the right to terminate this Agreement with respect to the disrupted Services immediately upon written notice to SpinCo. An event of Force Majeure shall not operate to extend the Term or to limit amounts payable for Services rendered on or prior to the actual date of the event of Force Majeure.

**ARTICLE XIII.
DISPUTES**

13.1 Efforts Regarding Resolution Procedure. Each Party agrees to use its reasonable best efforts to resolve disputes under this Agreement by a negotiated resolution between the Parties or as provided for in this ARTICLE XIII.

13.2 Appointed Representatives. Each Party shall appoint a representative who shall be responsible for administering this dispute resolution provision (the “Appointed Representatives”).

13.3 Dispute Resolution Procedure. Except as otherwise provided in this Agreement or in any other Transaction Document, in the event of a controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or any other Transaction Document or otherwise arising out of, or in any way related to, this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby (each, a “Transition Services Agreement Dispute”), the Appointed Representatives shall negotiate in good faith for a reasonable period of time to settle such Transition Services Agreement Dispute; provided, however, that: (a) such reasonable period shall not, unless otherwise agreed to by the relevant Parties in writing, exceed twenty (20) days from the time of receipt by a Party of written notice of such Transition Services Agreement Dispute and (b) the relevant employees from both Parties with knowledge and interest in the dispute shall first have tried to resolve the differences between the Parties. In the event that the Appointed Representatives are unable to resolve any Transition Services Agreement Dispute pursuant to this Section 13.3, either Party may immediately terminate this Agreement (in whole or in part) upon written notice to the other Party. Nothing said or disclosed, nor any document produced, in the course of any negotiations, conferences and discussions in connection with efforts to settle a Transition Services Agreement Dispute that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes.

13.4 Survival of Dispute Resolution Obligations. Notwithstanding the expiration or earlier termination of this Agreement, the Parties' obligations to each other under this ARTICLE XIII regarding events or obligations occurring or arising during the Term shall survive such expiration or earlier termination until fulfilled.

**ARTICLE XIV.
MISCELLANEOUS**

14.1 Notices(a). All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if (a) delivered personally against written receipt, (b) sent by e-mail, (c) mailed by registered or certified mail, postage prepaid, return receipt requested or (d) mailed by reputable international overnight courier, fee prepaid, to the parties hereto at the following addresses or e-mail:

If to Merger Sub or any of the Acquired Entities to:

Kaleyra, Inc.
Via Marco D'Aviano, 2,
Milano MI, Italy
Attention: Dario Calogero
Email: dario.calogero@kaleyra.com

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

DLA Piper LLP (US)
555 Mission Street
Suite 2400
San Francisco, CA 94105
Attention: Jeffrey C. Selman
Email: jeffrey.selman@us.dlapiper.com

and

DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, NY 10020
Attention: James L. Kelly
Ilya A. Bubel
Email: james.kelly@us.dlapiper.com
ilya.bubel@us.dlapiper.com

If to SpinCo or any of the SpinCo Entities to:

Vivial Inc.
160 Inverness Drive West
Suite 250
Englewood, CO 80112
Attention: Richard G. Hallé; Nick Continenza
Email: RHalle@vivial.net; ncontinenza@vivial.net

with copies (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Ackneil M. Muldrow III
Email: trey.muldrow@weil.com

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section 14.1, upon delivery, (x) if delivered by e-mail as provided in this Section 14.1, upon manual or electronic confirmation of delivery, (y) if delivered by mail as provided in this Section 14.1, upon the earlier of the fifth Business Day following mailing and receipt and (z) if delivered by overnight courier as provided in this Section 14.1, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 14.1). Any party hereto may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

14.2 Assignment and Delegation. Except to the extent permitted by Section 1.4(e) of this Agreement with respect to SpinCo's right to subcontract the Services, no Party shall assign or subcontract its rights, duties or obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

14.3 Independent Contractor. SpinCo is and shall remain at all times an independent contractor of the applicable Service Recipient in the performance of all Services hereunder and not as an agent, employee or joint venture counterparty of a Services Recipient. All employees and representatives of SpinCo or persons under contract or agreement with SpinCo to perform such Services shall be and remain employees, representatives or contractors solely of SpinCo and subject only to the supervision and control of SpinCo's supervisory personnel. Each SpinCo shall have the sole right to exercise all authority with respect to such employees and representatives (including the right to select, hire, utilize and discharge such employees and representatives), such employees and representatives will be deemed to be employees or representatives, as applicable, of SpinCo for purposes of compensation and employee benefits, and in no event shall such employees and representatives be deemed to be employees or agents of a Services Recipient.

14.4 Performance. Each Party shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Affiliate of such Party.

14.5 Severability. It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; provided, however, that (a) if the deletion of any provision of this Agreement frustrates an essential purpose(s) of the Agreement or material right(s) of a Party, then such Party may terminate this Agreement without further liability or obligation, and (b) absent such frustration and to the extent legally possible, the Parties shall seek in good faith to agree upon alternate provisions or arrangements to achieve the same purposes as the invalid, illegal or unenforceable provision. If such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

14.6 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, and notwithstanding the fact that certain of the parties may be partnerships or limited liability companies, each Party covenants, agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any of the Parties' or any of their respective Affiliates' former, current or future direct or indirect equity holders, controlling persons, stockholders, directors, officers, employees, agents, members, managers, general or limited partners or assignees (each a "Related Party" and collectively, the "Related Parties"), in each case other than Parent, Merger Sub, SpinCo or any of their respective successors and permitted assignees under this Agreement, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any applicable Law, it being expressly agreed and acknowledged that no Liability whatsoever (whether in contract, tort or otherwise) shall attach to, be imposed on or otherwise be incurred by any of the Related Parties, as such, for any Liability of Merger Sub, SpinCo, the Acquired Entities, the SpinCo Entities or any of their Affiliates under this Agreement or any documents or instruments delivered in connection herewith for any claim based on, in respect of or by reason of such obligations or liabilities or their creation; provided, however, nothing in this Section 14.6 shall relieve or otherwise limit the liability of Parent, Merger Sub, SpinCo or any Affiliate, as such, for any breach or violation of its obligations under such agreements, documents or instruments. The liability limitation provision in this Section 14.6 shall survive termination of this Agreement.

14.7 Interpretation. The headings contained in this Agreement or in any Schedule are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Except when the context requires otherwise, any reference in this Agreement to any Article, clause or Schedule shall be to the Articles, clauses of, and Schedules to, this Agreement. The words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation” and references to dollars or to \$ are expressed in United States currency unless otherwise specifically indicated. To the extent computation of any amounts contemplated by this Agreement include a currency other than U.S. dollars, such amounts shall be converted to U.S. dollars using the USD Equivalent, in accordance with the definition of “Spot Rate” set forth in the Merger Agreement. Reference to any person includes such person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually. Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder, all as in effect on the date hereof. Any reference to the masculine, feminine or neuter gender shall include such other genders and any reference to the singular or plural shall include the other, in each case unless the context otherwise requires. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. When a reference is made in this Agreement to an Article or Schedule, such reference shall be to an Article of or an Schedule to this Agreement unless otherwise indicated.

14.8 Amendment. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed on behalf of each Party and otherwise as expressly set forth herein.

14.9 Waiver. No failure or delay of either Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Parties are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of either Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

14.10 No Third-Party Beneficiaries. Except for SpinCo and Service Recipients or as otherwise expressly provided in this Agreement, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement expressed or implied shall give or be construed to give to any person, other than the Parties, their respective affiliates and Service Recipients and such successors and permitted assigns, any legal or equitable rights under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, (a) the Merger Sub Indemnified Parties shall be third-party beneficiaries of the provisions set forth in Section 11.1(a), (b) the SpinCo Indemnified Parties shall be third-party beneficiaries of the provisions set forth in Section 11.1(b) and (c) the Related Parties shall be third-party beneficiaries of the provisions set forth in Section 14.6.

14.11 Governing Law. All matters relating to or arising out of this Agreement or the other transactions contemplated herein (whether sounding in contract, tort or otherwise) will be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule of any jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

14.12 Submission to Jurisdiction: Waiver of Jury Trial.

(a) Subject to the terms of ARTICLE XIII, each Party irrevocably agrees that any Action arising out of or relating to this Agreement brought by any other Party or its successors or assigns shall be brought and determined in the Court of Chancery of the State of Delaware (or, solely if such courts decline jurisdiction, in any federal court located in the State of Delaware), and each Party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Subject to the terms of ARTICLE XIII, each Party agrees not to commence any Action relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each Party further agrees that notice as provided herein shall constitute sufficient service of process and each Party further waives any argument that such service is insufficient. Subject to the terms of ARTICLE XIII, each hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Action arising out of or relating to this Agreement or the transactions contemplated hereby, (i) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (ii) that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) that (A) the Action in any such court is brought in an inconvenient forum, (B) the venue of such Action is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 14.12.

14.13 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof and that each Party shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy to which such Party is entitled at law, in equity, in contract, in tort or otherwise, in accordance with the express provisions of this Section 14.13. The Parties agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by the other Party, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of such other Party under this Agreement all in accordance with the terms of this Section 14.13. No Party shall be required to provide any bond or other security in connection with seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, all in accordance with the terms of this Section 14.13.

14.14 Consent. To the extent a Party's consent is required under this Agreement or the Schedules hereto, each Party agrees to act in good faith and not unreasonably withhold or delay such consent.

14.15 Conflict. In the event of any conflict between the terms of this Agreement and the Merger Agreement, the terms of this Agreement shall govern. In the event of any conflict between the terms of this Agreement and the Schedules hereto, the terms of the Schedules shall govern.

14.16 Execution of Agreement. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by email or other electronic transfer shall be effective as delivery of a manually executed counterpart to this Agreement.

[SIGNATURE PAGES FOLLOW]

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

VIVIAL MEDIA HOLDINGS, INC.

By: /s/James Continenza

Name: James Continenza

Title: Chief Executive Officer

VOLCANO MERGER SUB, INC.

By: /s/Dario Calogero

Name: Dario Calogero

Title: Chief Executive Officer

[Signature Page to Transition Services Agreement]

Schedule A

Services Provided by SpinCo to Merger Sub for the Acquired Businesses

(See attached)

SEPARATION AND DISTRIBUTION AGREEMENT

DATED AS OF JUNE 1, 2021

by and between

VIVIAL INC.

and

VIVIAL MEDIA HOLDINGS, INC.

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SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT, dated as of June 1, 2021 (this "Agreement"), is entered into by and between Vivial Inc., a Delaware corporation (the "Company") and Vivial Media Holdings, Inc., a Delaware corporation ("SpinCo"). Certain terms used in this Agreement are defined in Section 1.1. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Merger Agreement (as defined below).

W I T N E S E T H:

WHEREAS, the Company, acting through itself and its direct and indirect Subsidiaries, currently conducts the SpinCo Business;

WHEREAS, SpinCo is a newly formed, wholly owned Subsidiary of the Company;

WHEREAS, the Company intends to separate the SpinCo Business from the Acquired Business and to cause the SpinCo Assets to be transferred to SpinCo and the other SpinCo Entities and to cause the SpinCo Liabilities to be assumed by SpinCo and the other SpinCo Entities, subject to the conditions set forth in this Agreement;

WHEREAS, the Company will cause the holders of the outstanding common stock, \$0.01 par value, of the Company (the "Company Common Stock") as of the close of business on the Record Date to receive on a pro rata basis for no consideration all of the issued and outstanding shares of common stock, \$0.01 par value, of SpinCo (the "SpinCo Common Stock") in accordance with a distribution ratio to be determined by the Board of Directors of the Company or a committee thereof (the "Distribution");

WHEREAS, pursuant to the Agreement and Plan of Merger, dated as February 18, 2021 (the "Merger Agreement"), by and among Kaleyra Inc., a Delaware corporation ("Parent"), Volcano Merger Sub, Inc., a Delaware corporation and direct, wholly-owned Subsidiary of Parent ("Merger Sub"), the Company and GSO Special Situations Master Fund LP, an exempted limited partnership formed under the laws of the Cayman Islands, solely in its capacity as the Stockholder Representative, immediately following the Distribution, Merger Sub will merge with and into the Company (the "Merger") and all shares of Company Common Stock shall be converted automatically into and shall thereafter represent the right to receive the consideration described in the Merger Agreement;

WHEREAS, the Board of Directors of each of the Company and SpinCo have approved the Reorganization, the Distribution, the Merger Agreement and the Merger (as applicable); and

WHEREAS, the Company and SpinCo desire to set forth the principal corporate transactions required to effect the Reorganization and the Distribution.

NOW, THEREFORE, in consideration of the foregoing, the representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

(a) "Acquired Business Employees" means all employees of the SpinCo Entities who are dedicated to the Acquired Business (as scheduled on Schedule 1.1(a)).

(b) "Adversarial Action" means (i) an Action by any Acquired Entity, on the one hand, against any SpinCo Entity, on the other hand, or (ii) an Action by any SpinCo Entity, on the one hand, against any Acquired Entity, on the other hand.

(c) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise; provided, however, that, for purposes of this Agreement, no SpinCo Entity shall be deemed to be an Affiliate of any Acquired Entity, and no Acquired Entity shall be deemed to be an Affiliate of any SpinCo Entity, from and after the Distribution Time.

(d) "Approvals or Notifications" means any consents, waivers, approvals, Permits or authorizations to be obtained from, notices, registrations, information or reports to be submitted to, or other filings or consultations to be made with, any third Person, including employee representatives, unions, works councils, health and safety committees, or any Governmental Entity.

(e) "Assets" means any and all assets, properties, claims and rights (including goodwill), wherever located (including in the possession of vendors or other third Persons or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected, or required to be recorded or reflected, on the books and records or financial statements of the applicable Person, including the following:

(i) all Information, cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data and drawings, correspondence and lists, product data and literature, artwork, design, development, business process files and data, quality records and reports and accounting and other books, records, studies, surveys, reports, plans, documents, advertising and promotional materials, and other printed or written materials; artwork; design; development, procedures and files; vendor and customer drawings; quality records and reports and other books, records, ledgers, files, documents, plats, photographs, studies, surveys, reports, plans and documents, operating, production and other manuals, corporate minute books and related stock records, financial records, separate entity Tax Returns and associated Tax records of SpinCo and its Subsidiaries (including of any entity that is treated as a predecessor of SpinCo or any of its Subsidiaries for U.S. federal income tax purposes), and files whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape, electronic or any other form ("Books and Records");

(ii) all apparatus, computers and other electronic data processing and communications equipment, telecommunications equipment and data, electronic storage equipment, fixtures, marketing and transportation systems and related facilities, equipment, furniture, office equipment, tools, apparatus, cables, test devices, prototypes and models and other tangible personal property of any kind;

(iii) all interests in real property of whatever nature, including lessor, sublessor, lessee, sublessee or otherwise;

(iv) all interests in any capital stock or other equity or ownership interests of any Subsidiary or any other Person;

(v) all rights under Contracts and/or any other business arrangements, license agreements, leases of personal property and all claims or rights against any Person relating thereto;

(vi) all deposits, prepaid expenses and letters of credit;

(vii) all written (including in electronic form) technical information, data, research and development information and materials and analyses prepared by consultants and other third Persons;

(viii) all Intellectual Property rights and all physical and tangible materials embodying same;

(ix) all IT Assets;

(x) all prepaid expenses, trade accounts and other accounts and notes receivable (whether current or non-current);

(xi) all interests, rights to causes of action, lawsuits, judgments, claims, counterclaims, rights under express or implied warranties, rights of recovery and rights of setoff of any kind, demands and benefits of any Person, including all claims or rights against any Person arising from the ownership of any Asset, all rights in connection with any bids or offers, causes of action or similar rights, whether accrued or contingent;

(xii) all licenses, Permits, approvals and authorizations which have been issued by any Governmental Entity or other third Person;

(xiii) all interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements; and

(xiv) all cash or cash equivalents, bank accounts, lock boxes and other deposit arrangements.

(f) "Company Trademarks" has the meaning set forth on Schedule 1.1(f).

(g) “Distribution Date” means the date on which the Company distributes all of the issued and outstanding shares of SpinCo Common Stock to the holders of Company Common Stock.

(h) “Distribution Time” means the time at which the Distribution occurs on the Distribution Date, which shall be deemed to be 12:01 a.m., New York City time.

(i) “Excluded SpinCo Records” means (a) any and all Tax Returns and associated Tax records of SpinCo and its Subsidiaries, including, for the avoidance of doubt, any Tax Returns filed on a consolidated basis with any Acquired Entity and associated Tax records; (b) any personnel records for individuals employed by any of the Acquired Entities; (c) any Books and Records not related in any material respect to the SpinCo Business (it being understood that to the extent that such Books and Records relate in part to the SpinCo Business, SpinCo shall be provided access to redacted copies of such records showing only the information that relates to the SpinCo Business); and (d) any Books and Records the transfer of which is prohibited by applicable Law.

(j) “Financial Statements” means the consolidated audited financial statements of Vivial Inc. and its Subsidiaries consisting of the balance sheets of Vivial Inc. and its Subsidiaries as of December 31, 2020 and the related consolidated statements of operations, changes in equity and cash flow including, in each case, the notes thereto.

(k) “Information” means information, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, accountant’s work papers, contracts, instruments, surveys, designs, samples, flow charts, data, computer data, disks, diskettes, tapes, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), other communications containing information not generally known to the public, memoranda and other materials prepared by attorneys and accountants or under their direction (including attorney work product), and all other technical, financial, employee or business information or data.

(l) “Insurance Policies” has the meaning set forth in the Merger Agreement.

(m) “Insurance Proceeds” means those monies (a) received by an insured from an insurance carrier, (b) paid by an insurance carrier on behalf of the insured or (c) received (including by way of setoff) from any third Person in the nature of insurance, contribution or indemnification in respect of any Liability; in any such case net of any applicable premium adjustments (including reserves and retrospectively-rated premium adjustments) and net of any costs or expenses, including Taxes, incurred in connection with the receipt thereof.

(n) “IT Assets” means computers, computer software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology and related equipment, and all dated stores therein or processed thereby.

(o) “Liabilities” means any and all debts, liabilities and obligations of any kind or nature, whether direct or indirect, accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due whether in contract, tort, strict liability or otherwise.

(p) “Party” means the Company or SpinCo, as appropriate, and “Parties” means the Company and SpinCo.

(q) “Record Date” means the close of business on the date determined by the Board of Directors of the Company (or a committee thereof) as the record date for the Distribution.

(r) “Reorganization” means the transfer of the SpinCo Assets that are not already owned by the SpinCo Entities to the SpinCo Entities and the assumption of the SpinCo Liabilities that are not already owned by the SpinCo Entities by the SpinCo Entities, and the transfer of Excluded Assets that are not already owned the Acquired Entities to the Acquired Entities and the assumption of the Excluded Liabilities that are not already owned by the Acquired Entities, all as more fully described in this Agreement and the other Transaction Documents and including the steps set forth in the Plan of Reorganization.

(s) “Service Provider” means, with respect to any Person, any current, former or future employee, officer, consultant, independent contractor or director of such Person.

(t) “Shared Assets” means the Assets identified on Schedule 1.1(t).

(u) “Shared Contracts” means all Contracts to which the Company or any of its Subsidiaries is a party as of immediately prior to the Distribution Time that relate both to the SpinCo Business and the Acquired Business (other than (i) Intercompany Obligations and (ii) any Contracts that are the subject of Transition Services under the Transition Services Agreement, which shall be treated as set forth therein), which all such Shared Contracts are set forth on Schedule 1.1(u).

(v) “SpinCo Business Records” means Books and Records of the SpinCo Entities as of immediately prior to the Distribution Time, excluding Excluded SpinCo Records.

(w) “SpinCo Cash” means the aggregate amount of cash and cash equivalents in accounts held by a SpinCo Entity as of immediately prior to the Distribution Time. For the avoidance of doubt, SpinCo Cash shall not include any amounts included in the calculation of Closing Cash and Closing Net Working Capital.

(x) “SpinCo Contracts” means the following Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of their respective Assets is bound, in each case, as of immediately prior to the Distribution Time (except for any such Contract or part thereof that is expressly contemplated to be retained by or transferred to the Company or any Acquired Entity pursuant to any provision of this Agreement or any other Transaction Document):

(a) any Contract that is primarily related to the SpinCo Business; and

(b) any Contract that is otherwise expressly contemplated pursuant to this Agreement (including Shared Contracts, subject to Section 2.7) or any of the other Transaction Documents to be assigned to SpinCo or any other SpinCo Entity.

- (y) “SpinCo Intellectual Property” means all Intellectual Property owned by the SpinCo Entities.
- (z) “Tax” has the meaning set forth in the Merger Agreement.
- (aa) “Tax Return” has the meaning set forth in the Merger Agreement.
- (bb) “Total SpinCo Debt” means collectively, any Indebtedness incurred by SpinCo or any of its Subsidiaries after the Closing or to the extent not included in the calculation of Closing Indebtedness prior to the Closing.
- (cc) “Transaction Documents” means this Agreement, the Transition Services Agreement and the Transfer Documents, in each case including all annexes, exhibits, schedules, attachments and appendices thereto.
- (dd) “Transfer Documents” means the Pre-Distribution Transfer Documents, the Post-Distribution Company Transfer Documents and the Post-Distribution SpinCo Transfer Documents.
- (ee) “Transition Services Agreement” means the Transition Services Agreement in substantially the form attached hereto as Exhibit A, entered into or to be entered into by and between Merger Sub and SpinCo on or immediately prior to the Distribution Date.
- (ff) “Transition Services” has the meaning set forth in the Transition Services Agreement.

Section 1.2 Other Terms. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Definition</u>	<u>Section</u>
Agreement	Preamble
Applicable Matters	4.6
Appointed Representative	7.13(a)
Books and Records	1.1(d)(i)
Company	Preamble
Company Confidential Information	6.2(b)
Company Controlled Actions	5.2(b)
Company Common Stock	Recitals
Distribution	Recitals
Excluded Assets	2.2(b)
Excluded Liabilities	2.3(b)
Intercompany Obligations	2.6(a)
Merger	Recitals
Merger Agreement	Recitals
Merger Sub	Recitals
Mixed Action	5.2(d)
Plan of Reorganization	2.1(a)
Post-Distribution Company Transfer Documents	2.5(b)
Post-Distribution SpinCo Transfer Documents	2.4(b)

Pre-Closing Occurrence-Based Policies	2.2(a)(vi)
Pre-Distribution Transfer Documents	2.1(c)
Prior Company Counsel	4.6
Privileged Communications	4.6
Representatives	6.2(a)
Separate Action	5.2(c)
Separation Agreement Disputes	7.13(b)
SpinCo Confidential Information	6.2(a)
SpinCo	Preamble
SpinCo Assets	2.2(a)
SpinCo Common Stock	Recitals
SpinCo Controlled Actions	5.2(a)
SpinCo Liabilities	2.3(a)
SpinCo Released Persons	5.1
SpinCo Site	2.2(a)(viii)

ARTICLE II THE REORGANIZATION

Section 2.1 Transfer of Assets and Assumption of Liabilities Prior to the Distribution

(a) In accordance with the plan and structure set forth on Schedule 2.1(a) (such plan and structure being referred to herein as the “Plan of Reorganization”) and to the extent not previously effected pursuant to the steps of the Plan of Reorganization that have been completed prior to the date of this Agreement, prior to the Distribution Time:

(i) SpinCo Assets. The Company shall, and shall cause its applicable Subsidiaries to, assign, transfer, convey and deliver to SpinCo and/or one or more of its Subsidiaries designated by SpinCo, and SpinCo and/or one or more of its Subsidiaries designated by SpinCo, shall accept from the Company and the Company’s applicable Subsidiaries, all of the Company’s and such Subsidiaries’ respective direct or indirect right, title and interest in and to all SpinCo Assets;

(ii) SpinCo Liabilities. SpinCo and/or one or more of its Subsidiaries designated by SpinCo shall accept, assume and agree faithfully to perform, discharge and fulfill the SpinCo Liabilities in accordance with their respective terms (and, for the avoidance of doubt, shall not assume the Excluded Liabilities). SpinCo and such Subsidiaries shall be responsible for all SpinCo Liabilities, regardless of when or where such SpinCo Liabilities arose or arise, or the legal entity that incurred or holds the SpinCo Liability (provided, however, that nothing contained herein shall preclude or inhibit SpinCo from asserting against third parties any defenses available to the legal entity that incurred or holds such SpinCo Liability), or whether the facts on which they are based occurred prior to, at or subsequent to the Distribution Time, regardless of where or against whom such SpinCo Liabilities are asserted or determined or whether asserted or determined prior to the date of this Agreement;

(iii) Excluded Assets. The Company shall cause the SpinCo Entities to assign, transfer, convey and deliver to the Company or one or more of its other Subsidiaries designated by the Company (other than any SpinCo Entity), and the Company or such other Subsidiaries shall accept from the SpinCo Entities, such applicable Person's respective direct or indirect right, title and interest in and to any Excluded Assets; and

(iv) Excluded Liabilities. The Company and/or its Subsidiaries designated by Company (other than any SpinCo Entity) shall accept and assume from the SpinCo Entities and agree faithfully to perform, discharge and fulfill the Excluded Liabilities of such Persons, and the Company and/or its applicable Subsidiaries shall be responsible for all Excluded Liabilities, regardless of when or where such Excluded Liabilities arose or arise, or the legal entity that incurred or holds the Excluded Liability (provided, however, that nothing contained herein shall preclude or inhibit Company from asserting against third parties any defenses available to the legal entity that incurred or holds such Excluded Liability), or whether the facts on which they are based occurred prior to, at or subsequent to the Distribution Time, regardless of where or against whom such Excluded Liabilities are asserted or determined or whether asserted or determined prior to the date of this Agreement.

(b) In furtherance of the assignment, transfer, conveyance and delivery of the SpinCo Assets and the assumption of the SpinCo Liabilities in accordance with Section 2.1(a)(i) and Section 2.1(a)(ii), on the date that such SpinCo Assets are assigned, transferred, conveyed or delivered or such SpinCo Liabilities are assumed: (i) the Company shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, deeds, stock powers, certificates of title, assignments of Contracts and other instruments of transfer, conveyance and assignment as and to the extent reasonably necessary to evidence the transfer, conveyance and assignment of all of the Company's and its Subsidiaries' (other than the SpinCo Entities) right, title and interest in and to such SpinCo Assets and (ii) SpinCo shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such assumptions of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption of the SpinCo Liabilities by SpinCo and its Subsidiaries.

(c) In furtherance of the assignment, transfer, conveyance and delivery of the Excluded Assets and the assumption of the Excluded Liabilities in accordance with Section 2.1(a)(iii) and Section 2.1(a)(iv), on the date that such Excluded Assets are assigned, transferred, conveyed or delivered or such Excluded Liabilities are assumed: (i) SpinCo shall execute and deliver, and shall cause the SpinCo Entities to execute and deliver, such bills of sale, deeds, stock powers, certificates of title, assignments of Contracts and other instruments of transfer, conveyance and assignment as and to the extent reasonably necessary to evidence the transfer, conveyance and assignment of all of SpinCo's and such Person's right, title and interest in and to such Excluded Assets and (ii) the Company shall execute and deliver, and shall cause its Subsidiaries (other than the SpinCo Entities) to execute and deliver, such assumptions of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption of the Excluded Liabilities by the Company and its Subsidiaries. All of the foregoing documents contemplated by Section 2.1(b) and this Section 2.1(c) shall be referred to collectively herein as the "Pre-Distribution Transfer Documents".

(d) Without limiting any other provision hereof, in connection with the Reorganization contemplated by Section 2.1(a), each of the Company and SpinCo will take, and will cause the Acquired Entities or the SpinCo Entities (as applicable) to take, such actions as are reasonably necessary to consummate the transactions contemplated by the Plan of Reorganization (whether prior to, at or after the Distribution Time).

Section 2.2 Allocation of Assets.

(a) For purposes of this Agreement, "SpinCo Assets" shall mean the following Assets, except for Excluded Assets:

(i) the shares of capital stock of, or any other equity or ownership interests in the Subsidiaries held, directly or indirectly, by the Company, listed on Schedule 2.2(a)(i);

(ii) (A) the SpinCo Contracts and (B) any Shared Contracts to the extent allocated to SpinCo pursuant to Section 2.7;

(iii) the Assets of any SpinCo Entity reflected on the Financial Statements as specifically being allocated to a SpinCo Entity and any Assets acquired by the SpinCo Business or any SpinCo Entity subsequent to the date of the Financial Statements which, had they been so acquired on or before such date and owned as of such date, would have been reflected in the Financial Statements if prepared on a consistent basis; provided that no Asset shall be deemed to be a SpinCo Asset solely as a result of this clause (iii) if such Asset is within the category or type of Asset expressly covered by (A) another subsection of this Section 2.2(a), (B) a subsection of Section 2.2(b) or (C) by the terms of another Transaction Document;

(iv) all cash and cash equivalents held by any SpinCo Entity or any Acquired Entity, including the SpinCo Cash and all bank accounts, lock boxes and other deposit arrangements exclusively used in, held for use in or related to the SpinCo Business but excluding the Closing Cash and Closing Net Working Capital;

(v) the SpinCo Intellectual Property and the Company Trademarks and any associated rights, including, but not limited to, any and all rights to sue and recover for past, present and future infringement, misappropriation or other violation thereof and all remedies associated therewith;

(vi) subject to Section 6.3 (including any limitations or obligations of any SpinCo Entity thereunder), to the terms of the applicable Insurance Policies, the rights of any SpinCo Entity under any occurrence-based Insurance Policies of the Company or its Subsidiaries (as applicable) in place prior to the Distribution Date under which SpinCo or any other SpinCo Entity is insured (the "Pre-Closing Occurrence-Based Policies") (it being understood that any retrospective premiums, deductibles or other similar obligations arising from any claim(s) by or on behalf of any SpinCo Entity under such Pre-Closing Occurrence-Based Policies shall be borne by the SpinCo Entities); provided further that nothing in this clause shall be deemed to constitute (or to reflect) an assignment of any or all of such Pre-Closing Occurrence-Based Insurance Policies themselves (as distinguished from a grant of a right to access coverage under such Pre-Closing Occurrence Based Policies for the Assumed Liabilities, as provided in Section 6.3), to SpinCo or any other SpinCo Entity;

(vii) the leases, subleases, licenses or other agreements set forth on Schedule 2.2(a)(vii);

(viii) fixtures, office equipment, tangible IT Assets, furnishings and other tangible property located at a physical site of which the leasehold or subleasehold interest is being transferred to or retained by any SpinCo Entity, and which is not subject to a site division, a lease or sublease back to an Acquired Entity as of the Distribution Time (a "SpinCo Site"), but excluding the items listed on Schedule 2.2(a)(viii) (in each case excluding any such tangible property owned by Persons other than the Company and its Subsidiaries as of immediately prior to the Distribution Time; provided that personal computers and other personal equipment shall be retained by the Party who, following the Distribution Time, retains the services of the applicable Service Provider who, prior to the Distribution Time, used such personal computer);

(ix) originals or, to the extent originals are not available by reason other than that such originals are Excluded SpinCo Business Records, copies of all SpinCo Business Records that are located at a SpinCo Site and copies of all other SpinCo Business Records (but not, for the avoidance of doubt, such SpinCo Business Records themselves); and

(x) all other Assets that are expressly provided by this Agreement or any other Transaction Document as Assets to be transferred to SpinCo or any other SpinCo Entity.

(b) For the purposes of this Agreement, "Excluded Assets" shall mean the following Assets that are owned, leased or licensed, at or prior to the Distribution Time, by the Company or any of its Subsidiaries (without duplication):

(i) the Assets listed or described on Schedule 2.2(b)(i);

(ii) the Closing Cash and the Closing Net Working Capital;

(iii) the shares of capital stock of, or any other equity or ownership interests in, the Subsidiaries held, directly or indirectly, by the Company that are not SpinCo Entities;

(iv) (A) except as provided in clause (B), other Contracts that are not primarily related to the SpinCo Business and (B) any Shared Contracts, to the extent not allocated to SpinCo pursuant to Section 2.7;

(v) all Company Intellectual Property (except as otherwise provided in Section 2.2(a));

(vi) the leases, subleases, licenses or other agreements governing the leased real property allocated to any Acquired Entity set forth on Schedule 2.2(b)(vi);

(vii) the Excluded SpinCo Records; and

(viii) all other Assets (A) that are not included as SpinCo Assets pursuant to Section 2.2(a) or (B) that are expressly contemplated by this Agreement or any other Transaction Document as Assets to be retained by the Company or any other Acquired Entity.

Section 2.3 Allocation of Liabilities.

(a) For the purposes of this Agreement, "SpinCo Liabilities" shall mean the following Liabilities (without duplication):

(i) all Liabilities to the extent relating to, arising out of or resulting from:

(A) the operation of the SpinCo Business, as conducted at any time before, at or after the Distribution Time;

(B) that certain Letter Agreement, dated as of March 26, 2020, by and between Guggenheim Securities, LLC and the

Company;

(C) that certain Engagement Letter, dated as of April 1, 2020, by and between FTI Consulting, Inc. and the Company; or

(D) the SpinCo Assets.

(ii) the Liabilities of any SpinCo Entity reflected as Liabilities of the SpinCo Business in the Financial Statements including, for the avoidance of doubt, all accounts payable and deferred revenue reflected therein, and all Liabilities relating to the SpinCo Business arising or assumed after the date of the Financial Statements which, had they arisen or been assumed on or before such date and been retained as of such date, would have been reflected in the Financial Statements if prepared on a consistent basis, subject, in each case, to any discharge of such Liabilities subsequent to the date of the Financial Statements;

(iii) the Liabilities arising out of or resulting from the Total SpinCo Debt; and

(iv) all other Liabilities that are expressly provided by this Agreement or any other Transaction Document as Liabilities to be assumed by SpinCo or any other SpinCo Entity, including Taxes resulting from the Reorganization or the Distribution, and all agreements, obligations and Liabilities of SpinCo or any other SpinCo Entity under this Agreement or any of the other Transaction Documents.

(b) For the purposes of this Agreement, "Excluded Liabilities" shall mean (without duplication):

(i) all Liabilities of the Company or its Subsidiaries to the extent such Liabilities are not SpinCo Liabilities;

(ii) all Liabilities, whether presently in existence or arising after the date of this Agreement, relating to fees, commissions or expenses owed to any broker, finder, investment banker, accountant, attorney or other intermediary or advisor engaged by any Acquired Entity or, to the extent the relevant engagement was entered into prior to the Distribution Time, any SpinCo Entity, in each case in connection with the transactions contemplated by this Agreement or the Transaction Documents (other than, for the avoidance of doubt, to the extent otherwise provided in the Merger Agreement or any Transaction Document), but only to the extent such Liability is Indebtedness or a Company Transaction Expense (as such term is defined in the Merger Agreement) each payable in accordance with Sections 2.4(a)(i) and (ii) of the Merger Agreement, respectively, and excluding, for the avoidance of doubt, the Liabilities set forth in Section 2.3(a)(i)(B) and Section 2.3(a)(i)(C);

(iii) all Liabilities to the extent relating to, arising out of or resulting from the indemnification of any director, officer, manager, agent or employee of the Company or any of its Affiliates who was a director, officer, manager, agent or employee of the Company or any of its Affiliates (including the SpinCo Entities) on or prior to the Distribution Time to the extent such director, officer, manager, agent or employee is or becomes a named defendant in any shareholder derivative suit brought by shareholders of the Company against the Company arising from the transactions contemplated by this Agreement or the Merger Agreement, with respect to which he or she was entitled to such indemnification pursuant to then-existing obligations;

(iv) all Liabilities relating to any Excluded Asset; and

(v) all other Liabilities of the Company and its Subsidiaries that are expressly contemplated by this Agreement or any other Transaction Document as Liabilities to be retained or assumed by the Company or any other Acquired Entity, and all agreements, obligations and other Liabilities of the Company or any Acquired Entity under this Agreement or any of the other Transaction Documents.

Section 2.4 Transfer of Excluded Assets and Assumption of Excluded Liabilities Not Effected at or Prior to the Distribution Time

(a) Subject to Section 2.4(d), to the extent any Excluded Asset is transferred or assigned to, or any Excluded Liability is assumed by, any SpinCo Entity at or prior to the Distribution Time, or is owned or held by any SpinCo Entity after the Distribution Time, from and after the Distribution Time:

(i) SpinCo shall, and shall cause its applicable Subsidiaries to, promptly assign, transfer, convey and deliver to the Company or certain of its Subsidiaries designated by the Company, and the Company or such Subsidiaries shall accept from SpinCo and its applicable Subsidiaries, all of SpinCo's and such Subsidiaries' respective right, title and interest in and to such Excluded Assets; and

(ii) The Company and/or its Subsidiaries designated by Company shall promptly accept, assume and agree faithfully to perform, discharge and fulfill all such Excluded Liabilities in accordance with their respective terms.

(b) In furtherance of the assignment, transfer, conveyance and delivery of Excluded Assets and the assumption of Excluded Liabilities provided for in Section 2.4(a)(i) and Section 2.4(a)(ii) and the other Transaction Documents and without any additional consideration therefor: (i) SpinCo shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, deeds, stock powers, certificates of title, assignments of Contracts and other instruments of transfer, conveyance and assignment as and to the extent reasonably necessary to evidence the transfer, conveyance and assignment of all of SpinCo's and its Subsidiaries' right, title and interest in and to the Excluded Assets to Company and its Subsidiaries, and (ii) the Company shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such assumptions of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption of the Excluded Liabilities by the Company or its Subsidiaries. All of the foregoing documents contemplated by this Section 2.4(b) shall be referred to collectively herein as the "Post-Distribution SpinCo Transfer Documents".

(c) To the extent that the transfer or assignment of any Excluded Asset or the assumption of any Excluded Liability requires any Approvals or Notifications, the Parties shall use their reasonable best efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that except to the extent expressly provided in Section 6.4 or in any of the other Transaction Documents, neither the Company nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial or commercial accommodation) to any Person in order to obtain or make such Approvals or Notifications; provided, further, that the obligation to obtain or make such Approvals or Notifications shall terminate on the date that is twenty-four (24) months after the Distribution.

(d) If and to the extent that the valid, complete and perfected transfer or assignment to the Acquired Entities of any Excluded Assets or the assumption by the Acquired Entities of any Excluded Liabilities would be a violation of applicable Law or require any Approval or Notification that has not been made or obtained at or prior to the Distribution Time, then, unless the Parties shall mutually otherwise determine, the transfer or assignment to the Acquired Entities of such Excluded Assets or the assumption by the Acquired Entities of such Excluded Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made. Notwithstanding the foregoing, any such Excluded Assets or Excluded Liabilities shall continue to constitute Excluded Assets and Excluded Liabilities for all other purposes of this Agreement.

(e) If any transfer or assignment of any Excluded Asset or any assumption of any Excluded Liability intended to be transferred, assigned or assumed under this Agreement or other Transaction Documents is not consummated at or prior to the Distribution Time, whether as a result of the provisions of Section 2.4(d) or for any other reason, then the Parties shall cooperate to effect such transfers as promptly following the Distribution Time as practicable and, prior to the effectiveness of such transfer of Assets or assumption of Liabilities, the SpinCo Entity retaining such Excluded Asset or such Excluded Liability, as the case may be, shall thereafter hold such Excluded Asset in trust for the use and benefit of the Acquired Entity entitled thereto (at the expense of the Acquired Entity entitled thereto) and retain such Excluded Liability for the account of the Acquired Entity and otherwise enter into mutually acceptable arrangements, including subcontracting, sublicensing, subleasing, back-to-back agreement, or other similar arrangement, to convey the economic rights and obligations relating to such Excluded Assets or Excluded Liability to the Acquired Entities. In addition, the SpinCo Entity retaining such Excluded Asset or such Excluded Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Excluded Asset or Excluded Liability in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the Acquired Entity to whom such Excluded Asset is to be transferred or assigned, or which will assume such Excluded Liability, as the case may be, in order to place Acquired Entity in the same position as if such Excluded Asset or Excluded Liability had been transferred, assigned or assumed as contemplated hereby and so that all the benefits and burdens relating to such Excluded Asset or Excluded Liability, as the case may be, including use, risk of loss, potential for gain and dominion, control and command over such Excluded Asset or Excluded Liability, as the case may be, are to inure from and after the Distribution Time to the Acquired Entities. Except to the extent otherwise required by applicable Law, each of the Company and SpinCo shall, and shall cause its Affiliates to, (i) for all U.S. federal (and applicable state, local and foreign) income tax purposes, treat any Excluded Asset and any Excluded Liability transferred, assigned or assumed after the Distribution Time pursuant to this Section 2.4(c) as having been so transferred, assigned or assumed prior to the Distribution Time pursuant to the Reorganization and (ii) file all Tax Returns in a manner consistent with such treatment and not take any Tax position inconsistent therewith.

(f) If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Excluded Asset or the deferral of assumption of any Excluded Liability pursuant to Section 2.4(d), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Excluded Assets or the assumption of any Excluded Liabilities have been removed, the transfer or assignment of the applicable Excluded Asset or the assumption of the applicable Excluded Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable other Transaction Document.

(g) Any SpinCo Entity retaining an Excluded Asset or Excluded Liability due to the deferral of the transfer or assignment of such Excluded Asset or the deferral of the assumption of such Excluded Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced (or otherwise made available or agreed in advance to be reimbursed) by the Company or the Acquired Entity entitled to the Excluded Asset or Excluded Liability, as the case may be, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by the Company or the Acquired Entity entitled to such Excluded Asset or Excluded Liability.

Section 2.5 Transfer of SpinCo Assets and Assumption of SpinCo Liabilities Not Effected at or Prior to the Distribution Time

(a) Subject to Section 2.5(d), to the extent any SpinCo Asset is transferred or assigned to, or any SpinCo Liability is assumed by, any Acquired Entity at or prior to the Distribution Time, or is owned or held by any Acquired Entity after the Distribution Time, from and after the Distribution Time:

(i) The Company shall, and shall cause its applicable Subsidiaries to, promptly assign, transfer, convey and deliver to SpinCo or certain of its Subsidiaries designated by SpinCo, and SpinCo or such Subsidiaries shall accept from the Company and its applicable Subsidiaries, all of the Company's and such Subsidiaries' respective right, title and interest in and to such SpinCo Assets; and

(ii) SpinCo and/or its Subsidiaries designated by SpinCo shall promptly accept, assume and agree faithfully to perform, discharge and fulfill all such SpinCo Liabilities in accordance with their respective terms.

(b) In furtherance of the assignment, transfer, conveyance and delivery of SpinCo Assets and the assumption of SpinCo Liabilities provided for in Section 2.5(a)(i) and Section 2.5(a)(ii) and the other Transaction Documents and without any additional consideration therefor, and except with respect to matters addressed by the Intellectual Property Matters Agreement: (i) the Company shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, deeds, stock powers, certificates of title, assignments of Contracts and other instruments of transfer, conveyance and assignment as and to the extent reasonably necessary to evidence the transfer, conveyance and assignment of all of the Company's and its Subsidiaries' right, title and interest in and to the SpinCo Assets to SpinCo and its Subsidiaries, and (ii) SpinCo shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such assumptions of Contracts and other instruments of assumption as and to the extent reasonably necessary to evidence the valid and effective assumption of the SpinCo Liabilities by SpinCo or its Subsidiaries. All of the foregoing documents contemplated by this Section 2.5(b) shall be referred to collectively herein as the "Post-Distribution Company Transfer Documents".

(c) To the extent that the transfer or assignment of any SpinCo Asset or the assumption of any SpinCo Liability requires any Approvals or Notifications, the Parties shall use their reasonable best efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that except to the extent expressly provided in Section 6.4 or in any of the other Transaction Documents, neither the Company nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial or commercial accommodation) to any Person in order to obtain or make such Approvals or Notifications; provided, further, that the obligation to obtain or make such Approvals or Notifications shall terminate on the date that is twenty-four (24) months after the Distribution.

(d) If and to the extent that the valid, complete and perfected transfer or assignment to the SpinCo Entities of any SpinCo Assets or assumption by the SpinCo Entities of any SpinCo Liabilities would be a violation of applicable Law or require any Approval or Notification that has not been made or obtained at or prior to the Distribution Time then, unless the Parties shall mutually otherwise determine, the transfer or assignment to the SpinCo Entities of such SpinCo Assets or the assumption by the SpinCo Entities of such SpinCo Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made. Notwithstanding the foregoing, any such SpinCo Assets or SpinCo Liabilities shall continue to constitute SpinCo Assets and SpinCo Liabilities for all other purposes of this Agreement.

(e) If any transfer or assignment of any SpinCo Asset or any assumption of any SpinCo Liability intended to be transferred, assigned or assumed under this Agreement or the other Transaction Documents is not consummated at or prior to the Distribution Time, whether as a result of the provisions of Section 2.5(d) or for any other reason, then the Parties shall cooperate to effect such transfers as promptly following the Distribution Time as practicable and, prior to the effectiveness of such transfer of Assets or assumption of Liabilities, the Acquired Entity retaining such SpinCo Asset or such SpinCo Liability, as the case may be, shall thereafter hold such SpinCo Asset in trust for the use and benefit of the SpinCo Entity entitled thereto (at the expense of the SpinCo Entity entitled thereto) and retain such SpinCo Liability for the account of the SpinCo Entity and otherwise enter into mutually acceptable arrangements, including subcontracting, sublicensing, subleasing, back-to-back agreement, or other similar arrangement, to convey the economic rights and obligations relating to such SpinCo Assets or SpinCo Liability to the SpinCo Entities. In addition, the Acquired Entity retaining such SpinCo Asset or such SpinCo Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such SpinCo Asset or SpinCo Liability in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the SpinCo Entity to whom such SpinCo Asset is to be transferred or assigned, or which will assume such SpinCo Liability, as the case may be, in order to place such SpinCo Entity in the same position as if such SpinCo Asset or SpinCo Liability had been transferred, assigned or assumed as contemplated hereby and so that all the benefits and burdens relating to such SpinCo Asset or SpinCo Liability, as the case may be, including use, risk of loss, potential for gain and dominion, control and command over such SpinCo Asset or SpinCo Liability, as the case may be, are to inure from and after the Distribution Time to the SpinCo Entities. Except to the extent otherwise required by applicable Law, each of the Company and SpinCo shall, and shall cause its Affiliates to, (i) for all U.S. federal (and applicable state, local and foreign) income tax purposes, treat any SpinCo Asset and any SpinCo Liability transferred, assigned or assumed after the Distribution Time pursuant to this Section 2.5(e) as having been so transferred, assigned or assumed prior to the Distribution Time pursuant to the Reorganization and (ii) file all Tax Returns in a manner consistent with such treatment and not take any Tax position inconsistent therewith.

(f) If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any SpinCo Asset or the deferral of assumption of any SpinCo Liability pursuant to Section 2.5(d), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any SpinCo Asset or the assumption of any SpinCo Liability have been removed, the transfer or assignment of the applicable SpinCo Asset or the assumption of the applicable SpinCo Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable other Transaction Document.

(g) Any Acquired Entity retaining a SpinCo Asset or SpinCo Liability due to the deferral of the transfer or assignment of such SpinCo Asset or the deferral of the assumption of such SpinCo Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced (or otherwise made available or agreed in advance to be reimbursed) by SpinCo or the SpinCo Entity entitled to the SpinCo Asset or SpinCo Liability, as the case may be, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by SpinCo or the SpinCo Entity entitled to such SpinCo Asset or SpinCo Liability.

Section 2.6 Termination of Intercompany Contracts; Settlement of Intercompany Payables and Receivables

(a) Except as set forth in Section 2.6(b), in furtherance of the release and other provisions of Section 5.1, SpinCo and each SpinCo Entity, on the one hand, and the Company and each Acquired Entity, on the other hand, hereby terminate, effective as of the Distribution Time and in accordance with applicable Law, any and all Contracts and intercompany Liabilities (subject to Section 2.6(c)), whether or not in writing, and whether or not such subject Contract constitutes a SpinCo Material Contract, between or among SpinCo and/or any SpinCo Entity, on the one hand, and the Company and/or any Acquired Entity, on the other hand, that are effective or outstanding as of immediately prior to the Distribution Time (collectively, the “Intercompany Obligations”). No such terminated Contract (including any provision thereof that purports to survive termination) or intercompany Liability shall be of any further force or effect from and after the Distribution Time, no Acquired Entity nor any SpinCo Entity shall have any rights or obligations thereunder and all Parties shall be released from all Liabilities thereunder other than the Liability to settle any Intercompany Obligations as provided in Section 2.6(c). Each Party shall, at the reasonable request of any other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.6(a) shall not apply to any of the following Contracts (or to any of the provisions thereof):

(i) this Agreement, the other Transaction Documents and the Merger Agreement (and each other Contract expressly contemplated by this Agreement, any other Transaction Document or the Merger Agreement to be entered into or continued by the Parties or any of the Acquired Entities or the SpinCo Entities after the Distribution Time);

(ii) any Contracts to which any Person, other than the Parties and their respective wholly owned Subsidiaries, is a party;

(iii) any confidentiality or non-disclosure agreements among any SpinCo Entity, any Acquired Entity and any of their respective employees, including any obligation not to disclose privileged information; and

(iv) any Contract listed on Schedule 2.6(b)(iv).

(c) Any intercompany payables or receivables between the SpinCo Business and the Acquired Business shall be eliminated, by discharge or otherwise, cancelled in their entirety, effective immediately prior to the Distribution Time by the Party owing such amount (except for any such intercompany payables or receivables arising pursuant to a Transaction Document, which shall instead be settled in accordance with the terms of such Transaction Document). To the extent the parties determine that there are intercompany payables or receivables between the SpinCo Business and the Acquired Business outstanding as of the Distribution Time which have not been paid, eliminated, discharged or otherwise in accordance with this Agreement, the parties shall, as promptly as practicable after the Distribution Time, pay, settle or otherwise eliminate such outstanding amounts by means of cash payment (or as otherwise agreed by the parties).

Section 2.7 Shared Assets; Shared Contracts.

(a) The Parties shall use their reasonable best efforts to separate, as soon as practicable and to the extent practicable prior to the Distribution Time, the Shared Assets into separate Assets so that the SpinCo Business will remain entitled to the rights and benefits, and shall be subject to the Liabilities, with respect to or arising from each Shared Asset to the extent related to the SpinCo Business on substantially the same terms and conditions applicable to the SpinCo Business immediately prior to the Distribution Time with respect to such Shared Asset, and the Company will retain the rights and benefits, and shall be subject to the Liabilities, with respect to or arising from each Shared Asset to the extent related to the Acquired Business on substantially the same terms and conditions applicable to the Acquired Business immediately prior to the Distribution Time with respect to such Shared Assets; provided, however, that except to the extent expressly provided in Section 6.4 or in any of the other Transaction Documents, neither the Company nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial or commercial accommodation) to any Person in order to obtain or make any Approvals or Notifications necessary to effect such separation of Shared Assets. If any third party that is entitled to consent to the separation of the Shared Asset has not provided such consent or if the separation of a Shared Asset has not been completed as of the Distribution Date for any other reason, then the Parties shall use their reasonable best efforts to develop and implement mutually agreed arrangements (including subcontracting, sublicensing, subleasing or back-to-back agreement) to pass along to, and make available for use by, the SpinCo Entities the benefit and the Liabilities (including any Tax Liabilities) of the portion of any such Shared Asset related to the SpinCo Business and to pass along to, and make available for use by, the Acquired Entities the benefit and the Liabilities (including any Tax Liabilities) of the portion of the Shared Asset related to the Acquired Business, as the case may be. No Acquired Entity shall claim depreciation, amortization or any other tax benefit with respect to the portion of any such Shared Asset related to the SpinCo Business and no SpinCo Entity shall claim depreciation, amortization or any other tax benefit with respect to the portion of any such Shared Asset related to the Acquired Business. If and when any such consent is obtained, the Shared Asset will be separated in accordance with this Section 2.7. The obligations set forth in this Section 2.7 shall terminate on the date that is twenty-four (24) months after the Distribution Date.

(b) The Parties shall use their reasonable best efforts to complete the action with respect to each Shared Contract set forth under the column labeled "SDA Action" on Schedule 1.1(u), as soon as practicable and to the extent practicable prior to the Distribution Time, so that (i) the SpinCo Business will remain entitled to the rights and benefits, and shall be subject to the Liabilities, with respect to or arising from each Shared Contract to the extent related to the SpinCo Business on substantially the same terms and conditions applicable to the SpinCo Business immediately prior to the Distribution Time under such Shared Contract, and (ii) the Company will retain the rights and benefits, and shall be subject to the Liabilities, with respect to or arising from each Shared Contract to the extent related to the Acquired Business on substantially the same terms and conditions applicable to the Acquired Business immediately prior to the Distribution Time with respect to such Shared Contracts (it being understood that Shared Contracts may include volume-based pricing or other incentive mechanisms or pricing benefits that will not be retained), as applicable; provided, however, that except to the extent expressly provided in Section 6.4 or in any of the other Transaction Documents, neither the Company nor SpinCo shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial or commercial accommodation) to any Person in order to obtain or make any Approvals or Notifications necessary to effect such separation of Shared Contracts. If a counterparty to any Shared Contract that is entitled under the terms of the Shared Contract to consent to the assignment of, separation of, or entry into a new standalone with respect to, the Shared Contract has not provided such consent or if the separation of, or entry into a new standalone with respect to, a Shared Contract has not been completed as of the Distribution Date for any other reason, then the Parties shall use their reasonable best efforts to promptly develop and implement mutually agreed arrangements (including subcontracting, sublicensing, subleasing or back-to-back agreement) to pass along to, and make available for use by, the SpinCo Entities the benefit and the Liabilities (including any Tax Liabilities) of the portion of any such Shared Contract related to the SpinCo Business and to pass along to, and make available for use by, the Acquired Entities the benefit and the Liabilities (including any Tax Liabilities) of the portion of the Shared Contract related to the Acquired Business, as the case may be. No Acquired Entity shall claim depreciation, amortization or any other tax benefit with respect to the portion of any such Shared Contract related to the SpinCo Business and no SpinCo Entity shall claim depreciation, amortization or any other tax benefit with respect to the portion of any such Shared Contract related to the Acquired Business. If and when any such consent is obtained, the Shared Contract will be separated in accordance with this Section 2.7. With respect to each Shared Contract, the obligations set forth in this Section 2.7 shall terminate upon the date that is twenty four (24) months after the Distribution Date.

(c) Without limiting the foregoing, pending the separation of each Shared Asset or Shared Contract, the Parties shall (and shall cause their respective Subsidiaries to) use their reasonable best efforts to maintain good relations with any obligees or other counterparties in connection with such Shared Asset or Shared Contract, keep such Shared Asset in good condition (ordinary course wear and tear excepted) and, in the case of Shared Contracts, comply in all material respects with the terms thereof and refrain from voluntarily terminating such Shared Contract.

(d) Except to the extent otherwise required by applicable Law, each of the Company and SpinCo shall, and shall cause its Affiliates to, (i) for all U.S. federal (and applicable state, local and foreign) income tax purposes, treat the portion of each Shared Asset and each Shared Contract the rights and benefits of which inure to it or any Acquired Entity or SpinCo Entity (as applicable) as Assets owned by, and/or Liabilities of, as applicable, it or the Acquired Entities or the SpinCo Entities, as applicable, as of no later than immediately prior to the Effective Time, and (ii) file all Tax Returns in a manner consistent with such treatment and not take any Tax position inconsistent therewith.

Section 2.8 Transfer of Acquired Business Employees. Effective immediately prior to the Distribution Time, each Acquired Business Employee with any SpinCo Entity shall be offered employment by mGage, LLC, a Delaware limited liability company and an Acquired Entity (“mGage”), and each Acquired Business Employee who accepts such offer shall become an employee of mGage effective immediately prior to, and contingent upon, the Distribution Time.

Section 2.9 Sublease of Dominican Republic Lease. Merger Sub and SpinCo shall negotiate in good faith for Merger Sub’s sublease (the “Sublease”) of the sixth floor of the leased real property located in Santo Domingo, Dominican Republic effective as of or prior to the expiration of the Transition Services to be provided by SpinCo to Merger Sub with respect to the Dominican Republic (as described in Schedule A to the Transition Services Agreement) in accordance with the Transition Services Agreement. The Sublease shall contain commercially reasonable terms mutually agreeable between Merger Sub and SpinCo for use by Merger Sub or an Affiliate of Merger Sub.

Section 2.10 Post-Distribution Payments or Reimbursements. As between the Company (and the other Acquired Entities) and SpinCo (and the other SpinCo Entities), except to the extent prohibited by applicable Law, all payments and reimbursements received after the Distribution Time by either Party (or any Acquired Entity or SpinCo Entity, as applicable) to which the other Party (or any Acquired Entity or any SpinCo Entity, as applicable) is entitled under this Agreement shall be held by such receiving Party in trust for the use and benefit of the Party entitled thereto and, within thirty (30) days of receipt by such receiving Party of any such payment or reimbursement, such receiving Party shall pay over, or shall cause the applicable Acquired Entity or SpinCo Entity to pay over to the other Party or the applicable Acquired Entity or SpinCo Entity, the amount of such payment or reimbursement without right of setoff, and shall forward any all material supporting documents including copies of checks documenting such payment or reimbursement.

Section 2.11 Post-Distribution Communications. After the Distribution Time, each Party or any other Acquired Entity or SpinCo Entity may receive mail, packages and other communications properly belonging to the other Party or any other Acquired Entity or SpinCo Entity (as applicable). At all times after the Distribution Time, each Party and the other Acquired Entities and SpinCo Entities (as applicable) are hereby authorized to receive and open all mail, packages and other communications received by such Party or other Acquired Entity or SpinCo Entity (as applicable) that belongs to the other Party or any other Acquired Entity or SpinCo Entity (as applicable) if such Party is not able to reasonably determine to which Party such mail, package or other communication properly belongs without opening any of the foregoing, and to the extent that such mail, packages or other communications do not relate to the business of the receiving Party or any other Acquired Entity or SpinCo Entity (as applicable), the receiving Party or other Acquired Entity or SpinCo Entity (as applicable) shall promptly deliver such mail, packages or other communications (or, in case the same also relates to the business of the receiving Party or Acquired Entity or SpinCo Entity (as applicable), copies thereof) to the other Party as provided for in Section 7.3. The provisions of this Section 2.11 are not intended to, and shall not, be deemed to, constitute an authorization by any Party to permit the other to accept service of process on its behalf, and no Party is or shall be deemed to be the agent of any other Party for service of process purposes. The provisions of this Section 2.11 are not intended to, and shall not, be deemed to constitute (a) a disclosure of Privileged Communications or waiver of attorney-client privilege or (b) a disclosure of SpinCo Confidential Information or Company Confidential Information.

ARTICLE III THE DISTRIBUTION

Section 3.1 Actions at or Prior to the Distribution Time Prior to the Distribution Time and subject to the terms and conditions set forth herein, the following shall occur, the Company and SpinCo shall cooperate to cause the conditions to the Distribution set forth in Section 3.2 to be satisfied and to effect the Distribution at the Distribution Time upon such satisfaction (or waiver).

Section 3.2 Conditions Precedent to the Distribution. In no event shall the Distribution occur unless each of the following conditions shall have occurred:

(a) the Reorganization shall have been completed substantially in accordance with the Plan of Reorganization (other than those steps that are expressly contemplated to occur at or after the Distribution);

(b) the consummation or satisfaction of the actions set forth in Section 3.1(a); and

(c) the satisfaction or waiver of the conditions set forth in Article VI of the Merger Agreement, in each case other than those conditions that, by their nature, are to be satisfied contemporaneously with the Distribution or the Merger.

Section 3.3 The Distribution. The Board of Directors of the Company, in accordance with applicable Law, shall establish (or designate Persons to establish) a Record Date and the Distribution Date, and the Company shall establish appropriate procedures in connection with, and to effectuate in accordance with applicable Law, the Distribution. All shares of SpinCo Common Stock held by the Company on the Distribution Date shall be distributed to the holders of record of Company Common Stock in a manner mutually agreeable by the Company and SpinCo. Each holder of Company Common Stock on the Record Date shall be entitled to receive for each Company Common Share held by such holder on the Record Date a number of shares of SpinCo Common Stock equal to (x) the total number of shares of SpinCo Common Stock held by Company on the Distribution Date, multiplied by (y) a fraction, the numerator of which is the number of shares of Company Common Stock held by such holder on the Record Date and the denominator of which is the total number of shares of Company Common Stock outstanding on the Record Date.

ARTICLE IV ACCESS TO INFORMATION

Section 4.1 Access to Information. For a period commencing on the Distribution Date and ending on the sixth anniversary of the Distribution Date, the Parties shall use commercially reasonable efforts to maintain all Information relating to periods ending on or prior to the Distribution Date and shall make them, and any individuals responsible for the preparation and maintenance of such Information, available to the other Party, as reasonably requested. If at any time after the Distribution Date, any Party requires copies of such Information, the other Party shall provide a copy thereof (at the expense of the requesting Party) as promptly as reasonably practicable.

Section 4.2 Ownership of Information. Any Information owned by any Acquired Entity or SpinCo Entity that is provided to a requesting Party pursuant to Section 4.1 shall be deemed to remain the property of the providing Party, except where such Information is an Asset of the requesting Party pursuant to the provisions of this Agreement, the Merger Agreement or any other Transaction Document. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any Information requested or provided pursuant to Section 4.1.

Section 4.3 Liability for Information Provided. No Party shall have any Liability to any other Party in the event that any Information exchanged or provided pursuant to this Agreement is found to be inaccurate, in the absence of fraud or willful misconduct by the Party providing such information.

Section 4.4 Other Agreements Providing for Exchange of Information. The rights and obligations granted under this Article IV are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of Information set forth in the Merger Agreement or any Transaction Document.

Section 4.5 Production of Witnesses and Records in Connection with an Action

(a) Notwithstanding anything to the contrary in Section 4.1, from and after the Distribution Time, except in the case of an Adversarial Action by one Party against another Party, each Party shall use its reasonable efforts to make available to each other Party, upon written request, the former, current and future directors, officers, employees and other Representatives of the other Acquired Entities or SpinCo Entities (as applicable) as witnesses, and any books, records or other Information within its control or which it otherwise has the ability to make available, to the extent that any such Person (giving consideration to business demands of such directors, officers, employees and other Representatives) or books, records or other Information may reasonably be required in connection with any Action in which the requesting Party may from time to time be involved. The requesting Party shall bear all out-of-pocket costs and expenses in connection therewith (which, for the avoidance of doubt, shall not include the costs and benefits of employees who are witnesses or any *pro rata* portion of overhead or other cost of employing such employees which would have been incurred by such employees' employer regardless of the employees' service as witnesses).

(b) The obligation of the Parties to provide witnesses pursuant to this Section 4.5 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses officers without regard to whether the witness or the employer of the witness could assert a possible business conflict, except in the case of an Adversarial Action by one Party against another Party.

(c) In connection with any matter contemplated by this Section 4.5, the Parties will enter into a mutually acceptable joint defense agreement so as to maintain to the extent practicable any applicable attorney-client privilege, work product immunity or other applicable privileges or immunities of any Acquired Entity or SpinCo Entity.

(d) For the avoidance of doubt, the provisions of this Section 4.5 are in furtherance of the provisions of Section 4.1 and shall not be deemed to limit the Parties' rights and obligations under Section 4.1.

Section 4.6 Counsel; Privileges; Legal Materials. The Company hereby waives and agrees to not assert, and agrees to cause the other Acquired Entities to waive and not assert, any actual or potential conflict of interest arising out of or relating to the representation, of SpinCo or any SpinCo Entity or any of their respective officers, directors, managers, employees or representatives (the "Applicable Matters"), by any law firm currently representing the Company or SpinCo in connection with this Agreement and the transactions contemplated hereby (each, a "Prior Company Counsel"). Recognizing that Prior Company Counsel has acted as legal counsel to the Acquired Entities and the SpinCo Entities and certain of the direct and indirect equity holders of Company (as of immediately prior to the Closing) and certain of their respective Affiliates prior to date hereof, and that Prior Company Counsel intends to act as legal counsel to certain of the direct and indirect equity holders of Company (as of immediately prior to the Closing) and their respective Affiliates (which will include SpinCo and other SpinCo Entities and no longer include the Company and the other Acquired Entities) after the Closing, the Company hereby waives, on its own behalf and agrees to cause its Affiliates to waive, any conflicts that may arise in connection with Prior Company Counsel representing any such direct or indirect equity holders of the Company (as of immediately prior to the Closing) or their Affiliates (including SpinCo and the other SpinCo Entities) in respect of the Applicable Matters after the Closing as such representation may relate to the Acquired Entities or this Agreement or the transactions contemplated hereby. The Company further waives and agrees to not assert, and agrees to cause the other Acquired Entities to waive and not assert, any attorney-client privilege with respect to any communications by Prior Company Counsel, on the one hand, and any direct or indirect equity holder of the Company (as of immediately prior to the Closing), or any of their respective Affiliates (including SpinCo and other SpinCo Entities), or the Company or other Acquired Entities, or any of their respective Affiliates (including SpinCo and the other SpinCo Entities), on the other hand, occurring prior to Closing (collectively, "Privileged Communications"). The Company hereby agrees that any attorney-client privilege attaching to any Privileged Communications shall survive the Closing and shall remain in effect with all rights to such Privileged Communications, including the right to control such attorney-client privilege, to be held by SpinCo. Accordingly, each of the Parties hereto agrees to take the steps necessary to ensure that any privilege attaching to Privileged Communications shall survive the Closing, remain in effect and be assigned to and controlled by SpinCo. As such, the Company and the other Acquired Entities shall not have access to any such Privileged Communications or to the files of Prior Company Counsel relating to such engagement from and after the Closing in respect of the Applicable Matters, and all books, records and other Information of the Company and its Subsidiaries in respect of the Applicable Matters in any medium (including electronic copies) containing or reflecting any of the Privileged Communications or the work product of legal counsel with respect thereto, including any related summaries, drafts or analyses, and all rights with respect to any of the foregoing, shall belong to SpinCo or direct and indirect equity holders of the Company (as of immediately prior to the Closing). Without limiting the generality of the foregoing, from and after the Closing, (a) SpinCo, the direct and indirect equity holders of the Company (as of immediately prior to the Closing) and their respective Affiliates (including the SpinCo Entities and excluding the Acquired Entities) shall be the sole holders of the attorney-client privilege with respect to the Privileged Communications in respect of the Applicable Matters, and none of the Acquired Entities shall be a holder thereof, (b) to the extent that files of Prior Company Counsel in respect of the Privileged Communications in respect of the Applicable Matters constitute property of the client, only SpinCo and the direct and indirect equity holders of the Company (as of immediately prior to the Closing) and their respective Affiliates (including SpinCo and the other SpinCo Entities and excluding the Acquired Entities) shall hold such property rights and (c) Prior Company Counsel shall have no duty whatsoever to reveal or disclose any such Privileged Communications or files in respect of the Applicable Matters to the Acquired Entities by reason of any attorney-client relationship between Prior Company Counsel and any Acquired Entity or otherwise. Each of the Company and SpinCo hereby acknowledges and confirms that it has had the opportunity to review and obtain adequate Information regarding the significance and risks of the waivers and other terms and conditions of this Section 4.6, including the opportunity to discuss with counsel such matters and reasonable alternatives to such terms. This Section 4.6 is for the benefit of SpinCo direct and indirect equity holders of the Company (as of immediately prior to the Closing) and each Prior Company Counsel, and the direct and indirect equity holders of the Company (as of immediately prior to the Closing), SpinCo, and each Prior Company Counsel are intended third party beneficiaries of this Section 4.6. This Section 4.6 shall be irrevocable, and no term of this Section 4.6 may be amended, waived or modified, without the prior written consent of each of the Parties and the Prior Company Counsel affected thereby. The covenants and obligations set forth in this Section 4.6 shall survive for 10 years following the Closing.

ARTICLE V
RELEASES

Section 5.1 Release of Pre-Distribution Claims. Effective upon and following the Closing, the Company, on its own behalf and on behalf of each Acquired Entity, generally, irrevocably, unconditionally and completely releases and forever discharges SpinCo and each SpinCo Entity, and each of their respective successors and assigns (collectively, the "SpinCo Released Persons") from all disputes, claims, losses, controversies, demands, rights, Liabilities, Actions and causes of action of every kind and nature, whether known or unknown, arising from any matter with respect to this Agreement occurring prior to the Closing (other than as contemplated by this Agreement), provided, however, that nothing in this Section 5.1 shall release the SpinCo Released Persons from their obligations under this Agreement, the Transaction Documents, or the Merger Agreement, including but not limited to the SpinCo Liabilities.

Section 5.2 Management of Actions. This Section 5.2 shall govern the direction of pending and future Actions in which the SpinCo Entities or the Acquired Entities are named as parties, but shall not alter the allocation of Liabilities set forth in Article II unless expressly set forth in this Section 5.2.

(a) *Management of SpinCo Controlled Actions*. From and after the Distribution Time, the SpinCo Entities shall direct the defense or prosecution of any Actions that constitute only SpinCo Liabilities or SpinCo Assets ("SpinCo Controlled Actions"). If an Action that constitutes solely a SpinCo Liability or a SpinCo Asset is commenced after the Distribution Time naming any Acquired Entity as a party thereto, then SpinCo shall use its commercially reasonable efforts to cause such Acquired Entity to be removed as a party to such Action. Except in the case of an Adversarial Action, no Party shall add the other Party to any Action pending as of or after the Distribution Time without the prior written consent of the other Party.

(b) *Management of Company Controlled Actions*. From and after the Distribution Time, the Acquired Entities shall direct the defense or prosecution of any Actions that constitute only Excluded Liabilities or Excluded Assets ("Company Controlled Actions"). If an Action that constitutes solely an Excluded Liability or an Excluded Asset is commenced after the Distribution Time naming any SpinCo Entity as a party thereto, then Company shall use its commercially reasonable efforts to cause such SpinCo Entity to be removed as a party to such Action. Except in the case of an Adversarial Action, no Party shall add the other Party to any Action pending as of or after the Distribution Time without the prior written consent of the other Party.

(c) *Management of Actions Naming Both SpinCo and the Company.* From and after the Distribution Time, in the event that one or more SpinCo Entities and one or more Acquired Entities is named in an Action that is not a SpinCo Controlled Action, a Company Controlled Action nor a Mixed Action (a "Separate Action"), each of SpinCo and the Company shall be entitled to assume their own defense and select counsel of their own choosing to defend their respective interests in such Separate Action. SpinCo and the Company shall consult in good faith with each other regarding the management of the defense of each Separate Action.

(d) *Management of Mixed Actions.* From and after the Distribution Time, any Action that constitutes both (i) a SpinCo Liability or a SpinCo Asset, on the one hand, and (ii) an Excluded Liability or an Excluded Asset, on the other hand, and that do not constitute a SpinCo Controlled Action nor a Company Controlled Action (clauses (i) and (ii), "Mixed Action") shall be managed by the Party with the greater financial exposure with respect thereto (taking into account the provisions of this Article V), as determined in good faith by the Parties; provided that any outside counsel employed by a Party managing the Action with respect thereto shall be subject to the approval of other Party (such approval not to be unreasonably withheld, conditioned or delayed); provided, further, that if the Action involves the pursuit of any criminal sanctions or penalties or seeks equitable or injunctive relief against only a Party or Subsidiary of such Party, that Party shall be entitled to control the defense of the applicable claims against such Party. Notwithstanding the preceding sentence, if, despite one Party having a greater financial exposure in respect of a Mixed Action, the other Party reasonably considers that such Mixed Action will be materially detrimental to its competitive or commercial business prospects and wishes to manage such Action, the first Party with the greater financial exposure shall consider in good faith the other Party's request for the second mentioned Party to manage such Mixed Action. The Parties shall reasonably cooperate and consult with each other, and to the extent necessary or advisable, maintain a joint defense in a manner that would preserve for both Parties and their respective Affiliates any attorney-client privilege, attorney work-product protection, joint defense or other privilege with respect to Mixed Actions. The Party managing such Mixed Action shall on a quarterly basis, or if a material development occurs as soon as reasonably practicable thereafter, inform the other Party of the status of and developments relating to any Mixed Action and provide copies of any material document, notices or other materials related to such Mixed Action; provided that the failure to provide any such information shall not be a basis for liability of a Party managing such Mixed Action except and solely to the extent the other Party shall have been actually prejudiced thereby. Notwithstanding anything to the contrary herein, the Parties may jointly retain counsel (in which case the cost of counsel shall be shared equally by the Parties) or retain separate counsel (in which case each Party will bear the cost of its separate counsel) with respect to any Mixed Action; provided that the Parties shall share discovery and other joint litigation costs in proportion to their respective expected financial exposure (in the case of Actions that constitute both a SpinCo Liability and an Excluded Liability) or respective expected financial recovery (in the case of Actions that constitute both a SpinCo Asset and an Excluded Asset). In any Mixed Action, each of the Company and SpinCo may pursue separate defenses, claims, counterclaims or settlements to those claims relating to the Acquired Business or the SpinCo Business, respectively; provided that each Party shall in good faith make all reasonable efforts to avoid adverse effects on the other Party. Notwithstanding anything to the contrary herein, (A) if an adverse judgment is obtained with respect to a Mixed Action, the Parties shall endeavor in good faith to allocate the Liabilities in respect of such judgment between them based on the proportion of such Liabilities attributable to the Acquired Business and the SpinCo Business; and (B) if a recovery is obtained with respect to a Mixed Action, the Parties shall endeavor in good faith to allocate the Assets in respect of such recovery between them based on their respective injuries. A Party that is not named as a defendant in a Mixed Action may elect to become a party to such Mixed Action, and the Party named in such Mixed Action shall reasonably cooperate to have such first Party named in such Mixed Action.

(e) *Delegation of Rights of Recovery*. To the maximum extent permitted by applicable Law, the rights to recovery of each Party's Subsidiaries in respect of any past, present or future Action are hereby delegated to such Party. It is the intent of the Parties that the foregoing delegation shall satisfy any Law requiring such delegation to be effected pursuant to a power of attorney or similar instrument. The Parties and their respective Subsidiaries shall execute such further instruments or documents as may be necessary to effect such delegation.

Section 5.3 Settlement of Actions. No Party managing an Action pursuant to Section 5.2 shall settle or compromise such Action (other than the Company with respect to Company Controlled Actions and SpinCo with respect to SpinCo Controlled Actions) without the prior written consent of the other Party (not to be unreasonably withheld, conditioned or delayed).

ARTICLE VI OTHER AGREEMENTS

Section 6.1 Further Assurances.

(a) In addition to the actions provided for elsewhere in this Agreement and the other Transaction Documents and the Merger Agreement, each of the Parties will cooperate with each other and shall (and will cause their respective Subsidiaries to), prior to, at and after the Distribution Time, use its reasonable best efforts to take, or to cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary on its part under applicable Law or Contracts to consummate and make effective the transactions contemplated by this Agreement and the other Transaction Documents.

(b) Without limiting the foregoing and except as otherwise provided in any other Transaction Document, prior to, at and for twenty-four (24) months after the Distribution Time, each Party shall cooperate with the other Party, without any further consideration but from and after the Distribution Time at the expense of the requesting Party, to execute and deliver, or shall cause to be executed and delivered, all instruments, including instruments of conveyance, assignment, title and transfer, and use reasonable best efforts to obtain or make any Approvals or Notifications from or with any Governmental Entity or any other Person under any Permit, license, Contract or other instrument, and to take all such other actions as such Party may reasonably be requested to take by any other Party, consistent with the terms of this Agreement and the other Transaction Documents, in order to effectuate the provisions and purposes of this Agreement and the other Transaction Documents and the transfers of the SpinCo Assets and the Excluded Assets and the assignment and assumption of the SpinCo Liabilities and the Excluded Liabilities and the other transactions contemplated hereby and thereby; provided, however, that except to the extent expressly provided in Section 6.4 or in any of the other Transaction Documents, neither Party shall be obligated pursuant to this Section 6.1 to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial or commercial accommodation) to any Person in order to obtain or make such Approvals or Notifications. Without limiting the foregoing, except to the extent otherwise provided in any other Transaction Document, each Party will, at the reasonable request and expense of the other Party, take such other actions as may be reasonably necessary to vest in such other Party good and marketable title and rights to the Assets allocated to such other Party under this Agreement or any of the other Transaction Documents, if and to the extent it is practicable to do so.

(c) At or prior to the Distribution Time, the Company and SpinCo in their respective capacities as direct and indirect stockholders of their respective Subsidiaries, shall each ratify any actions that are reasonably necessary or desirable to be taken by their respective Subsidiaries, as the case may be, to effectuate the transactions contemplated by this Agreement or any other Transaction Document.

Section 6.2 Confidentiality.

(a) From and after the Distribution Time, subject to Section 6.2(c) and except as contemplated by this Agreement, any other Transaction Document or the Merger Agreement, the Company shall not, and shall cause its Affiliates and their respective officers, directors, employees, agents and representatives, including attorneys, advisors and other representatives of any Person providing financing (collectively, "Representatives"), not to, directly or indirectly, disclose to any Person, other than Representatives of the Company or its Affiliates who reasonably need to know such information in providing services to any Acquired Entity, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any SpinCo Confidential Information. If any disclosures are made in connection with providing services to any Acquired Entity under this Agreement, any other Transaction Document or the Merger Agreement, then the SpinCo Confidential Information so disclosed shall be used only as required to perform the services or as otherwise provided in an applicable Transaction Document. The Company shall use the same degree of care to prevent the unauthorized use or disclosure of the SpinCo Confidential Information by any of its Representatives as it currently uses for its own confidential information, but in no event less than a reasonable standard of care. "SpinCo Confidential Information" means any Information to the extent relating to the SpinCo Business (including any confidential or proprietary Information included in the SpinCo Assets or SpinCo Contracts) furnished or made available to or accessible by, or otherwise in the possession of, any Acquired Entity, including as a result of or in connection with the Reorganization or Distribution or the performance of any Transaction Document or the Merger Agreement irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by any Acquired Entity or their respective Representatives, to the extent they contain or otherwise reflect such Information; provided that SpinCo Confidential Information does not include, and there shall be no obligation under this Agreement with respect to, Information that (i) is or becomes generally available to the public, other than as a result of any use or disclosure by any Acquired Entity or any of its Representatives not otherwise permissible under this Section 6.2, (ii) the Company can demonstrate was or became available to the Company or any of its Representatives after the Distribution Time from a source other than SpinCo or its Representatives, provided that such source was not known by the Company to be bound by a contractual, legal or fiduciary obligation of confidentiality to any SpinCo Entity with respect to such Information, or (iii) is developed independently by any Acquired Entity or any of its Representatives without use or reference to the SpinCo Confidential Information.

(b) From and after the Distribution Time, subject to Section 6.2(c) and except as contemplated by this Agreement, any other Transaction Document or the Merger Agreement, SpinCo shall not, and shall cause its Affiliates and their respective Representatives not to, directly or indirectly, disclose to any Person, other than Representatives of SpinCo or its Affiliates who reasonably need to know such information in providing services to any SpinCo Entity, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any Company Confidential Information. If any disclosures are made in connection with providing services to any SpinCo Entity under this Agreement, any other Transaction Document or the Merger Agreement, then the Company Confidential Information so disclosed shall be used only as required to perform the services. SpinCo shall use the same degree of care to prevent the unauthorized use or disclosure of the Company Confidential Information by any of its Representatives as it currently uses for its own confidential information, but in no event less than a reasonable standard of care. “Company Confidential Information” means any Information to the extent relating to the Acquired Business furnished or made available to or accessible by, or otherwise in the possession of, any SpinCo Entity as a result of or in connection with the Reorganization or Distribution or the performance of any Transaction Document or the Merger Agreement, irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by any SpinCo Entity or their respective Representatives, to the extent they contain or otherwise reflect such Information; provided that Company Confidential Information does not include, and there shall be no obligation under this Agreement with respect to, Information that (i) is or becomes generally available to the public, other than as a result of any use or disclosure by any SpinCo Entity or any of its Representatives not otherwise permissible under this Section 6.2, (ii) SpinCo can demonstrate was or became available to SpinCo or any of its Representatives after the Distribution Time from a source other than the Company or its Representatives; provided that such source was not known by SpinCo to be bound by a contractual, legal or fiduciary obligation of confidentiality to any Acquired Entity with respect to such Information, or (iii) is developed independently by any SpinCo Entity or any of its Representatives without use or reference to the Company Confidential Information.

(c) Notwithstanding the provisions of Section 6.2(a) and Section 6.2(b), the Company or its Representatives may disclose SpinCo Confidential Information, and SpinCo and its Representatives may disclose Company Confidential Information: (i) to the extent such Party or such Representative is required or compelled to disclose any such Company Confidential Information or SpinCo Confidential Information by judicial or administrative process or by other requirements of Law or stock exchange rule, (ii) as required in connection with any Adversarial Action, (iii) as necessary in order to permit a Party to prepare and disclose its financial statements in connection with any regulatory filings or Tax Returns, (iv) as necessary for a Party to enforce its rights or perform its obligations under this Agreement, the Merger Agreement or any other Transaction Document or (v) to Governmental Entities in accordance with applicable procurement regulations and contract requirements. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Company Confidential Information or SpinCo Confidential Information is made pursuant to clause (i), (iii) or (v) above (other than with respect to any such Information furnished pursuant to the provisions of Article IV), as applicable, the Person receiving such request or demand or other disclosure requirement shall use commercially reasonable efforts to provide the other Party with written notice of such request or demand as promptly as practicable so that such other Party shall have an opportunity to seek an appropriate protective order. The Party receiving such request or demand shall take, and cause its Representatives to take, at the requesting Party’s expense, all other reasonable steps necessary to obtain confidential treatment by the recipient. Subject to the foregoing, the Party or any of its Representatives that received such request or demand may thereafter disclose or provide any SpinCo Confidential Information or Company Confidential Information, as the case may be, to the extent required by such Governmental Entity, stock exchange or applicable Law (as so advised by counsel).

(d) Prior to the Distribution, notwithstanding anything to the contrary provided herein but without prejudice to whether any such device would constitute a SpinCo Asset, the Company shall be entitled to cause any Company Confidential Information to be removed from personal computers or other devices owned or leased by the Company or any of its Subsidiaries and used by a SpinCo employee, including by replacing such device with a comparable device not containing Company Confidential Information. For the avoidance of doubt, this Section 6.2 (including the obligations set forth in Section 6.2(b)) applies to all Company Confidential Information, regardless of whether such Company Confidential Information has or has not been so removed pursuant to this Section 6.2(d).

(e) Prior to the Distribution, notwithstanding anything to the contrary provided herein but without prejudice to whether any such device would constitute an Excluded Asset, the SpinCo Entities shall be entitled to cause any SpinCo Confidential Information to be removed from personal computers or other devices owned or leased by the Acquired Entities and used by a Company employee, including by replacing such device with a comparable device not containing SpinCo Confidential Information. For the avoidance of doubt, this Section 6.2 (including the obligations set forth in Section 6.2(a)) applies to all SpinCo Confidential Information, regardless of whether such SpinCo Confidential Information has or has not been so removed pursuant to this Section 6.2(e).

Section 6.3 Insurance Matters.

(a) From and after the Distribution Time, except as expressly provided herein, the SpinCo Entities and the SpinCo Business shall cease to be insured by the Company's Insurance Policies. For the avoidance of doubt, the Company shall retain all rights to control its Insurance Policies, including the right to exhaust, settle, release, or otherwise resolve disputes with respect to any of its Insurance Policies notwithstanding whether any such Insurance Policies apply to any Liabilities of any SpinCo Entity; provided, however, that the Company shall take no action to commute, buy back or otherwise modify any Insurance Policy to which SpinCo is entitled to rights pursuant to Section 2.2(a)(vii), in a manner that would adversely affect the SpinCo Entities or the SpinCo Business without the prior written consent of SpinCo which consent will not be unreasonably withheld, conditioned or delayed, or without making adequate provision for such rights of SpinCo Entities or SpinCo businesses. For the avoidance of doubt, SpinCo shall be responsible for securing all Insurance Policies that it considers appropriate for the SpinCo Business and the operation thereof by the SpinCo Entities and for promptly providing evidence thereof, as may be required, to third parties under any Contract. SpinCo agrees to arrange for its own Insurance Policies with respect to the SpinCo Business and the SpinCo Entities covering all periods, effective at or prior to the Distribution Time. SpinCo agrees, on behalf of itself and each SpinCo Entity, from and after the Distribution Time, not to seek through any means to benefit from and not to assert any right, claim or interest in, to or under, any Insurance Policies of any Acquired Entity.

(b) For any claim asserted against SpinCo or any other SpinCo Entity (i) for any occurrence, claim, loss, injury or damage taking place prior to the Distribution Time and covered under Pre-Closing Occurrence-Based Policies or (ii) for any Pre-Distribution Time act, error, or omission covered under any insurance policy issued on a claims-made basis (“Claims-Made Policies”) (collectively “Post-Closing Claims”), SpinCo and each other SpinCo Entity may access coverage under the Pre-Closing Occurrence-Based Policies or Claims-Made Policies, as applicable, for such claims (it being understood that any retrospective or audited premiums, deductibles, retentions, or similar obligations arising from such any corresponding insurance claims by or on behalf of any SpinCo Entity under the Pre-Closing Occurrence-Based Policies or Claims-Made Policies shall be borne by the SpinCo Entities and SpinCo Entities shall hold Company harmless for such). From and after the Effective Time, if SpinCo or any other SpinCo Entity determines to submit a Post-Closing Claim for coverage under the Pre-Closing Occurrence-Based Policies or Claims-Made Policies, SpinCo shall provide a written request to the Company and shall promptly thereafter provide the Company with all information to be included with such Post-Closing Claim. The Company shall promptly, following receipt of such information, submit the applicable Post-Closing Claim under the applicable Pre-Closing Occurrence-Based Policies or Claims-Made Policies. The Company thereafter shall use commercially reasonable efforts to secure insurance coverage for SpinCo for the Post-Closing Claim under the Pre-Closing Occurrence-Based Policies or Claims-Made Policies, at SpinCo’s expense. In doing so, the Company will undertake commercially reasonable efforts to get the insurers to accept and pay defense and indemnity costs for the Post-Closing Claim, but in no event will the Company guarantee results and in no event will the Company be liable for Post-Closing Claim costs that are not covered by insurance. In no event will the Company be obligated to initiate at its own costs or bear the costs of coverage litigation or arbitration. Nor shall the Company be obligated to initiate any coverage litigation or arbitration that would adversely affect the Company’s rights. No SpinCo Entity shall be entitled to make claims directly to any Pre-Closing Occurrence-Based Policies or Claims-Made Policies and in connection with any Post-Closing Claim. SpinCo or the other SpinCo Entities shall be responsible for the satisfaction or payment of any applicable retention, deductible, or retrospective or audited premium with respect to any Post-Closing Claim, and shall defend, indemnify, and hold harmless the Company and its Subsidiaries against all loss, liabilities, claims, and expenses (including without limitation legal fees and costs) arising out of or resulting from such Post-Closing Claims. Subject to the immediately following sentence and any deductions therefor, any Insurance Proceeds received by any Acquired Entity in respect of a Post-Closing Claim shall be promptly transmitted to SpinCo or another SpinCo Entity designated by SpinCo. In the event that a Post-Closing Claim is a Mixed Action for which both the Company or its Subsidiaries on one hand, and SpinCo or other SpinCo Entity on the other, are seeking coverage under Pre-Closing Occurrence-Based Policies, and the limits under an applicable Pre-Closing Occurrence-Based Policy or Claims-Made Policy are not sufficient to fund all covered claims of SpinCo or any other SpinCo Entity (as applicable) and the Company or its Subsidiaries (as applicable), amounts due under such a Pre-Closing Occurrence-Based Policy or Claims-Made Policy shall be first paid to the Company or its Subsidiaries (as applicable).

Section 6.4 Separation Expenses. Except as otherwise provided in this Agreement, each Party shall bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated herein, whether or not the transactions contemplated hereby are consummated, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties.

Section 6.5 Transaction Documents. Effective on or prior to the Distribution Time, each of the Company and SpinCo will, or will cause the other Acquired Entities and SpinCo Entities (as applicable) to, execute and deliver the Transition Services Agreement. In the event that the provisions of any of the other Transaction Documents conflict with the provisions of this Agreement, the provisions of such other agreement or agreements shall govern with respect to the subject matter addressed thereby to the extent of such conflict. Specifically, the Parties intend that, to the extent set forth in such other Transaction Document and unless otherwise provided therein; provided that, the representations, warranties, covenants or agreements referred to in this sentence shall refer to the representations, warranties, covenants or agreements set forth in the applicable Transaction Document.

ARTICLE VII MISCELLANEOUS

Section 7.1 Governing Law; Submission to Jurisdiction; Waiver of Trial

(a) All matters relating to or arising out of this Agreement or other transaction contemplated herein (whether sounding in contract, tort or otherwise) will be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule of any jurisdiction that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

(b) Each Party irrevocably agrees that any Action arising out of or relating to this Agreement brought by any other Party hereto or its successors or assigns shall be brought and determined in the Court of Chancery of the State of Delaware (or, solely if such courts decline jurisdiction, in any federal court located in the State of Delaware), and each Party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each Party agrees not to commence any Action relating thereto except in the courts described above in Delaware, other than Actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each Party further agrees that notice as provided herein shall constitute sufficient service of process and each Party further waives any argument that such service is insufficient. Each Party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Action arising out of or relating to this Agreement or the transactions contemplated hereby, (i) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (ii) that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) that (A) the Action in any such court is brought in an inconvenient forum, (B) the venue of such Action is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 7.1.

Section 7.2 Survival of Covenants. The covenants to be performed at or prior to the Closing, in each case, set forth in this Agreement, or in any certificate delivered in connection herewith, shall terminate and be of no further force and effect from and after the Closing and no Party shall have any Liability with respect thereto from and after the Closing. Covenants to be performed after the Closing set forth in this Agreement or in any document delivered in connection herewith or therewith shall survive until fully performed.

Section 7.3 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if (a) delivered personally against written receipt, (b) sent by e-mail, (c) mailed by registered or certified mail, postage prepaid, return receipt requested or (d) mailed by reputable international overnight courier, fee prepaid, to the Parties hereto at the following addresses or e-mail:

If to SpinCo, then to:
Vivial Media Holdings, Inc.
160 Inverness Drive West
Suite 250
Englewood, CO 80112
Attention: Richard G. Hallé; Nick Continenza
Email: RHalle@vivial.net; NContinenza@vivial.net

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

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Attention: Ackneil M. Muldrow III
Email: trey.muldrow@weil.com

If to the Company, then to:

Kaleyra, Inc.
Via Marco D'Aviano, 2,
Milano MI, Italy
Attention: Dario Calogero
Email: dario.calogero@kaleyra.com

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

DLA Piper LLP (US)
555 Mission Street
Suite 2400
San Francisco, CA 94105
Attention: Jeffrey C. Selman
Email: jeffrey.selman@us.dlapiper.com

and

DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, NY 10020
Attention: James L. Kelly; Ilya A. Bubel
Email: james.kelly@us.dlapiper.com; ilya.bubel@us.dlapiper.com

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section 7.3, upon delivery, (x) if delivered by e-mail as provided in this Section 7.3, upon manual or electronic confirmation of delivery, (y) if delivered by mail as provided in this Section 7.3, upon the earlier of the fifth Business Day following mailing and receipt and (z) if delivered by overnight courier as provided in this Section 7.3, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 7.3). Any Party may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

Section 7.4 Termination. This Agreement shall terminate simultaneously with the valid termination of the Merger Agreement prior to the Distribution Date. After the Effective Time, this Agreement may not be terminated except by an agreement in writing signed by each of the Parties. In the event of such termination, this Agreement shall become void and no Party, or any of its officers and directors, shall have any liability to any Person by reason of this Agreement.

Section 7.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such provision or its severance herefrom and (d) in lieu of such provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 7.6 Entire Agreement. This Agreement (including the Exhibits and the Schedules hereto), the Transaction Documents and the Merger Agreement and each of the documents delivered by the Parties in connection herewith and therewith constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the Parties hereto, written or oral, with respect to such subject matter.

Section 7.7 Successors and Assigns; No Third-Party Beneficiaries. This Agreement may not be assigned by either Party hereto without the prior written consent of the other Party; provided, however, that the Company may assign any or all of its rights and obligations hereunder to one or more of its Affiliates after the Effective Time; provided, further, that no such assignment will relieve the Company of any of its obligations hereunder. Subject to the foregoing sentence, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Except as set forth in the last sentence of this Section 7.7, no provision of this Agreement is intended or shall be deemed to confer upon any Person other than the Parties hereto any rights or remedies hereunder. Notwithstanding anything to the contrary set forth in this Agreement, Prior Company Counsel shall be a third-party beneficiary of the provisions set forth in Section 4.6.

Section 7.8 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof and that each Party shall be entitled to seek specific performance of the terms hereof, in addition to any other remedy to which such Party is entitled at law, in equity, in contract, in tort or otherwise. The Parties agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by the other Party, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of such other Party under this Agreement all in accordance with the terms of this Section 7.8. No Party shall be required to provide any bond or other security in connection with seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, all in accordance with the terms of this Section 7.8.

Section 7.9 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless such amendment is in writing and signed by each of the Parties. No failure or delay by any Party hereto in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any agreement on the part of a Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party. The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 7.10 Rules of Construction. For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other gender; (b) references herein to "Articles," "Sections," "subsections" and other subdivisions, and to Exhibits and Schedules, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits and Schedules to, this Agreement; (c) all Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein; (d) a reference to a subsection or other subdivision without further reference to a Section is a reference to such subsection or subdivision as contained in the same Section in which the reference appears; (e) the words "herein", "hereof", "hereunder", "hereby" and other words of similar import refer to this Agreement as a whole and not to any particular provision; (f) the words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation"; (g) all accounting terms used and not defined herein have the respective meanings given to them under GAAP; (h) reference to any Person includes such Person's successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (i) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof and (j) references to dollars or to \$ are expressed in United States currency unless otherwise specifically indicated. To the extent computation of any amounts contemplated by this Agreement include a currency other than U.S. dollars, such amounts shall be converted to U.S. dollars using the USD Equivalent, in accordance with the definition of "Spot Rate" set forth in the Merger Agreement.

Section 7.11 Captions; Counterparts. All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by email or other electronic transfer shall be effective as delivery of a manually executed counterpart to this Agreement.

Section 7.12 Performance. The Company will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any other Transaction Document to be performed by any Acquired Entity. SpinCo will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any other Transaction Document to be performed by any SpinCo Entity. Each Party (including its permitted successors and assigns) further agrees that it will (a) give timely notice of the terms, conditions and continuing obligations contained in this Section 7.12 to the other Acquired Entities or SpinCo Entities (as applicable), and (b) cause all of the other Acquired Entities or SpinCo Entities (as applicable) not to take any action inconsistent with such Party's obligations under this Agreement, any other Transaction Document or the transactions contemplated hereby or thereby.

Section 7.13 Dispute Resolution Procedures.

(a) Each Party shall appoint a representative who shall be responsible for administering this dispute resolution provision (the "Appointed Representative").

(b) Except as otherwise provided in this Agreement or in any other Transaction Document, and without limiting the rights of any Party under Section 7.12, in the event of a controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance, nonperformance, validity, termination or breach of this Agreement or any other Transaction Document or otherwise arising out of, or in any way related to, this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby (collectively, the "Separation Agreement Disputes"), the Appointed Representatives shall negotiate in good faith for a reasonable period of time to settle such Separation Agreement Dispute; provided, however, that such reasonable period shall not, unless otherwise agreed to by the relevant Parties in writing, exceed twenty (20) days from the time of receipt by a Party of written notice of such Separation Agreement Dispute. Nothing said or disclosed, nor any document produced, in the course of any negotiations, conferences and discussions in connection with efforts to settle an Separation Agreement Dispute that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose, but shall be considered as to have been disclosed for settlement purposes.

Section 7.14 Consummation of Merger Agreement Transactions In the event that the transactions contemplated by the Merger Agreement (including, without limitation, the Merger) are not consummated on the same Business Day as the transactions contemplated by this Agreement, the transactions contemplated by this Agreement shall be null, void and of no effect and shall be deemed to have not occurred.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

VIVIAL INC.

By: /s/ James Continenza
Name: James Continenza
Title: Chief Executive Officer

VIVIAL MEDIA HOLDINGS, INC.

By: /s/ James Continenza
Name: James Continenza
Title: Chief Executive Officer

[Signature Page to Separation and Distribution Agreement]

June 1, 2021

**Kaleyra Closes Landmark Acquisition of Mobile Messaging Solution Provider mGage to Become Tier-1 Messaging Provider in US**

The combination puts Kaleyra among the top-5 global CPaaS platforms with strong positions in the Americas, Europe, and APAC. On a pro forma basis, the existing North American customer base will be approximately 30% of 2021 revenue.

VIENNA, Va. & ATLANTA—(BUSINESS WIRE)—Kaleyra, Inc. (NYSE: KLR) (KLR WS) (“Kaleyra” or the “Company”), a rapidly growing cloud communications software provider delivering a secure system of application programming interfaces (APIs) and connectivity solutions in the API/Communications Platform as a Service (CPaaS) market, today announced that it has closed the previously announced transaction under which Kaleyra would acquire mGage, a leading global mobile messaging provider, for \$215 million in cash and Kaleyra common stock.

mGage is a best-of-breed, Tier 1 aggregator, enabling a diverse range of enterprise to effectively engage with their customers leveraging the power of mobile messaging across a variety of use cases. mGage serves its customers through its enterprise-grade, cloud-based campaign management platform, Communicate Pro, and its API solution, Connect to provide mobile messaging across multiple channels such as SMS, MMS, Push, and RCS.

“We are excited to have closed the mGage transaction and look forward to competing globally as a combined entity. This acquisition redefines Kaleyra by uniting two world-class enterprise cloud communications companies, creating a top-5 global CPaaS platform with a global footprint of diversified and balanced products,” commented Dario Calogero, Kaleyra’s Founder and Chief Executive Officer. “This combination will accelerate and expand Kaleyra’s opportunity to serve the CPaaS market which is expected to reach \$26 billion in 2025 with a compound annual growth rate of 35%¹ and the broader A2P Enterprise messaging market which is expected to reach \$78 billion in 2022.²”

This combination provides multiple benefits to Kaleyra’s customers.

Kaleyra will expand its network operator connections, which already cover more than 190 countries, and become one of only four companies providing direct connectivity to all US carriers. These enhanced global connections position Kaleyra as a stronger player in the messaging arena and provide significant cost synergies

From a go-to-market perspective, this acquisition is perfectly aligned with Kaleyra's history of focused and disciplined acquisitions. This transaction makes Kaleyra a geographically balanced CPaaS company and vastly expands its existing US customer base to 31% of revenues on a pro forma basis.

The combination expands Kaleyra's R&D footprint and strengthens its messaging portfolio with Google RCS/RBM while also enriching its offering of Enterprise Communication Analytics and Omnichannel Engagement Services. Kaleyra and mGage's messaging portfolios are highly complementary and provide for immediate cross-selling opportunities across the existing combined customer base of over 3,800 customers.

Financial Outlook

Kaleyra expects mGage's first month of results to have the following contribution to its financial outlook for the second quarter 2021, also provided on May 10, 2021:

- Second Quarter 2021 Guidance: Increase the revenue range by \$10 - \$11 million to \$50.0 - \$51.0 million.

Acquisition Details

Kaleyra acquired mGage for a total purchase price of approximately \$215 million. mGage shareholders received cash in the amount of \$195 million and 1,600,000 shares of Kaleyra common stock. In a related transaction, Kaleyra raised \$200 million in senior unsecured convertible notes and sold 8,400,000 shares of common stock in a PIPE offering.

About Kaleyra Inc.

Kaleyra, Inc. (NYSE American: KLR) (KLR WS), is a global group providing mobile communication services to financial institutions, e-commerce, digital giants, software companies, logistic providers, healthcare and other large organizations worldwide. Through its proprietary platform, Kaleyra manages multi-channel integrated communication services on a global scale, consisting of messaging and instant messaging, push notifications, e-mail, voice services, and chatbots. Kaleyra's technology today makes it possible to safely and securely manage billions of messages monthly with a reach to hundreds of MNOs including all tier-1 US carriers. For more information: <https://www.kaleyra.com/>.

Cautionary Statement Regarding Forward-Looking Statements

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including with respect to the anticipated benefits of the acquisition of mGage by the Company, including the Company's projected future results and market opportunities following the acquisition of mGage. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "future," "opportunity," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result," and similar expressions. Forward-looking statements are predictions, projections and other statements about future events that are based on current expectations and assumptions and, as a result, are subject to risks and uncertainties. Many factors could cause actual future events to differ materially from the forward-looking statements in this press release, including but not limited to: (i) risks that the transaction disrupts current plans and operations of mGage and potential difficulties in mGage employee retention as a result of the transaction, (ii) the price of the Company's securities may be volatile due to a variety of factors, including changes in the competitive and highly regulated industries in which the Company, including mGage, operates, variations in operating performance across competitors, changes in laws and regulations affecting the Company's, including mGage's, business and changes in the combined capital structure, (iii) the ability to implement business plans, forecasts, and other expectations after the completion of the transaction, and identify and realize additional opportunities, (iv) the risk of downturns and a changing regulatory landscape in the highly competitive communications industry and (v) the size and growth of the market in which the Company operates, (vi) the mix of services utilized by the Company's customers and such customers' needs for these services, (viii) market acceptance of new service offerings, (ix) the ability of the Company to expand what it does for existing customers as well as to add new customers, (x) that the Company will have sufficient capital to operate as anticipated, and (xi) the impact that the novel coronavirus and the illness, COVID-19, that it causes, as well as governmental responses to deal with the spread of this illness and the reopening of economies that have been closed as part of these responses, may have on the Company's operations, the demand for its products, global supply chains and economic activity in general. The foregoing list of factors is not exhaustive. You should carefully consider the foregoing factors and the other risks and uncertainties described in the "Risk Factors" section of the Company's Annual Report on Form 10-K for the year ended December 31, 2019, the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021 and other documents filed by the Company from time to time with the U.S. Securities and Exchange Commission (the "SEC"). These filings identify and address other important risks and uncertainties that could cause actual events and results to differ materially from those contained in the forward-looking statements. Forward-looking statements speak only as of the date they are made. Should one or more of these risks or uncertainties materialize or should any of the assumptions being made prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Readers are cautioned not to put undue reliance on forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

1 Juniper Research, 2020

2 Statista, 2021

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Investor Contact:

Marc P. Griffin

ICR, Inc.

Marc.Griffin@icrinc.com

ir@kaleyra.com

646-277-1290

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