

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **December 9, 2019 (December 8, 2019)**

**ClearOne, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or Other Jurisdiction  
of Incorporation)

**001-33660**

(Commission  
File Number)

**87-0398877**

(I.R.S. Employer  
Identification No.)

**5225 Wiley Post Way, Suite 500, Salt Lake City, Utah**

(Address of principal executive offices)

**84116**

(Zip Code)

**+1 (801) 975-7200**

(Registrant's telephone number, including area code)

**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 of the registrant under any of the following provisions:

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

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.

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, \$0.001	CLRO	The NASDAQ Capital Market

**Item 1.01 Entry Into a Material Definitive Agreement.**

On December 8, 2019, ClearOne, Inc. (the “Company”) and certain of its subsidiary guarantors (the “Guarantors”) entered into a Note Purchase Agreement with Edward D. Bagley (the “Note Purchase Agreement”) pursuant to which Mr. Bagley has agreed to purchase \$3,000,000 of secured convertible notes of the Company (the “Notes”) and warrants (the “Warrants”) to purchase 340,909 shares of common stock, par value \$0.001 per share, of the Company (the “Common Stock”) in a private placement transaction (the “Offering”). Mr. Bagley is an affiliate of the Company and was the beneficial owner of approximately 46.6% of the Company’s issued and outstanding shares of Common Stock.

The Note Purchase Agreement provides for the issuance and sale of Notes in the aggregate principal amount of up to \$3.0 million. The Notes will mature four years from the date of issuance (the “Maturity Date”) and will earn interest at a variable rate adjusted on a quarterly basis and equal to two and one-half percent (2.5%) over the greater of (x) five and one-quarter percent (5.25%) and (y) the Prime Rate as published in the Wall Street Journal (New York edition) as of the beginning of such calendar quarter. The Notes may be converted into shares of the Company’s Common Stock at any time at the election of Mr. Bagley at an initial conversion price of \$2.11 per share (the “Conversion Price”), or 120% of the closing price of the Common Stock on December 6, 2019 as reported on the Nasdaq Capital Market. Also, the Company can cause a mandatory conversion of the Notes if the volume weighted average closing price of the Common Stock over 90 consecutive trading days exceeds 200% of the Conversion Price. In addition, the Notes may be redeemed by the Company for cash at any time after the one year anniversary of the date of issuance of the Notes upon payment of the outstanding principal balance of the Notes and any unpaid and accrued interest. The Company also is required to redeem the Notes upon the occurrence of a change in control of the Company.

The Warrants will have an initial exercise price equal to \$1.76, the closing price of the Common Stock on December 6, 2019 as reported on the Nasdaq Capital Market, and will be exercisable for a period of seven years from the date of issuance. The Warrants must be exercised for cash, unless at the time of exercise there is not a then effective registration statement for the resale of the shares of Common Stock issuable upon exercise of the Warrants, in which case the Warrants may be exercised via a cashless exercise feature that provides for net settlement of the shares of Common Stock issuable upon exercise.

Concurrent with the closing of the issuance of the Notes and Warrants pursuant to the Note Purchase Agreement, the Company, the Guarantors and Mr. Bagley will enter into a Guaranty and Collateral Agreement (the “Collateral Agreement”) pursuant to which the Company and the Guarantors will grant Mr. Bagley a first priority lien interest in all of the Company’s assets as security for the Company’s performance of its obligations under the Notes and Warrants.

The closing of the transactions contemplated by the Note Purchase Agreement, Notes, Warrants and Collateral Agreement are expected to close prior to December 31, 2019. The completion of the transaction is subject to customary closing conditions, including the delivery of officers’ certificates and legal opinions, the filing of UCC financing statements, and Nasdaq approval of the listing of the shares of Common Stock issuable upon exercise of the Warrants or conversion of the Notes.

The foregoing descriptions of the Note Purchase Agreement, Notes, Warrants and Collateral Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the documents, which are filed as exhibits to this Current Report on Form 8-K and 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.**

The description of the Offering is incorporated herein by reference from Item 1.01 above.

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**Item 3.02 Unregistered Sale of Equity Securities.**

The description of the Offering is incorporated herein by reference from Item 1.01 above. The Notes and Warrants were issued in reliance on the exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D promulgated thereunder.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<b>Exhibit Number</b>	<b>Exhibit Title</b>
10.1	<a href="#"><u>Note Purchase Agreement by among ClearOne, Inc., the guarantors a party thereto and Edward D. Bagley dated as of December 8, 2019.</u></a>
10.2	<a href="#"><u>Form of Guaranty and Collateral Agreement.</u></a>
10.3	<a href="#"><u>Form of Secured Convertible Note.</u></a>
10.4	<a href="#"><u>Form of Warrant.</u></a>

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**SIGNATURES**

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

CLEARONE, INC.

Date: December 9, 2019

By: /s/ Zeynep Hakimoglu  
Zeynep Hakimoglu  
Chief Executive Officer  
(Principal Executive Officer)

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## EXHIBIT INDEX

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10.4	<a href="#"><u>Form of Warrant.</u></a>

**NOTE PURCHASE AGREEMENT**

**by and among**

**CLEARONE, INC.,**

**as Borrower,**

**various Guarantors from time to time party hereto,**

**and**

**EDWARD D. BAGLEY,**

**as Purchaser**

**Dated as of December 8, 2019**

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**EXHIBITS:**

Exhibit A	Form of Note
Exhibit B	Form of Warrant

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## NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT, dated as of December 8, 2019 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, this “**Agreement**”), is by and among **CLEARONE, INC.**, a Delaware corporation (the “**Borrower**”), the Guarantors from time to time party hereto, and **EDWARD D. BAGLEY** (the “**Purchaser**”).

### STATEMENT OF PURPOSE:

**WHEREAS**, the Borrower wishes to issue and sell to the Purchaser, and the Purchaser wishes to purchase, on the terms and subject to the conditions set forth herein, (y) a senior secured convertible note to be issued by the Borrower on the Closing Date in an aggregate original principal amount set forth opposite the Purchaser’s name on Schedule 2.1 hereto, substantially in the form of **Exhibit A** hereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, each a “**Note**” and collectively the “**Notes**”) and (z) a warrant to be issued by the Borrower on the Closing Date to purchase that number of shares of Common Stock set forth opposite the Purchaser’s name on Schedule 2.1 hereto, substantially in the form of **Exhibit A** hereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, each a “**Warrant**” and collectively the “**Warrants**”).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

“**Account or Accounts**” has the meaning given to that term in the UCC.

“**Account Debtor**” has the meaning given to that term in the UCC.

“**Acquisition**” means any transaction or series of related transactions, consummated on or after the date of this Agreement, by which the Borrower or any Subsidiary, directly or indirectly, (a) acquires any going concern business or all (or substantially all) of the assets of any firm, corporation, limited liability company or other entity, or division thereof, whether through purchase of assets, merger or otherwise or (b) acquires at least a majority (in number of votes) of the securities of an entity which have ordinary voting power for the election of directors or managers or a majority (by percentage or voting power) of the outstanding Capital Stock of any other Person.

“**Affiliate**” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person owns 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of Capital Stock, by contract or otherwise; provided that in no event shall the Purchaser, or any Affiliates of Purchaser, on the one hand, and the Borrower and any of its Subsidiaries, on the other hand, be deemed to be “Affiliates” of one another.

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“**Agreement**” has the meaning given to that term in the introductory paragraph.

“**Applicable Law**” means all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, document or contract in question, including all applicable common law and equitable principles, all provisions of all applicable state, federal and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Authority, and all orders, judgments and decrees of all courts and arbitrators.

“**Applicable Rate**” means the Prime Rate plus two and three quarters of one percent (2.75%) per annum.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Board**” has the meaning set forth in Section 8.14.

“**Borrower**” has the meaning given to that term in the introductory paragraph.

“**Business Combination**” has the meaning set forth in the definition of “Change of Control”.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York or Utah are authorized or required by law or executive order to close.

“**Capital Lease**” of a Person means any lease of Property by such Person as lessee which would be classified as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“**Capital Lease Obligations**” of any Person means all obligations (including sales tax obligations) of such Person under Capital Leases.

“**Capital Stock**” means (a) any capital stock, partnership, membership, limited liability company, joint venture or other ownership or equity interest or other equivalent, participation or securities (whether voting or non-voting, whether preferred, common or otherwise, whether certificated or uncertificated, and however designated), and (b) any option, warrant, security, appreciation right, profits interests or other right (including Indebtedness securities or other evidence of Indebtedness) directly or indirectly convertible into or exercisable or exchangeable for, or otherwise to acquire directly or indirectly, any capital stock, partnership, membership, limited liability company, joint venture or other ownership or equity interest, participation or security described in clause (a) above.

“**Cash Equivalents**” means (a) short-term obligations of, or fully guaranteed by, the United States, (b) commercial paper rated A-1 or better by Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. (or any successor thereto) or P-1 or better by Moody’s Investors Service, Inc. (or any successor thereto) with a duration of not more than twelve (12) months, (c) demand deposit accounts maintained in the ordinary course of business, and (d) certificates of deposit issued by, and time deposits with, commercial banks (whether domestic or foreign) having capital and surplus in excess of \$100,000,000.

“**Casualty Event**” means, with respect to any property, any of the following: (a) any casualty, loss, destruction, damage or taking of such property (or any part thereof), (b) any condemnation, loss of title, seizure, or taking, by exercise of the power of eminent domain or other similar proceeding, of such property (or any part thereof), or confiscation of such property (or any part thereof) or the requisition of the use of such property by any Governmental Authority, or (c) any event that results in the receipt of business interruption insurance.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“**CFC**” means a controlled foreign corporation within the meaning of Section 957 of the Code.

“**CFC Holdco**” means a Domestic Subsidiary (a) all or substantially all of the assets of which consist of equity interests of one or more CFCs and (b) that conducts no material business.

“**Change of Control**” means the occurrence of any of the following:

(a) The acquisition by any Person or any group of Persons (other than by the Purchaser and/or any of the Purchaser’s Affiliates or Insiders) of record or beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 25% or more of (i) the Capital Stock of the Borrower (as determined on a fully-diluted basis) or (ii) the combined voting power of the then-outstanding voting securities of the Borrower (the “**Outstanding Company Voting Securities**”);

(b) Consummation by the Borrower or any of its Subsidiaries of a merger, consolidation, combination, reorganization, or sale of Capital Stock, or an exchange of the Capital Stock of the Borrower for the Capital Stock of any other Person or Persons whether in one or a series of related transactions (a “**Business Combination**”), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 80% of the then outstanding shares of voting Capital Stock of the purchasing or surviving entity in such Business Combination, in substantially the same proportions as its ownership immediately prior to such Business Combination, of the Outstanding Company Voting Securities and (ii) at least a majority of the members of the board of directors (or equivalent governing body) of the purchasing or surviving entity in such Business Combination were members of the Borrower’s or such Subsidiary’s board of directors (or equivalent governing body) at the time of the execution of the initial agreement, or of the action of the Borrower’s or such Subsidiary’s board of directors (or equivalent governing body), providing for such Business Combination;

(c) A sale, assignment, lease, conveyance, exchange, transfer, sale-leaseback or other Disposition of more than 50% of the assets of the Borrower or any Guarantor, whether in one or a series of related transactions (excluding normal inventory sales, financing arrangements associated with inventory or receivables, and as a result of a Disposition permitted by Section 9.4);

(d) The Borrower ceases to own and control, directly or indirectly, free and clear of all Liens (other than in favor of the Purchaser) 100% of the Capital Stock of each Guarantor (other than directors’ qualifying shares, as may be required by law, and other than as a result of a Disposition permitted by Section 9.4);

- (e) Approval by the board of directors (or equivalent governing body) of the Borrower or any Guarantor of:
  - (i) a liquidation or dissolution of the Borrower or any Guarantor;
  - (ii) the sale or Disposition of all or substantially all of the assets of the Borrower or any Guarantor;
  - (iii) the merger or consolidation of the Borrower with or into another Person unless permitted by Section 9.3; or
  - (iv) The exchange of the Capital Stock of the Borrower for the Capital Stock of any other Person or Persons.

(f) During any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (i) who were members of such Board on the first (1<sup>st</sup>) day of such period, (ii) whose election or nomination to such Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of such Board or (iii) whose election or nomination to such Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of such Board (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of such Board occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any Person or group other than a solicitation for the election of one or more directors by or on behalf of such Board); or

(g) [intentionally omitted]; or

(h) The occurrence of a “change of control” and/or “change of control event” (or any comparable term) as defined in the Borrower’s Charter Documents or any Material Contract.

“**Charter Documents**” means the articles or certificate of incorporation or formation (as applicable), the bylaws or operating or limited liability company agreement (as applicable), and other similar organizational and governing documents of any Person, as amended, restated, supplemented or otherwise modified from time to time.

“**Closing**” has the meaning given to that term in Section 2.2.

“**Closing Date**” has the meaning given to that term in Section 2.2.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” has the meaning given to that term in the Guaranty and Collateral Agreement.

“**Collateral Access Agreement**” has the meaning assigned thereto in the Guaranty and Collateral Agreement.

“**Collateral Documents**” means the Guaranty and Collateral Agreement, the Collateral Access Agreement, , and each other agreement or writing pursuant to which the Borrower or any Subsidiary purports to pledge or grant a security interest in any property or assets securing the Obligations or any of such Borrower or Subsidiary purports to guarantee the payment and/or performance of the Obligations, in each case, as amended, restated, supplemented or otherwise modified from time to time.

“**Common Stock**” means the common stock, par value \$0.001 per share, of the Borrower.

“**Common Stock Equivalents**” means any securities of the Borrower which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

“**Contractual Obligations**” means as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument or arrangement (whether in writing or otherwise) to which such Person is a party or by which it or any of such Person’s property is bound.

“**CWA**” has the meaning set forth in the definition of “Environmental Laws.”

“**Default**” means any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“**Default Rate**” has the meaning given to that term in [Section 3.1\(b\)](#).

“**Disposition**” has the meaning given to that term in [Section 9.4](#).

“**Disqualified Capital Stock**” means any Capital Stock which, by its terms (or by the terms of any security or other equity interests into which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Capital Stock which are not otherwise Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, (b) is redeemable or subject to mandatory repurchase, in either case, at the option of the holder thereof (other than solely for equity interests which are not otherwise Disqualified Capital Stock), in whole or in part, (c) provides for scheduled payments, dividends or distributions in cash or (d) is or becomes convertible into or exchangeable or exercisable for indebtedness or any other equity interests that would constitute Disqualified Capital Stock, in each case, prior to the date that is ninety-one (91) days after the Maturity Date.

“**Distributions**” by a Person means (a) the declaration or payment of dividends or other distributions (whether in cash, securities or other property or assets) on any now or hereafter outstanding Capital Stock of such Person; (b) any payment (whether in cash, securities or other property or assets) on account of the redemption, repurchase, defeasance, sinking fund or other retirement or acquisition of such Capital Stock or of warrants, rights or other options to purchase such Capital Stock made either directly or indirectly; (c) any loans or advances (other than salaries or advances to, or reimbursement of, directors or employees for travel, entertainment, relocation or other business expenses in the ordinary course of business), to any stockholder(s), partner(s) or member(s) of such Person; (d) any payment or prepayment of principal or premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to any Indebtedness that is subordinated to the Obligations; and (e) setting aside funds for any of the foregoing.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the laws of any state of the United States or the District of Columbia.

“**EBITDA**” means, for any period in question, the sum of (a) Net Income for such period plus (b) to the extent deducted in determining such Net Income, the sum, without duplication, of (i) Interest Expense, (ii) all foreign, federal, state, and/or local income tax expense or benefit, (iii) depreciation expense, (iv) amortization expense, (v) non-cash stock-based compensation, (vi) Intangibles write-offs, (vii) Goodwill write-offs, (viii) Increases or decreases in inventory obsolescence reserves, (ix) legal expenses for matters not related to day-to-day operations of the business, and (x) any extraordinary, non-recurring and/or non-cash losses and expenses incurred during such period as may be agreed in writing by the Purchaser in their sole discretion, minus (c) any extraordinary, non-recurring and/or non-cash gains or income during such period, all calculated in accordance with GAAP.

“**Environmental Laws**” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, Licenses, concessions, grants, franchises, agreements and other governmental restrictions relating to (a) the protection of the environment, (b) the effect of the environment on human health, (c) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water, air or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof, including, without limitation, the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq. (“**CWA**”), the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act), 42 U.S.C. § 6901 et seq. (“**RCRA**”), and CERCLA.

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

“**ERISA Affiliate**” means a corporation that is or was a member of a controlled group of corporations with the Borrower within the meaning of Section 4001(a) or (b) of ERISA or Section 414(b) of the Code, a trade or business (including a sole proprietorship, partnership, trust, estate or corporation) that is under common control with the Borrower within the meaning of Section 414(m) of the Code, or a trade or business which together with the Borrower is treated as a single employer under Section 414(o) of the Code.

“**Event of Default**” has the meaning given to that term in Section 10.1.

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

“**Excluded Shares**” means shares of Common Stock or Common Stock Equivalents reserved for issuance to directors, officers, employees or consultants of the Borrower or any Subsidiary of the Borrower in connection with their service as directors of the Borrower or any Subsidiary of the Borrower, their employment by the Borrower or any Subsidiary of the Borrower or their retention as consultants by the Borrower or any Subsidiary of the Borrower, in each case authorized by the Board and issued pursuant to either the ClearOne, Inc. 2007 Equity Incentive Plan (the “2007 Plan”) or the ClearOne, Inc. Employee Stock Purchase Plan (the “ESPP”). As of September 30, 2019, there were 946,083 shares of Common Stock authorized and reserved for future issuance under the 2007 Plan and 427,268 shares of Common Stock authorized and reserved for future issuance under the ESPP.



“**Excluded Taxes**” means, with respect to the Purchaser, or any other recipient of any payment to be made by or on account of any Obligations, (a) Taxes imposed on or measured by its net income (however denominated) and franchise Taxes, (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office or applicable lending office is located or (ii) that are Other Connection Taxes, (b) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction in which the applicable Purchaser or recipient is located, (c) in the case of a Purchaser, any U.S. federal withholding Tax that is imposed on amounts payable to the Purchaser pursuant to a law in effect at the time the Purchaser becomes a party hereto (or designates a new lending office, receives an assignment or participation interest), except to the extent that the Purchaser (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office (or assignment or sale of a participation), to receive additional amounts from Borrower with respect to such withholding Tax pursuant to Section 3.4(a), (d) Taxes resulting from the failure to comply with Section 3.4(e) or (e) any U.S. federal withholding Taxes imposed under FATCA.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements with respect thereto and any fiscal or regulatory legislation, rules, practices, or laws adopted pursuant to such intergovernmental agreements.

“**Fiscal Quarter**” means a fiscal quarter of the Borrower and its Subsidiaries, ending on March 31, June 30, September 30, and December 31 of each year.

“**Fiscal Year**” means a fiscal year of the Borrower and its Subsidiaries, ending on December 31 of each year.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**GAAP**” means generally accepted accounting principles in effect within the United States from time to time, consistently applied. If there are any changes to GAAP during the term of this Agreement, the parties shall continue to determine compliance with the financial covenants, and make all other financial determinations hereunder, without giving effect to any such changes until such time that the parties hereto can agree to amend the financial covenants and other provisions requiring financial determinations hereunder to take into account the effect of such changes to GAAP in a mutually acceptable manner.

“**Governmental Authority**” means the government of any nation, state, city, locality or other political subdivision of any thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, regulation or compliance, including, without limitation, any federal, state or local public utility commission, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

“**Guarantor**” or “**Guarantors**” means each Person that guarantees all or any portion of the Obligations. Each of the Subsidiaries of the Borrower on the Closing Date and each other Subsidiary of the Borrower created or acquired after the Closing Date and required to guarantee all or any portion of the Obligations (in each case, other than Immaterial Subsidiaries, CFCs, CFC Holdcos or Subsidiaries of CFCs) shall be a Guarantor.

**“Guaranty and Collateral Agreement”** means that certain Guaranty and Collateral Agreement, dated as of the Closing Date, made by the Loan Parties in favor of the Purchaser, as amended, restated, modified, or supplemented from time to time.

**“Hazardous Materials”** means (a) any “hazardous substance”, as defined by CERCLA, (b) any “hazardous waste”, as defined by RCRA, (c) any petroleum product, (d) any “pollutant,” as defined by the CWA, or (e) any contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any other Environmental Law.

**“Hedging Agreement”** means any rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging agreement.

**“Holder”** means each Purchaser, and each Purchaser’s successors, assigns, and other transferees of a Note permitted hereunder.

**“Immaterial Subsidiary”** means any Subsidiary of the Borrower designated as such on the Closing Date on Schedule 1.1 hereto or any Subsidiary hereafter designated as such by the mutual written agreement of the Borrower and the Purchaser; provided that, if at any time and from time to time after the Closing Date, (1) Immaterial Subsidiaries comprise in the aggregate more than five percent (5.0%) of the consolidated total assets (as determined in accordance with GAAP) of the Borrower and its Subsidiaries as of the end of the most recently ended calendar month of Borrower or more than five percent (5.0%) of the consolidated total revenues of the Borrower and its Subsidiaries for such applicable period, (2) any individual Immaterial Subsidiary comprises in the aggregate more than two and one half percent (2.5%) of the consolidated total assets (as determined in accordance with GAAP) of the Borrower and its Subsidiaries as of the end of the most recently ended calendar month of Borrower or more than two and one half (2.5%) of the consolidated total revenues of the Borrower and its Subsidiaries for such applicable period, or (3) any individual Immaterial Subsidiary is valued (whether through a sale of its Capital Stock or otherwise) in excess of \$250,000, then the Borrower shall designate in writing to Purchaser one or more of such Immaterial Subsidiary(ies) as no longer an Immaterial Subsidiary(ies) to the extent required such that any of the foregoing condition ceases to be true (in the time periods applicable as if such Immaterial Subsidiary(ies) had become Guarantors at such time); provided, further, that no Immaterial Subsidiary shall own any Intellectual Property that is material to the Loan Parties.

**“Indebtedness”** means, with respect to any Person, without duplication, such Person’s (a) obligations for borrowed money, (b) obligations representing the deferred purchase price of Property or services (other than accounts payable arising in the ordinary course of such Person’s business payable on terms customary in the trade and not outstanding more than 90 days past the date of invoice), (c) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from Property now or hereafter owned or acquired by such Person, (d) obligations which are evidenced by bonds, debentures, notes, acceptances, or other similar instruments, (e) obligations of such Person to purchase securities or other Property arising out of or in connection with the sale of the same or substantially similar securities or Property, (f) Capital Lease Obligations and obligations created or arising under any conditional sale or other title retention agreement, (h) net obligations under or relating to Hedging Agreements, (i) Off-Balance Sheet Liabilities, (j) attributable indebtedness related to Sale and Leaseback Transactions, (k) the aggregate undrawn face amount of all letters of credit issued for the account and/or upon the application of such Person together with all unreimbursed drawings with respect thereto, (l) any obligation to repurchase or redeem Disqualified Capital Stock of such Person other than at the sole option of such Person, (m) “earnouts” and similar payment obligations of such Person to the extent such obligations become fixed or are considered liabilities under GAAP, (n) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (m), and (o) any other obligation for borrowed money or other financial accommodation which, in accordance with GAAP, would be shown as a liability on the balance sheet of such Person. The amount of Indebtedness under any Hedging Agreement on any date shall be deemed to be the swap termination value thereof as of such date.

**“Indemnified Taxes”** means (a) any Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Note Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Insider”** means any Person who, as of the date of this Agreement, is an executive officer (as such term is defined in Rule 3b-7 of the Exchange Act) or a member of the Board of Directors of Borrower.

**“Intellectual Property”** means all intellectual and similar property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases.

**“Intellectual Property License”** has the meaning assigned thereto in the Guaranty and Collateral Agreement.

**“Interest Expense”** means, for any period, the net interest expense of the Borrower and its Subsidiaries for the period in question, determined on a consolidated basis and in accordance with GAAP (including, without limitation, all commissions, discounts and/or related amortization and other fees and charges owed by the Borrower and its Subsidiaries with respect to letters of credit or bankers’ acceptances, the net costs associated with any Hedging Agreement of the Borrower and its Subsidiaries, capitalized interest expense, the interest portion of Capital Lease Obligations and the interest portion of any deferred payment obligation).

**“Inventory”** means all of the “inventory” (as that term is defined in the UCC) of the Borrower and its Subsidiaries, whether now existing or hereafter acquired or created.

**“Investment”** means any direct or indirect purchase, acquisition or other investment (including, without limitation, any loan or advance or capital contribution) in or to any Person, whether payment therefor is made in cash or Capital Stock or otherwise, and whether such investment is by acquisition of Capital Stock or Indebtedness, or by loan, advance, transfer of property out of the ordinary course of business, capital contribution (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) bona fide Accounts arising in the ordinary course of business consistent with past practice), equity or profit sharing interest, extension of credit on terms other than those normal in the ordinary course of business or otherwise. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write downs or write offs with respect to such Investment.

**“IRS”** means the United States Internal Revenue Service.

“**Knowledge of the Borrower**” or any similar phrases means the actual knowledge of any director or executive officer of the Borrower or such Loan Party, as applicable, in the case of any officer, after due and reasonable inquiry of the individuals in the organization of the Borrower and its Loan Parties involved in, and responsible for, the subject matter area covered by the relevant representation and warranty.

“**Licenses**” means all licenses, permits, authorizations, determinations, and registrations issued by any Governmental Authority to the Borrower or any Subsidiary in connection with the conduct of its business.

“**Lien**” means any lien (statutory or otherwise), security interest, mortgage, pledge, hypothecation, deed of trust, assignment, deposit arrangement, encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capital Lease, or other title retention agreement (and any lease in the nature thereof)) and any agreement to give any of the foregoing.

“**Loan Party**” means the Borrower and each Guarantor.

“**Material Adverse Effect**” means individually or in the aggregate (a) a material adverse condition, event, occurrence or development related to, or material adverse change or effect on, the assets, business, properties, liabilities, results of operations, cash flows or financial condition of the Borrower and its Subsidiaries (taken as a whole), (b) a material adverse effect upon (i) the legality, validity, binding effect or enforceability against the Borrower or any Loan Party of any Note Document, (ii) the Collateral or the validity, perfection or priority of the Purchaser’s Liens on a material portion of the Collateral or (iii) the rights, remedies and benefits (taken as a whole) available to, or conferred upon, the Purchaser under any Note Document, or (c) a material adverse effect on the ability of the Borrower or any of its Loan Parties to perform its obligations under any Note Document.

“**Material Contract**” means any contract, agreement, instrument, permit, lease or License (in each case, whether written or oral) of the Borrower or its Subsidiaries (other than this Agreement and the Note Documents) (i) with any of the ten (10) largest customers and/or suppliers of the Loan Parties, measured by aggregate billings; (ii) not made in the ordinary course of business, or involving a commitment to pay an amount, by any Loan Party or any of its Subsidiaries in excess of \$250,000 in any twelve-month period following the Closing Date (whether or not in the ordinary course of business); (iii) for a partnership or a joint venture or for the acquisition, sale or lease of any assets or Capital Stock of any Loan Party, its Subsidiaries or any other Person or involving a sharing of profits; (iv) that is a loan agreement, credit agreement, promissory note, guarantee, subordination agreement, letter of credit or any other similar type of Contractual Obligations, including without limitation, such items for or relating to borrowed money (other than in connection with trade payables incurred in the ordinary course of business); (v) that grants any Lien on the assets or Capital Stock of any Loan Party; (vi) which contain any provisions that may require payments to be made by any Loan Party or any of its Subsidiaries upon or following a “change of control”, if such payments under such Contractual Obligations could individually or in the aggregate result in a Material Adverse Effect; or (vii) the failure to comply with could reasonably be expected to result in a Material Adverse Effect.

“**Maturity Date**” has the meaning given to that term in [Section 3.2\(a\)](#).

“**Maximum Rate**” has the meaning given to that term in [Section 3.1\(d\)](#).

“**Monthly Amortization Percentage**” means with respect to each full calendar month commencing after the Closing Date as set forth below, the percentage indicated below of the then-outstanding aggregate principal amount of the Notes from time to time issued hereunder and outstanding as of the applicable Payment Date occurring in such calendar month (giving effect to any amount prepaid on account of the Notes and applied to scheduled installments of principal pursuant to Section 3.2(b), Section 3.2(c) or Section 3.3 hereof):

<b>Months after the Closing Date</b>	<b>Monthly Amortization Percentage</b>
1-12	zero
13-24	1.0%
25-36	2.0%
37-48	2.5%

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code.

“**Net Income**” means the net income (or loss) of the Borrower and its Subsidiaries for the period in question, determined on a consolidated basis and in accordance with GAAP; provided that, to the extent that any amount of income is attributable to a Foreign Subsidiary, such income shall be excluded for the purpose of calculating Net Income for such period.

“**Note**” or “**Notes**” has the meaning set forth in the recitals contained in the Statement of Purpose section of this Agreement and shall include any Note issued under this Agreement.

“**Note Documents**” means this Agreement, the Notes, the Collateral Documents, , the Warrants, and each other agreement, document, form or certificate delivered pursuant to this Agreement or any other Note Document, in each case, as amended, restated, modified or supplemented from time to time.

“**Obligations**” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Notes, and (b) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by Borrower and each of its Subsidiaries to the Purchaser under any Note Document of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**Observer**” has the meaning set forth in Section 8.14.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Other Connection Taxes**” means any Taxes imposed as a result of a former or present connection between the recipient of a payment hereunder and the jurisdiction imposing such Taxes (other than a connection arising from executing, delivering, becoming a party to, the performance of an obligation under, receiving payments under, perfecting a security interest under, or engaging in any other transaction pursuant to, or enforcing, this Agreement or selling or assigning any interest in the Notes).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or under any Note Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any Note Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment in accordance with the terms hereof.

“**Outstanding Company Voting Securities**” has the meaning set forth in the definition of “Change of Control”.

“**Participant Register**” has the meaning given to that term in Section 11.3(c).

“**Payment Date**” means the last day of each calendar month, commencing, (i) in the case of Section 3.1(c), December 31, 2019 and continuing through the last day of the calendar month preceding the Maturity Date and (ii) in the case of Section 3.2(a)(ii), December 31, 2020 and continuing through the last day of the calendar month preceding the Maturity Date.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor agency.

“**Pension Plan**” means Each of the Plans maintained by the Borrower or any ERISA Affiliate that is an “employee benefit pension plan” (within the meaning of Section 3(2)(a) of ERISA).

“**Permitted Liens**” has the meaning given to that term in Section 9.5.

“**Person**” means any individual, firm, corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

“**Plans**” means any employee benefit plan (as defined in Section 3(3) of ERISA) or other employee benefit arrangement of the Borrower or any ERISA Affiliate.

“**Prepayment Date**” means that certain date that is not less than fifteen (15) days’ prior written notice from the Borrower to the Purchaser of Borrower’s redemption of all or a portion of the Notes, which date shall be a Business Day; provided, that, Borrower may not deliver such written prepayment notice prior to the one year anniversary of the Closing Date.

“**Prime Rate**” means, for any day, the greater of (i) the rate of interest in effect for such day equal to the prime rate in the United States as reported from time to time in The Wall Street Journal, and (ii) five and one quarter of one percent (5.25%). Any change in such rate of interest shall take effect at the opening of business on the day of such change. In the event The Wall Street Journal (or such other authoritative source) publishes a range of “prime rates”, the Prime Rate shall be the highest of the “prime rates”.

“**Property**” of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased, or operated by such Person.

“**Purchaser**” means Edward D. Bagley, an individual.

“**RCRA**” has the meaning set forth in the definition of “Environmental Laws.”

“**Register**” has the meaning given to that term in Section 11.3(b).

“**Reportable Event**” means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; *provided, however, that* a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

“**Requirements of Law**” means as to any Person, provisions of the Charter Documents of such Person, or any law, treaty, code, rule, regulation, right, privilege, qualification, License or franchise, or any determination of an arbitrator or a court or other Governmental Authority, in each case applicable to such Person or any of such Person’s property or to which such Person or any of such Person’s property is subject or pertaining to any or all of the Transactions or other transactions contemplated or referred to in the Note Documents.

“**Sale and Leaseback Transaction**” means any sale or other transfer of Property by any Person with the intent to lease such Property as lessee.

“**SEC**” means the United States Securities and Exchange Commission or any other governmental authority then having jurisdiction to enforce the Securities Act and/or the Exchange Act, as applicable.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations thereunder as the same shall be in effect at the time.

“**Single Employer Plan**” means a Plan maintained by the Borrower, its Subsidiaries or any member of a controlled group of corporations with the Borrower, within the meaning of Section 4001(a) or (b) of ERISA or Section 414(b) of the Code, for employees of the Borrower, any of its Subsidiaries or any of its respective ERISA Affiliates.

“**Solvent**” means, with respect to any Person that (a) the fair value of the assets and the property of such Person exceeds the fair value of the aggregate liabilities (including contingent and unliquidated liabilities) of such Person, (b) after giving effect to the transactions contemplated by this Agreement and the other Note Documents, such Person will not be left with unreasonably small capital, and (c) after giving effect to the transactions contemplated by this Agreement and the other Note Documents, such Person is able to both service and pay its liabilities as they mature. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities will be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that is likely to become an actual or matured liability.

“**Subsidiary**” means, with respect to any Person, a corporation or other entity of which more than fifty percent (50%) of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Tax**” means any present or future United States federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on-minimum, estimated, or other taxes, levies, assessments, fees or other charges imposed by any Governmental Authority, including any interest, penalty, or addition thereto, whether disputed or not.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Transactions**” means the issuance of the Notes and Warrants hereunder, each on the Closing Date.

“**UCC**” has the meaning set forth in the Guaranty and Collateral Agreement.

“**Unfunded Liabilities**” means the amount (if any) by which the present value of all vested and unvested accrued benefits under a Pension Plan subject to Title IV of ERISA exceeds the fair market value of all such Plan assets allocable to such benefits, all determined as of the then most recent valuation date for such Plans using actuarial assumptions used in determining the Plan’s normal cost for purposes of Section 412(b)(2)(A) of the Code. In each case, the foregoing determination shall be made as of the most recent date prior to the filing of said annual report as of which such actuarial present value of accumulated Plan benefits is determined.

“**Warrants**” has the meaning set forth in the recitals contained in the Statement of Purpose section of this Agreement and shall include any Warrants issued under this Agreement.

“**Wholly-owned**” means, with respect to a Subsidiary, that all of the Capital Stock of such Subsidiary is, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-owned Subsidiaries.



**1.2 Accounting Terms.** All accounting terms used herein and not expressly defined in this Agreement shall have the respective meanings given to them in conformance with GAAP. Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, this shall be done in accordance with GAAP, consistently applied, to the extent applicable, except as otherwise expressly provided in this Agreement. If any changes in accounting principles from those in effect on the date hereof are hereafter occasioned by promulgation of rules, regulations, pronouncements or opinions by or are otherwise required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions), and any of such changes results in a change in the method of calculation of, or affects the results of such calculation of, any of the financial covenants, standards or terms found herein, then the parties hereto agree upon the request of any Loan Party or the Purchaser to enter into and diligently pursue negotiations in order to amend such financial covenants, standards or terms so as to equitably reflect such changes, with the desired result that the criteria for evaluating financial condition and results of operations of the Borrower and its Subsidiaries shall be the same after such changes as if such changes had not been made; provided that until any such amendments have been agreed upon by the Purchaser, the provisions in this Agreement shall be calculated as if no such changes in accounting principles had occurred. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party at “fair value.” Notwithstanding any accounting change after the Closing Date that would require lease obligations that would be treated as operating leases as of the Closing Date to be classified and accounted for as capital leases or otherwise reflected on the Borrower’s and its Subsidiaries’ consolidated balance sheet, for the purposes of determining compliance with any covenant contained herein, such obligations shall be treated in the same manner as operating leases are treated as of the Closing Date.

ARTICLE 2  
**PURCHASE AND SALE OF THE NOTES**

**2.1 Purchase and Sale of the Notes.**

(a) Subject to the terms and conditions herein set forth, on the Closing Date the Borrower will issue and sell to the Purchaser, and the Purchaser will acquire from the Borrower, (i) Notes in the aggregate principal amount set forth opposite the Purchaser’s name on Schedule 2.1 and (ii) Warrants to purchase the number of shares of Common Stock set forth opposite the Purchaser’s name on Schedule 2.1, in exchange for the purchase price from the Purchaser set forth opposite the Purchaser’s name on Schedule 2.1.

(b) Any amounts of the Notes repaid or prepaid hereunder may not be reborrowed.

**2.2 Closing.** The purchase and issuance of the Notes and the Warrants shall take place at the closing (the “**Closing**”) on the date hereof (the “**Closing Date**”), subject to the satisfaction or waiver of the conditions to closing set forth in Section 4.1. At the Closing, the Borrower shall deliver the Notes and the Warrants to the Purchaser against delivery by the Purchaser of the purchase price for the Notes and the Warrants to be purchased by the Purchaser (as set forth opposite the Purchaser’s name on Schedule 2.1 hereto), which is payable by wire transfer of immediately available funds.

ARTICLE 3  
**THE NOTES**

**3.1 Interest and Related Fees.**

(a) Interest. Except as provided in Section 3.1(b), interest shall accrue and shall be calculated daily on the basis of the actual number of days elapsed and a 360-day year comprising twelve (12) thirty (30) day months on the unpaid principal amount of the Notes outstanding from time to time and on all other Obligations at the lesser of (i) the Applicable Rate and (ii) the Maximum Rate (as defined below).

(b) Default Rate of Interest. Automatically upon the occurrence of and during the continuance of any Event of Default, and for so long as such Event of Default continues, the unpaid principal amount of the Notes outstanding from time to time and the other Obligations shall bear interest at a rate per annum of five percent (5%) in excess of the rates otherwise payable under this Agreement or the Note Documents (but not in any event in excess of the Maximum Rate) (the “**Default Rate**”). The Default Rate shall apply retroactively to the date of occurrence of such Event of Default. All Default Rate interest shall be paid in cash on demand of the Purchaser. If, pursuant to the terms of this Agreement or the Note Documents such other Obligations do not bear interest, after the occurrence of an Event of Default and for so long as it continues, such Obligations shall bear interest at the rate per annum from time to time borne by the Notes.

(c) Payment of Interest and Related Fees. The Borrower shall pay accrued interest in arrears on each Payment Date. In addition, accrued and unpaid interest shall be payable on the maturity of the Notes, whether by acceleration or otherwise, and on the date of any prepayment (with respect to the amount prepaid) or conversion of the Notes (with respect to the principal amount converted).

(d) Excess Interest. It is the intention of the parties to comply strictly with applicable usury laws. Accordingly, notwithstanding any provision to the contrary in this Agreement or any other Note Document or any of the Obligations, in no event shall any Obligations require the payment or permit the payment, taking, reserving, receiving, collection or charging of any sums constituting interest under Applicable Law that exceed the maximum amount permitted by such laws, as the same may be amended or modified from time to time (the “**Maximum Rate**”). If any such excess interest is called for, contracted for, charged, taken, reserved or received in connection herewith or therewith, or in any communication by the Purchaser or any other Person to the Borrower or any other Person, or in the event that all or part of the principal or interest hereof or thereof shall be prepaid or accelerated, so that under any of such circumstances or under any other circumstance whatsoever the amount of interest contracted for, charged, taken, reserved or received on the amount of principal actually outstanding from time to time under any Obligations shall exceed the Maximum Rate, then in such event it is agreed that: (i) the provisions of this paragraph shall govern and control; (ii) neither the Borrower nor any other Person or entity now or hereafter liable for the payment of any Obligations shall be obligated to pay the amount of such interest to the extent it is in excess of the Maximum Rate; (iii) any such excess interest which is or has been received by the Purchaser, notwithstanding this paragraph, shall be credited against the then unpaid principal balance of the Obligations (or, if the principal amount of the Obligations shall have been paid in full, refunded by the Purchaser to the party primarily liable on such Obligation); and (iv) the provisions of this Agreement and the Obligations, and any other communication to the Borrower, shall immediately be deemed reformed and such excess interest reduced, without the necessity of executing any other document, to the Maximum Rate. The right to accelerate the maturity of the Obligations does not include the right to accelerate, collect, or charge unearned interest, but only such interest that has otherwise accrued as of the date of acceleration. Without limiting the foregoing, all calculations of the rate of interest contracted for, charged, taken, reserved or received in connection with any of the Obligations which are made for the purpose of determining whether such rate exceeds the Maximum Rate shall be made to the extent permitted by Applicable Laws by amortizing, prorating, allocating and spreading during the period of the full term of such Obligations, including all prior and subsequent renewals and extensions hereof or thereof, all interest at any time contracted for, charged, taken, reserved or received by the Purchaser. The terms of this paragraph shall be deemed to be incorporated into each of the other Note Documents.

### 3.2 Redemption of Notes.

(a) Scheduled Redemptions of Notes.

(i) Payment at Maturity. The Borrower shall redeem all Notes issued hereunder in full on the four year anniversary of the Closing Date (the “**Maturity Date**”) by payment in cash in full of the entire outstanding principal balance thereof, plus all unpaid interest accrued thereon through the date of redemption, plus all other outstanding and unpaid Obligations to the holders of the Notes through the date of redemption.

(ii) Principal Amortization. The Borrower shall make periodic redemptions of the Notes issued hereunder in principal installments payable on each Payment Date, each such payment in an amount equal to the aggregate then-outstanding principal balance of the Notes on such Payment Date multiplied by the applicable Monthly Amortization Percentage.

(b) Optional Redemption Initiated by the Borrower. The Borrower shall have the right, at its sole option and election, at any time or from time to time following the one year anniversary of the Closing Date, to redeem the Notes issued hereunder, in whole or in part, on a Prepayment Date, by payment of an amount equal to the greater of (I) the unpaid principal balance of the Notes to be redeemed, plus all unpaid interest accrued on the unpaid principal balance of the Notes to be redeemed through the Prepayment Date, and (II) the product of (y) the Event Equity Value (as defined in the Notes) and (z) the Underlying Shares (as defined in the Notes) issuable upon conversion of the principal amount of the Notes being redeemed, plus all accrued but unpaid interest on the principal balance of the Notes to be redeemed. Amounts paid by the Borrower to optionally redeem the Notes pursuant to this Section 3.2(b) shall be applied (i) to scheduled installments of principal on the Notes payable under Section 3.2(a)(ii) in the inverse order of maturity, and (ii) to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Notes being redeemed.

(c) Mandatory Redemptions.

(i) Change of Control. Upon the occurrence of a Change of Control, the Borrower shall purchase all Notes issued and outstanding hereunder in full by payment of an amount equal to the greater of (I) (x) the unpaid principal balance thereof, plus (y) all other outstanding Obligations payable to the Purchaser under the Note Documents through the date of repayment, plus (II) the product of (y) the Event Equity Value and (z) the Underlying Shares issuable upon conversion of the principal amount of the Notes, plus all accrued but unpaid interest on the principal amount of the Notes. The provisions of this Section 3.2(c)(i) shall not be deemed to be implied consent to any such Change of Control otherwise prohibited by the terms of this Agreement.

(d) Acceleration. In addition to the foregoing mandatory prepayment obligations under this Section 3.2, the Notes shall be subject to acceleration as set forth in Section 10.2 below.

**3.3 Manner of Payment.** All fees, interest, premium, principal and other amounts payable in cash in respect of any Note Document shall be paid by wire transfer of immediately available funds to an account at a bank designated in writing by the Purchaser. All payments made by the Borrower (excluding regular monthly interest payments made when due under Section 3.1(c)) upon the Obligations relating to the Notes and all net proceeds from the enforcement of the Obligations shall be applied (a) *first*, to that portion of the Obligations constituting fees, indemnities, and expenses and other amounts (including attorneys’ fees), payable to the Purchaser, (b) *second*, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Notes, (c) *third*, to the payment of that portion of the Obligations constituting unpaid principal of the Notes, and (d) *last*, the balance, if any, after all of the Obligations have been paid in full in cash (other than contingent indemnification or expense reimbursement obligations for which no claim has been made), to the Borrower or as otherwise required by any Requirements of Law. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day.

### 3.4 Taxes

(a) Any and all payments by or on account of any Obligations hereunder or under any Note Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if the applicable Loan Party shall be required by Applicable Law to deduct or withhold any Indemnified Taxes (as determined in the good faith discretion of the applicable Loan Party) from such payments, then (i) the sum payable shall be increased as necessary so that after making all such required deductions or withholding (including deductions or withholding applicable to additional sums payable under this Section 3.4) the Purchaser receives an amount equal to the sum it would have received had no such deductions or withholding been made, (ii) the applicable Loan Party shall make such deductions or withholding and (iii) the applicable Loan Party shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.

(b) Without limiting the provisions of Section 3.4(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrower shall indemnify the Purchaser for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.4) payable or paid by the Purchaser or required to be withheld or deducted from a payment to the Purchaser and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis for determining the amount of such payment or liability delivered to Borrower by the Purchaser shall be conclusive absent manifest error. Such payment shall be due within ten (10) days of Borrower's receipt of such certificate.

(d) As soon as practicable after any payment of Indemnified Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.4, Borrower shall deliver to the Purchaser the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Purchaser.

(e) Status of Purchaser.

(i) If Purchaser is entitled to an exemption from or reduction of withholding Tax with respect to payments made hereunder or under any Note Document, Purchaser shall deliver to the Borrower at the time or times reasonably requested by the Borrower such properly completed and executed documentation as reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Purchaser, if requested by the Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not the Purchaser is subject to backup withholding or information reporting requirements.

(ii) If a payment made to the Purchaser under any Note Document would be subject to U.S. federal withholding Tax imposed by FATCA if the Purchaser were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), the Purchaser shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that the Purchaser has complied with the Purchaser's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date hereof.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.4 (including additional amounts pursuant to this Section 3.4), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.4 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 3.4(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.4(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.4(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower and the Purchaser under this Section 3.4 shall survive the termination of the Note Documents and the payment in full of the Notes or the assignment of rights by the Purchaser.

**3.5 Tax Treatment.** The Borrower and the Purchaser shall file all Tax Returns consistent with the following: (i) the Notes are debt for U.S. federal and state income tax purposes; (ii) the Notes are issued with original issue discount; and (iii) the Notes are not governed by the rules set out in the U.S. Treasury Regulations Section 1.1275-4. The inclusion of this paragraph is not an admission by the Purchaser that it is subject to United States taxation.

**3.6 Purchase Price Allocation.** The Purchaser and the Borrower agree that the Notes and the Warrants constitute an "investment unit" for purposes of Section 1273(c)(2) of the Code. The Purchaser and the Borrower mutually agree that for purpose of the allocation of the issue price of such investment unit among the Notes and the Warrants in accordance with Section 1273(c)(2) of the Code and U.S. Treasury Regulation Section 1.1273-2(h) the Borrower and Purchaser shall mutually agree on an amount to be allocated to the Warrants after the Closing Date, and neither the Purchaser nor the Borrower shall take any position inconsistent with such mutually agreed upon allocation in any Tax Return or in any judicial or administrative proceeding in respect of Taxes. The allocation of the purchase price between the Notes and the Warrants does not modify or reduce or otherwise abrogate, in any manner, the Borrower's obligations under the Notes and the Warrants.

ARTICLE 4  
CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER

**4.1 Conditions Precedent to the Closing.** The obligation of the Purchaser to purchase the Notes and the Warrants, and to perform any obligations hereunder shall be subject to the following conditions on or before the Closing Date; provided that any waiver of a condition shall not be deemed a waiver of any breach of any representation, warranty, agreement, term or covenant, as specifically set forth elsewhere in this Agreement, or of any misrepresentation by the Borrower.

(a) Representations and Warranties. The representations and warranties contained in Article 6 hereof shall be true and correct in all material respects (except to the extent any such representation or warranty is by its terms qualified as to materiality, in which case such representation or warranty shall be true and correct in all respects) at and as of the Closing Date (except to the extent such representations and warranties specifically relate to an earlier date, in which case they shall be true and correct as of such earlier date) after giving effect to the Transactions, and the Purchaser shall have received at the Closing a certificate to the foregoing effect, dated as of the Closing Date, and executed by the chief executive officer or chief financial officer of the Borrower on behalf of the Borrower.

(b) Compliance with this Agreement. The Borrower and the Guarantors shall have performed and complied with all of their agreements and conditions set forth or contemplated herein that are required to be performed or complied with by such Loan Party on or before the Closing Date and the Purchaser shall have received at the Closing a certificate to the foregoing effect, dated the Closing Date, and executed by the chief executive officer or chief financial officer on behalf of the Borrower.

(c) Certificates. The Purchaser shall have received a certificate from each Loan Party, dated as of the Closing Date and signed by an officer of such Loan Party, certifying (i) that the attached copies of the Charter Documents of such Loan Party, and resolutions of the board of directors or similar governing body of such Loan Party approving the Note Documents to which it is a party and the Transactions are all true, complete and correct and remain unamended and in full force and effect, (ii) to the incumbency and specimen signature of each officer of such Loan Party executing any Note Document to which it is a party or any other document delivered in connection herewith and therewith on behalf of such Loan Party, (iii) that the attached list of executive officers and directors, as applicable, of such Loan Party are true, complete, and correct, (iv) that none of the executive officers and directors, as applicable, included in such attached list have been charged with, indicted for, been part of a proceeding for, been investigated for, arrested for, or convicted of a felony, nor are they engaged in criminal activity, nor have any of them been an officer of a bankrupt company, and (v) that there are no written or oral side agreements with any executive officer whereby such Loan Party or its management has agreed to incur any obligations other than those contained in formal written contracts or agreements executed by or on behalf of such Loan Party.

(d) Solvency. The Purchaser shall have received a certificate, signed by the chief financial officer of the Borrower, certifying that the Borrower and its Subsidiaries, on a consolidated basis, are Solvent both immediately before and immediately after giving effect to the Transactions.

(e) Documents. The Purchaser shall have received true, complete and correct copies of each of the Note Documents (including without limitation, the Notes, and the Warrants), and such other agreements, schedules, exhibits, certificates, documents, financial information and filings as the Purchaser may request in connection with or relating to the Transactions all in form and substance reasonably satisfactory to the Purchaser.

(f) Purchase of Notes Permitted by Applicable Laws. The acquisition of and payment for the Notes and Warrants to be acquired by the Purchaser hereunder on the Closing Date and the consummation of the transactions contemplated hereby and by the other Note Documents (i) shall not be prohibited by any Requirements of Law, and (ii) shall not subject the Purchaser to any penalty or other onerous condition under or pursuant to any Requirements of Law.

(g) Opinion of Counsel. The Purchaser shall have received opinions of Seyfarth Shaw LLP, counsel to the Loan Parties, dated as of the Closing Date, relating to the Transactions, in form and substance reasonably acceptable to the Purchaser.

(h) Consents and Approvals. All consents, exemptions, authorizations, or other actions by, or notices to, or filings with, Governmental Authorities and other Persons in respect of all Requirements of Law and with respect to those Contractual Obligations of the Borrower and each other Loan Party necessary in connection with the execution, delivery or performance by the Borrower or such other Loan Party, or enforcement against the Borrower, of the Note Documents to which it is a party shall have been made or obtained and be in full force and effect.

(i) No Material Judgment or Order. There shall not be on the Closing Date any judgment, injunction or order of a court of competent jurisdiction or any ruling of any Governmental Authority which would prohibit the purchase of the Notes and Warrants hereunder or subject the Purchaser to any penalty under or pursuant to any Requirement of Law if the Notes were to be purchased hereunder.

(j) Good Standing Certificates. The Borrower shall have delivered to the Purchaser as of a date not more than thirty (30) days before the Closing Date good standing certificates for the Borrower and each Guarantor for its jurisdiction of incorporation or formation and certificates of foreign qualification for all other jurisdictions where its ownership, lease or operation of property or the conduct of its business requires such foreign qualification, except where the failure to be so qualified could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(k) No Litigation. Except as set forth on Schedule 6.6, no arbitration, action, claim, suit, litigation or proceeding before any court or any Governmental Authority shall have been commenced or threatened in writing against the Borrower or any Subsidiary (including its directors or officers), and no investigation by any Governmental Authority shall have been commenced and no action, suit or proceeding by any Governmental Authority shall have been threatened in writing against the Purchaser or the Borrower (i) seeking to restrain, prevent or change the Transactions contemplated hereby or questioning the validity or legality of any of such Transactions, (ii) in which the amount of damages claimed is \$200,000 or more, or (iii) which could reasonably be expected to have a Material Adverse Effect.

(l) Fees, Etc. On the Closing Date, the Borrower shall have paid all costs, fees and expenses (including, without limitation, legal fees and expenses) then due and payable to the Purchaser, as applicable, hereunder.

(m) Collateral. The Purchaser shall have received correct, complete fully executed copies of each of the Collateral Documents, together with such UCC financing statements and any relevant financing statements or similar documents of any applicable foreign jurisdiction, original stock certificates, if any, and stock powers, original promissory notes, notices of security interest to be filed in the United States Patent and Trademark Office or any applicable foreign jurisdiction, and other instruments and documents required to be delivered under the Collateral Documents.

(n) Lien Searches. The Purchaser shall have received (i) searches of the Uniform Commercial Code, judgment, bankruptcy and tax lien filings which may be filed with respect to the Collateral covered by the Collateral Documents, and (ii) Lien searches of intellectual property, in each confirming that all such Property given as collateral is subject to no Liens except Permitted Liens.

(o) No Material Adverse Effect. There shall exist no (a) event, development, or circumstance occurring on or after December 31, 2018, that has had or could be expected to have, individually or in the aggregate, a Material Adverse Effect, or (b) material disruption or material adverse change in the financial, banking or capital markets generally affecting credit facilities similar to the facility herein.

(p) NASDAQ. The Borrower shall have filed with Nasdaq a Notification Form: Listing of Additional Shares for the listing of the shares of Common Stock underlying the Notes and the Warrants, and the Borrower shall not have received an objection thereto from Nasdaq.

#### ARTICLE 5 CONDITIONS TO THE OBLIGATIONS OF THE BORROWER

The obligations of the Borrower to issue, or cause to be issued, the Notes and the Warrants and to perform its other obligations hereunder shall be subject to the satisfaction as determined by, or waived by, the Borrower of the following conditions on or before the Closing Date:

**5.1 Representations and Warranties.** The representations and warranties of the Purchaser contained in Article 7 hereof shall be true and correct in all material respects (except to the extent any such representation or warranty is by its terms qualified as to materiality, in which case such representation or warranty shall be true and correct in all respects) at and as of the Closing Date as if made at and as of such date (except to the extent such representations and warranties specifically relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date).

**5.2 Compliance with this Agreement.** The Purchaser shall have performed and complied in all material respects with all of the agreements and conditions set forth or contemplated herein that are required to be performed or complied with by them on or before the Closing Date.

#### ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower hereby represents and warrants to the Purchaser as follows:

**6.1 Existence and Power.** The Borrower and each of its Subsidiaries: (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, and (b) and has all requisite corporate power and authority to carry on its business as now conducted.



**6.2 Authorization; No Contravention** The execution, delivery and performance by the Borrower and each Subsidiary of each Note Document to which it is or will be a party and the consummation of the Transactions: (a) have been duly authorized by all necessary organizational action; (b) do not and will not contravene or violate the terms of the Charter Documents of the Borrower or any of its Subsidiaries or any amendment thereto or any material Requirement of Law applicable to the Borrower or such Subsidiary or the Borrower's or such Subsidiary's assets, business or properties; (c) do not and will not (i) conflict with, contravene, result in any violation or breach of or default under any Contractual Obligation of the Borrower or such Subsidiary (with or without the giving of notice or the lapse of time or both) other than any right to consent, which consents have been obtained, (ii) create in any other Person a right or claim of termination or amendment of any Contractual Obligation of the Borrower or such Subsidiary, or (iii) require modification, acceleration or cancellation of any Contractual Obligation of the Borrower or such Subsidiary; and (d) do not and will not result in the creation of any Lien (or obligation to create a Lien) against any property, asset or business of the Borrower or such Subsidiary (other than those securing the Notes).

**6.3 Governmental Authorization; Third Party Consents** Except as set forth on Schedule 6.3, no approval, consent, compliance, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of the Note Documents to which it is a party or the consummation of the Transactions, other than (a) filings to perfect Liens granted under the Collateral Documents and (b) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date.

**6.4 Binding Effect** The Borrower and its Subsidiaries have duly executed and delivered the Note Documents to which it is a party and such Note Documents constitute the legal, valid and binding obligations of the Borrower and such Subsidiary enforceable against the Borrower and such Subsidiary in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and by general principles of equity.

**6.5 No Legal Bar** Neither the Borrower nor any Subsidiary has previously entered into any agreement which is currently in effect or to which the Borrower or any of its Subsidiaries is currently bound granting any rights to any Person which conflict with the rights to be granted by the Borrower or any Subsidiary in the Note Documents, other than the right to consent, which consents have been obtained.

**6.6 Litigation** Except as set forth on Schedule 6.6, (a) there are no legal actions, suits, proceedings, claims or disputes pending or, to the Knowledge of the Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority against or affecting the Borrower or its Subsidiaries; (b) there is no injunction, writ, temporary restraining order, decree or any order or determination of any nature by any arbitrator, court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of the Note Documents or which relates to the assets or the business of the Borrower or its Subsidiaries; and (c) there is no litigation, claim, audit, dispute, review, proceeding or investigation currently pending or, to the Knowledge of the Borrower, threatened in writing against the Borrower or its Subsidiaries for any violation or alleged violation of any Requirements of Law, and neither the Borrower nor any Subsidiary has received written notice of any threat of any suit, action, claim, dispute, investigation, review or other proceeding pursuant to or involving any Requirements of Law.

**6.7 Compliance with Laws.** The Borrower and its Subsidiaries are in compliance with all Requirements of Law, except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Event. Except as set forth on Schedule 6.7, there are no actual or pending appeals, audits, inquiries, investigations, proceedings or notices of intent to audit or investigate by any Governmental Authority against the Borrower or its Subsidiaries.

**6.8 No Default or Breach.** No event has occurred and is continuing or would result from the incurring of Obligations by the Borrower under the Note Documents which constitutes or, with the giving of notice or lapse of time or both, would constitute an Event of Default. To the Knowledge of the Borrower, except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, neither the Borrower nor any Subsidiary is in default with respect to any Contractual Obligation in any Material Contract.

**6.9 Title to Properties.** Except as set forth on Schedule 6.9, each of the Borrower and its Subsidiaries has good title to, or a valid leasehold interest in, all Property used by it in its business and none of such Property is subject to any Lien, except for Permitted Liens.

**6.10 Real Property.** Schedule 6.10 sets forth a correct and complete list of all real property owned or leased by the Borrower or its Subsidiaries. Each lease relating to such leased real property is in full force and effect and the Borrower and its Subsidiaries enjoy peaceful and undisturbed possession thereunder. There is no material default on the part of the Borrower or its Subsidiaries or any event or condition which (with notice or lapse of time, or both) would constitute a default on the part of the Borrower or its Subsidiaries under any such lease. The Borrower and its Subsidiaries have good and marketable title in fee simple to the real property identified on Schedule 6.10 as owned by the Borrower or its Subsidiaries, free and clear of any Liens other than Permitted Liens. There are no actions, suits or proceedings pending or, to the Knowledge of the Borrower, threatened in writing against the owned real property or the leased real property used in connection with the business of the Borrower or its Subsidiaries, at law or in equity, in arbitration or before any Governmental Authority which would in any way affect title to or the right to use such owned real property or leased real property.

#### **6.11 Taxes**

(a) Except as set forth on Schedule 6.11(a), the Borrower and each of its Subsidiaries has timely filed all foreign, United States federal and state income and other Tax Returns that it was required to file, in each case with due regard for any extension of time within which to file such Tax Return. All such Tax returns were correct and complete in all respects. All Taxes due and payable by the Borrower or its Subsidiaries have been paid, in each case with due regard for any extension of time within which to file such Tax Return, other than any Taxes the amount or validity of which is being actively contested by the Borrower or its Subsidiaries in good faith and by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor. There are no Liens, other than Permitted Liens, on any of the assets of the Borrower or its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax. No written claim has been made by a Governmental Authority in a jurisdiction where the Borrower and its Subsidiaries do not file Tax Returns that the Borrower or any of its Subsidiaries is or may be subject to taxation by that jurisdiction.

(b) Except as set forth on Schedule 6.11(b), there is no action, suit, proceeding, investigation, examination, audit, or claim now pending or threatened in writing by any Governmental Authority regarding any Taxes payable or alleged to be payable by the Borrower or any of its Subsidiaries. Neither the Borrower nor any Subsidiary has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of Taxes of such Person and there are no circumstances that would cause the taxable years of the Borrower or its Subsidiaries not to be subject to the normally applicable statute of limitations.

(c) The Borrower and each of its Subsidiaries have collected all sales, use, value added and other taxes required to be collected, and have remitted such amounts to the appropriate Governmental Authority or, if applicable, have furnished properly completed exemption certificates for all exempt transactions.

(d) Neither the Borrower nor any Subsidiary has entered into or participated in (i) a “reportable transaction” within the meaning of Section 6707A of the Code or Treasury Regulation Section 1.6011-4 (and all predecessor regulations) as in effect at the relevant time, or (ii) any act, transaction or arrangement which has been reported, or has been required to be reported, under any similar provision of state, local or non-U.S. law or a transaction similar to any such reportable or notifiable transaction.

## **6.12 Financial Condition; SEC Filings; Contingent Obligations.**

(a) The Borrower has furnished the Purchaser with true, correct and complete copies of (collectively, the “Financial Statements”): (i) the audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2018, 2017 and 2016, and the related audited consolidated statements of operations and comprehensive (loss) income, shareholders’ equity and cash flows for each of the Fiscal Years in the three-year period ended December 31, 2018, together with the notes thereto and the reports thereon as of December 31, 2018, certified by the Borrower’s independent certified public accountants, and (ii) the unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the Fiscal Quarter ended as of June 30, 2019 and the related unaudited consolidated statements of operations and comprehensive (loss) income and cash flows for such period. The Financial Statements fairly present, in all material respects, the consolidated financial position of the Borrower, as of the respective dates thereof, and the results of operations and cash flows thereof, as of the respective dates or for the respective periods set forth therein, and are in conformity with the past historical practices of the Borrower, with GAAP consistently applied during the periods involved. Except as set forth on Schedule 6.12, as of the dates of the Financial Statements, neither the Borrower nor any Subsidiary had any known obligation, Indebtedness or liability (whether accrued, absolute, contingent or otherwise, and whether due or to become due), which was not reflected or reserved against in the balance sheets which are part of the Financial Statements as required by GAAP, except for those incurred in the ordinary course of business and which are fully reflected on the books of account of the Borrower or its Subsidiaries, as applicable.

(b) Except as set forth on Schedule 6.12, all statements, reports, schedules, forms and other documents (the “SEC Documents”) required to have been filed or furnished by any Loan Party with or to the SEC since January 1, 2018 have been so filed or furnished on a timely basis. No Subsidiary of any Loan Party is required to file or furnish any documents with or to the SEC. As of the time it was filed with or furnished to the SEC as of the date of filing: (i) each of the SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be); and (ii) none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except to the extent corrected by the filing or furnishing of the applicable amending or superseding SEC Document. Each of the certifications and statements relating to SEC Documents required by: (1) the SEC’s Order dated June 27, 2002 pursuant to Section 21(a)(1) of the Exchange Act (File No. 4-460); (2) Rule 13a-14 or 15d-14 under the Exchange Act; or (3) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act) (collectively, the “Certifications”) is accurate and complete, and complied as to form and content with all Applicable Laws in effect at the time such Certification was filed with or furnished to the SEC.

(c) As of the Closing Date, there are no Contingent Obligations (other than indemnities to officers and directors to the extent permitted by Applicable Law) that would be required to be disclosed on the financial statements of any Loan Parties in accordance with GAAP, except for Contingent Obligations (i) arising from the Collateral Documents, or (ii) existing on the Closing Date as permitted Indebtedness pursuant to Section 9.2.

**6.13 Absence of Certain Changes or Events.** Since December 31, 2018, there has been no development, event, circumstance, or change which could be expected to have, either individually or in the aggregate, a Material Adverse Effect. To the Knowledge of the Borrower, there exists no present condition or state of facts or circumstances that could reasonably be expected to have a Material Adverse Effect or prevent the Borrower or any of its Subsidiaries from conducting its business after the consummation of the Transactions, in substantially the same manner in which such business has heretofore been conducted.

**6.14 Environmental Matters.**

(a) The Borrower and its Subsidiaries are and have been in compliance in all material respects with all applicable Environmental Laws relating to their Property, assets and operations; to the Knowledge of the Borrower, there are no Hazardous Materials stored or otherwise located in, on or under any of the Property or assets of the Borrower or its Subsidiaries, including, without limitation, the groundwater, except in material compliance with applicable Environmental Laws; and, to the Knowledge of the Borrower, there have been no Releases or, threatened Releases of Hazardous Materials in, on or under any property adjoining any of the Property or assets of (or used by) the Borrower or its Subsidiaries which have not been remediated to the satisfaction of the appropriate Governmental Authorities and in material compliance with Environmental Laws.

(b) To the Knowledge of the Borrower, none of the Property, assets or operations of (or used by) the Borrower and its Subsidiaries is the subject of any federal, state or local investigation evaluating whether (i) any remedial action is needed to respond to a Release or threatened Release of any Hazardous Materials into the environment or (ii) any Release or threatened Release of any Hazardous Materials into the environment is in contravention of any Environmental Law.

(c) Neither the Borrower nor any Subsidiary has received any written notice or claim, nor to the Knowledge of the Borrower are there any pending, threatened in writing, or anticipated lawsuits or proceedings against them, with respect to violations of an Environmental Law or in connection with the presence of or exposure to any Hazardous Materials in the environment or any Release or threatened Release of any Hazardous Materials into the environment, and neither the Borrower nor any Subsidiary is or has been the owner or operator of any property which (i) pursuant to any Environmental Law has been placed on any list of Hazardous Materials disposal sites, including, without limitation, the "National Priorities List" or CERCLIS List, (ii) has, or had, any subsurface storage tanks located thereon, or (iii) has ever been used as or for a waste disposal facility, a mine, a gasoline service station or a petroleum products storage facility.

(d) To the Knowledge of the Borrower, neither the Borrower nor any Subsidiary has present or contingent liability in connection with the presence either on or off the Property or assets of, or used by, the Borrower or any Subsidiary of any Hazardous Materials in the environment or any Release or threatened Release of any Hazardous Materials into the environment.

**6.15 Investment Company/Government Regulations.** Neither the Borrower nor any Subsidiary is an “investment company” within the meaning of the Investment Company Act of 1940, as amended. Neither the Borrower nor any Subsidiary is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, the Federal Power Act, the Interstate Commerce Act, or any federal or state statute or regulation limiting its ability to incur Indebtedness.

**6.16 Subsidiaries.** Except as set forth in Schedule 6.16, the Borrower does not (a) have any Subsidiaries or (b) own of record or beneficially, directly or indirectly, any (i) Capital Stock issued by any other Person or (ii) equity, voting or participating interest in any joint venture or other enterprise.

**6.17 Capitalization.** As of the Closing Date, after giving effect to the transactions contemplated hereby and in the other Note Documents, the capitalization of the Borrower and its Subsidiaries (including the maximum amount of diluted shares) is as set forth on Schedule 6.17. Schedule 6.17 lists all warrants, options, and other securities convertible or exercisable into shares of Capital Stock of the Borrower and lists the exercise or strike price applicable to such warrant, option or security. All of the issued and outstanding Capital Stock of the Borrower has been, and Capital Stock of the Borrower issuable upon the exercise of outstanding securities when issued will be, duly authorized and validly issued and are fully paid and nonassessable. All outstanding Capital Stock of the Borrower’s Subsidiaries are 100% owned by the Borrower or one of its Subsidiaries free and clear of all Liens other than Permitted Liens. The issuance of the foregoing Capital Stock (including the Notes and the Warrants and the Capital Stock issuable upon conversion and exercise thereof) is not and has not been subject to preemptive rights in favor of any Person other than such rights that have been waived or complied with, and will not result in the issuance of any additional Capital Stock of the Borrower or the triggering of any anti-dilution or similar rights contained in any options warrants, debentures or other securities or agreements of the Borrower or any of its Subsidiaries. On the Closing Date, except as set forth on Schedule 6.17, there are no outstanding securities convertible into or exchangeable for Capital Stock of the Borrower or any of its Subsidiaries or options, warrants or other rights to purchase or subscribe for Capital Stock of the Borrower or any of its Subsidiaries, or contracts, commitments, agreements, understandings or arrangements of any kind to which the Borrower or any of its Subsidiaries is a party relating to the issuance of any Capital Stock of the Borrower or any of its Subsidiaries, or any such convertible or exchangeable securities or any such options, warrants or rights. On the Closing Date, except as set forth on Schedule 6.17, neither the Borrower nor any of its Subsidiaries has any obligation, whether mandatory or at the option of any other Person, at any time to redeem or repurchase any Capital Stock of the Borrower or any of its Subsidiaries, pursuant to the terms of their respective Charter Documents or otherwise. On the Closing Date, except as set forth on Schedule 6.17, neither the Borrower nor any of its Subsidiaries maintains nor has any obligations under any stock option plan or other equity compensation related plans or agreements. No issued and outstanding shares of the Borrower’s Capital Stock are subject to a right of first refusal or condition of forfeiture in favor of the Borrower, and no shares of the Capital Stock of the Borrower are subject to vesting restrictions. Since January 1, 2019, the Borrower has not declared or paid, or become responsible to declare or pay, and the Borrower is not responsible for or has any obligation to declare or pay, a dividend or other distribution on its securities or otherwise combined, split, recapitalized or taken similar actions with respect to its outstanding Capital Stock. There are no voting trusts, proxies or other contracts or understandings to which the Borrower is a party or is bound with respect to the voting of any shares of the Borrower’s Capital Stock, the acquisition (including rights of co-sale, first refusal, antidilution or pre-emptive rights), disposition, registration of securities of the Borrower, or other rights of securityholders, or obligations of the Borrower, with respect to the securities of the Borrower, other than registration rights under warrants set forth on Schedule 6.17. All securities of the Borrower and its Subsidiaries (including all shares of the Borrower’s Capital Stock, securities, options and warrants to purchase shares of the Borrower’s Capital Stock (both outstanding as well as those that are no longer outstanding)), have been and were issued and granted pursuant to an exception from the Securities Act and otherwise in compliance, in all material respects, with all securities and other Applicable Laws, in compliance with the fiduciary obligations of the board of directors of the Borrower, and in compliance with all requirements of applicable contracts affecting, applicable to or relating to, such issuances.

**6.18 Solvency.** Borrower and its Subsidiaries, on a consolidated basis, are Solvent, both before and after taking into account the Transactions.

**6.19 Licenses and Approvals.** The Borrower and each of its Subsidiaries holds all material Licenses that are required by any Governmental Authority to permit it to conduct and operate the Borrower's or its Subsidiaries' business as now conducted, and all such Licenses are valid and in full force and effect and will remain in full force and effect upon consummation of the transactions contemplated by this Agreement and the other Note Documents. The Borrower and its Subsidiaries are in compliance in all material respects with all such Licenses. Neither the Borrower nor any Subsidiary is a party to and, to the Knowledge of the Borrower, there is not, any investigation, notice of apparent liability, violation, forfeiture or other order or complaint issued by or before any Governmental Authority or any other proceedings which could in any manner threaten or adversely affect the validity or continued effectiveness of such material Licenses of the Borrower or its Subsidiaries, or give rise to any order of forfeiture. There is no pending threat of cancellation, loss, termination, modification, or nonrenewal of any such Licenses of the Borrower or its Subsidiaries, nor any basis for such cancellation, loss, termination, modification, or nonrenewal. The Borrower has no reason to believe that such Licenses will not be renewed in the ordinary course. The Borrower and its Subsidiaries have filed in a timely manner all material reports, applications, documents, instruments, and information required to be filed pursuant to applicable rules and regulations or requests of every regulatory body having jurisdiction over any of its Licenses.

**6.20 Change of Control and Similar Payments.** Neither the execution, delivery and performance by the Borrower and the Guarantors of this Agreement, nor the execution, delivery and performance by the Borrower and the Guarantors of any of the other Note Documents, nor the consummation of the transactions contemplated hereby shall require any payment by the Borrower or any Subsidiary, in cash or kind, under any other agreement, plan, policy, commitment or other arrangement. There are no agreements, plans, policies, commitments or other arrangements with respect to any compensation, benefits or consideration which will be materially increased, or the vesting of benefits of which will be materially accelerated, as a result of this Agreement or the other Note Documents or the occurrence of any of the transactions contemplated hereby or thereby. There are no payments or other benefits payable by the Borrower or its Subsidiaries, the value of which will be calculated on the basis of any of the transactions contemplated by this Agreement or the other Note Documents.

## 6.21 **OFAC; Anti-Terrorism; Patriot Act.**

(a) Neither the Borrower nor any Subsidiary, or to the Knowledge of Borrower any Affiliate of the foregoing: (a) is a Sanctioned Person, (b) has any assets in Sanctioned Entities, or (c) derives any operating income from Investments in, or transactions with Sanctioned Persons or Sanctioned Entities. The proceeds of the Notes will not be used and have not been used to fund any operations in, finance any Investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

(b) The Borrower and its Subsidiaries are in compliance, in all material respects, with any applicable Requirements of Law relating to terrorism, sanctions or money laundering (the “**Anti-Terrorism Laws**”), including the United States Executive Order No. 13224 on Terrorist Financing (the “**Anti-Terrorism Order**”) and the Patriot Act. No part of the proceeds of any Note will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or any other Anti-Terrorism Law.

(c) No Loan Party and no Subsidiary of any Loan Party (and, to the Knowledge of the Borrower, no joint venture or Affiliate thereof) (i) is listed in the annex to, or is otherwise subject to the provisions of, the Anti-Terrorism Order or Anti-Terrorism Laws, (ii) is owned or controlled by, or acting for or on behalf of, any person listed in the annex to, or is otherwise subject to the provisions of, the Anti-Terrorism Order or Anti-Terrorism Laws or (iii) commits, threatens or conspires to commit or supports “terrorism” as defined in the Anti-Terrorism Order.

## 6.22 **Disclosure.**

(a) **Agreement and Other Documents.** This Agreement, together with all exhibits and schedules hereto, the Note Documents, and the agreements, certificates and other documents furnished to the Purchaser by the Borrower and/or the other Loan Parties at the Closing, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading provided that to the extent any such exhibit, schedule, agreement, certificate or other document was based solely upon or constitutes a forecast or projection, the Borrower represents only that it acted in good faith and utilized reasonable assumptions in the preparation of such exhibit, schedule, agreement, certificate or other document, it being understood that such forward-looking information is subject to the qualifications and risks relating to forward-looking information discussed in the SEC Documents and that actual results may vary from such forecasts and that such variations may be material.

(b) **Material Adverse Effect.** To the Knowledge of the Borrower, there is no fact which the Borrower has not disclosed to the Purchaser in writing which could reasonably be expected to have a Material Adverse Effect.

**6.23 Internal Controls.** Each Loan Party and its Subsidiaries maintain a system of internal control over financial reporting. Such internal controls over financial reporting (a) provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and (b) as to Borrower are designed to ensure that all material information concerning Borrower and its Subsidiaries required to be disclosed by Borrower in the reports that it is required to file, submit or furnish under the Exchange Act is recorded, processed, summarized and reported on a timely basis to the individuals responsible for the preparation of such reports. There are no significant deficiencies or material weaknesses in the design or operation of any Loan Party’s or its Subsidiaries’ ability to record, process, summarize and report financial data. There is and has been no fraud, whether or not material, that involves management or other employees who have a significant role in any Loan Party’s and/or its Subsidiaries’ internal controls.

#### **6.24 Accounts and Notes Receivable; Accounts and Notes Payable.**

(a) Except as set forth in Schedule 6.24(a), all the accounts receivable and notes receivable owing to any Loan Party or any of its Subsidiaries as of the date hereof constitute valid and enforceable claims (without any previously exercised rights of set off or compromise) arising from bona fide transactions in the ordinary course of business, consistent with past practice, are collectible in full in accordance with their payment terms and, to the Knowledge of the Borrower, there are no known or, to the Knowledge of the Borrower, asserted claims, refusals to pay or other rights of set-off against any thereof. Except as provided on Schedule 6.24(a), there is (i) as of the Friday occurring at least three Business Days prior to the Closing Date, no account debtor or note debtor delinquent in its payment by more than thirty (30) days; (ii) no account debtor or note debtor that has refused (or, to the Knowledge of the Borrower, threatened to refuse) to pay its obligations for any reasons; (iii) as of the Closing Date, to the Knowledge of the Borrower, no account debtor or note debtor that is insolvent or bankrupt other than as set forth on Schedule 6.24(a) and (iv) no account receivable or note receivable which is hypothecated or pledged to any person (except in connection with the Notes) by any Loan Party or any of its Subsidiaries.

(b) All accounts payable and notes payable by any Loan Party or any of its Subsidiaries to third parties as of the date hereof arise from bona fide transactions in the ordinary course of business, consistent with past practice and, as of the Closing Date, except as set forth on Schedule 6.24(b), there is no such account payable or note payable more than thirty (30) days delinquent in its payment, except those contested in good faith.

**6.25 Inventory.** All Inventory is (i) of good and merchantable quality (except for obsolete or discontinued items of Inventory which have been adequately reserved for in accordance with GAAP, consistently applied) and (ii) adequate for the conduct of the business of the Borrower in the ordinary course as currently conducted. All Inventory is recorded on the books of the Borrower at the lower of cost or market value determined in accordance with GAAP, consistently applied. To the extent required by Section 8.17 hereof, all Inventory is located on a premises that is subject to a Collateral Access Agreement. Purchase commitments for raw materials and parts are not in excess of normal requirements and were not made at a price materially in excess of market prices existing on the date such commitments were made.

**6.26 Notes and Warrants.** The Notes and Warrants, and the shares of Borrower's Capital Stock issuable upon conversion and exercise thereof, have been duly authorized by all necessary action on the part of the Borrower and no further consent or action is required by the Borrower, or its board of directors (the "Board") or stockholders in connection therewith. The Borrower has reserved the number of shares of Capital Stock underlying the Notes and the Warrants to permit the full conversion of the Notes and exercise of the Warrants by the Purchaser. As of the Closing Date, the shares of Capital Stock issuable upon conversion of the Notes and exercise of the Warrants, when so issued in accordance with the terms of the Notes or Warrants, as applicable, will be, validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Liens with respect to the issuance thereof except for such preemptive or similar rights or Liens as provided for in the Note Documents. As of the Closing Date, the Notes and Warrants have been, and the shares of Capital Stock issuable upon conversion of the Notes and exercise of the Warrants when so issued in accordance with their terms will be, issued in compliance with applicable securities laws, rules and regulations. There are no rights of first refusal applicable to the issuance of the Notes or the Warrants or the shares of Capital Stock of the Borrower issuable upon conversion or exercise thereof. No anti-dilution adjustments will be triggered as a result of the issuance of the Notes or the Warrants or the shares of Capital Stock issuable upon conversion or exercise thereof.



ARTICLE 7  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants as follows:

**7.1 Authorization.** The Purchaser has the capacity to enter into this Agreement and to perform all obligations required to be performed by it hereunder. This Agreement, when executed and delivered by the Purchaser, will constitute the Purchaser's valid and legally binding obligation, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and any other laws of general application affecting enforcement of creditors' rights generally, and (b) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

**7.2 Binding Effect.** This Agreement has been duly executed and delivered by the Purchaser and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

**7.3 No Legal Bar.** The execution, delivery, and performance of this Agreement by the Purchaser will not violate in any material respect any Requirement of Law applicable to it in any material respect, assuming the accuracy and correctness of the representations and warranties made by the Borrower to the Purchaser in the Note Documents.

**7.4 Securities Laws.**

(a) The Notes and the Warrants and the shares of Capital Stock issuable upon conversion and exercise thereof are being or will be acquired by the Purchaser hereunder for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof in any transaction which would be in violation of state or federal securities laws.

(b) The Purchaser is a sophisticated purchaser with respect to the purchase of the Notes and the Warrants and is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(c) The Purchaser understands that (i) the Notes and the Warrants and the shares of Capital Stock issuable upon conversion and exercise thereof constitute "restricted securities" under the Securities Act, (ii) the offer and sale of the Notes and the Warrants hereunder is not registered under the Securities Act or under any "blue sky" laws in reliance upon certain exemptions from such registration and that the Borrower is relying on the representations made herein by the Purchaser in its determination of whether such specific exemptions are available, and (iii) the Notes and the Warrants and the shares of Capital Stock issuable upon conversion and exercise thereof, may not be transferred except pursuant to an effective registration statement under the Securities Act, or under an exemption from such registration available under the Securities Act and under applicable "blue sky" laws or in a transaction exempt from such registration. The Purchaser is prepared and is able to bear the economic risk of an investment in the Notes and the Warrants for an indefinite period of time. The Purchaser understands that any certificate representing the Notes and the Warrants and the shares of Capital Stock that are issued to the Purchaser upon conversion or exercise thereof may bear, in the Borrower's discretion, the following restrictive legend during the period provided in Section 7(f) of the Notes:

*“NEITHER THIS [NOTE][WARRANT] NOR THE SECURITIES [INTO WHICH THIS NOTE ARE CONVERTIBLE][FOR WHICH THIS WARRANT IS EXERCISABLE] HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, [THIS NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS NOTE] [THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT.”*

(d) The Purchaser (i) has been furnished with or has had access to all material books and records of the Borrower and each Subsidiary and all of their respective material contracts, agreements and documents and (ii) has had an opportunity to ask questions of, and receive answers from, management and representatives of the Borrower and its Subsidiaries and which representatives have made available to them such information regarding the Borrower and its Subsidiaries and their current respective businesses, operations, assets, finances, financial results, financial condition and prospects in order to make a fully informed decision to purchase and acquire the Notes and the Warrants. The Purchaser has generally such knowledge and experience in business and financial matters, as to enable it to understand and evaluate the risks of an investment in the Notes and the Warrants and form an investment decision with respect thereto. The Purchaser acknowledges that none of the Borrower or its Subsidiaries has given the Purchaser any investment advice, credit information or opinion as to whether the purchase of the Notes or the Warrants is prudent.

(e) The foregoing, however, does not limit or modify the representations and warranties set forth in Article 6 of this Agreement or in any other Note Document or the right of the Purchaser to rely thereon.

ARTICLE 8  
AFFIRMATIVE COVENANTS

Until the payment in full in cash of all amounts outstanding under the Notes and all other Obligations hereunder and under the other Note Documents (other than contingent indemnification or expense reimbursement obligations for which no claim has been made) or such later date as set forth below, the Borrower hereby covenants and agrees with the Purchaser as follows:

**8.1 Delivery of Financial and Other Information.** The Borrower will, and will cause each other Loan Party to, maintain a system of accounting established and administered in accordance with GAAP (including reflecting in its financial statements adequate accruals and appropriations to reserves). In addition, the Borrower shall deliver or cause to be delivered to the Purchaser the following:

(a) Within one hundred twenty (120) days after the close of each Fiscal Year, an unqualified audit report certified by Tanner LLC or any other independent registered public accounting firm or such other independent certified public accountants that are registered and qualified with the Public Company Accounting Oversight Board and selected by the Borrower, prepared in accordance with GAAP, without qualifications (including any (x) “going concern” or like qualification or exception, (y) qualification or exception as to the scope of such audit, or (z) qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item) including consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such Fiscal Year and the related consolidated and consolidating statements of operations, changes in shareholders’ equity and cash flows for such Fiscal Year, all such financial statements to be prepared in accordance with GAAP and accompanied by (i) any management letter prepared by said accountants, and (ii) a management summary, discussion, and analysis prepared by an authorized officer of the Borrower setting forth in narrative form all significant operational and financial events and activities affecting the Borrower and its Subsidiaries during such Fiscal Year; provided that if a management summary, discussion and analysis is included in any Annual Report on Form 10-K, such management summary, discussion and analysis included therein shall suffice for purposes of this Section 8.1(a).

(b) Within forty-five (45) days after the close of each Fiscal Quarter an unaudited consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Quarter and the related consolidated and consolidating statements of operations, changes in shareholders’ equity and cash flows for such Fiscal Quarter and for the portion of the Fiscal Year ended at the end of such Fiscal Quarter, prepared in accordance with GAAP and setting forth in each case in comparative form, the figures for (i) the corresponding Fiscal Quarter and the corresponding portion of the previous Fiscal Year (as applicable), and (ii) the immediately preceding Fiscal Quarter, all of which shall be certified by an authorized officer of the Borrower as fairly presenting, in all material respects, the financial position of the Borrower and its Subsidiaries, as of the respective dates thereof, and the results of operations and cash flows thereof, as of the respective dates or for the respective periods set forth therein and accompanied by a management summary, discussion, and analysis prepared by an authorized officer of the Borrower setting forth in narrative form all significant operational and financial events and activities affecting the Borrower and its Subsidiaries during such Fiscal Quarter; provided that if a management summary, discussion and analysis is included in any Quarterly Report on Form 10-Q, such management summary, discussion and analysis included therein shall suffice for the requirements of such items pursuant to this Section 8.1(b). In addition, upon the written request of the Purchaser received within ten (10) days after the Borrower’s delivery of the quarterly financial information pursuant to this Section 8.1(b), Borrower shall deliver to the Purchaser copies of individual invoices equal to or greater than 10% of all orders for such quarter.

(c) Promptly after filing, copies of the annual federal and state income Tax Returns (and any Tax Returns for the purposes of any foreign Taxes on income, profits or gains, or losses) of the Borrower and each Subsidiary for the immediately preceding year.

(d) Promptly upon receipt by the Borrower or any Subsidiary, written notice of any material default which has not been waived or cured, given to any such Loan Party by any creditor or lessor to whom the Borrower or any Subsidiary has material debt or other obligations.

(e) Promptly upon obtaining knowledge thereof, written notice of any litigation claiming in excess of \$200,000 from the Borrower or any Subsidiary, or seeking injunctive relief against Borrower or any Subsidiary, or which could be expected to otherwise have a Material Adverse Effect, and copies of any pleadings associated therewith.

(f) As soon as available, copies of all statements, reports, press releases, and other documents relating to the financial condition of the Borrower, each Subsidiary and their respective business operations as required to be furnished to any other lender of the Borrower or any Subsidiary.

(g) Promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower or any Subsidiary, provided that the delivery thereof is not prohibited by any Requirement of Law, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower or any Subsidiary.

(h) Copies of any written reports, materials and other information given to each Board (or other governing body) of the Borrower or any Subsidiary and any such committees of the Board (or other governing body) of the Borrower or any Subsidiary, and any reports submitted by such Board (or other governing body) or committee thereof; provided that the Purchaser may be denied access to any such materials, if and to the extent the Borrower reasonably and in good faith determines (w) such denial is reasonably necessary based on the advice of counsel to preserve attorney-client privilege, (x) there exists an actual or potential conflict of interest between the Purchaser, and the Borrower or its Subsidiaries, as applicable, or (y) based on the advice of counsel, such denial is required by Applicable Laws.

(i) Promptly, and in any event within three (3) Business Days after receipt thereof by the Borrower or any Subsidiary of a notice of any “breach,” “default,” “event of default,” or “material adverse effect” (and copies of any written notices thereof) pursuant to the terms of any Material Contract, or other notices, amendments, waivers, consents or modifications (including notice of non-renewal or cancellation or termination, reports, borrowing notices, conversion notices, compliance certificates, and any other deliverable items in the ordinary course of business) required to be given under any such Material Contract, whether or not such notice or notification requirement has been waived by any party to such agreement.

(j) Promptly, and in any event within three (3) Business Days after the Borrower or any other Loan Party becomes aware of or has knowledge of any event or condition that constitutes a Default or an Event of Default, provide written notice of such event or condition and a statement of the curative action that the Borrower proposes to take with respect thereto.

## **8.2 Use of Proceeds.**

(a) The Borrower shall use the proceeds of the sale of the Notes hereunder only as follows: (i) for general corporate purposes and working capital requirements of the Borrower and its Subsidiaries and (ii) to pay all fees and expenses in connection with this Agreement.

(b) The Borrower shall not use any proceeds of the sale of the Notes hereunder to, directly or indirectly, purchase or carry any “margin stock” (as defined in Regulation U) or to extend credit to others for the purpose of purchasing or carrying any “margin stock” in violation of the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

**8.3 Notice of Material Adverse Effect.** The Borrower will give prompt notice in writing to the Purchaser upon becoming aware of any development or other information outside the ordinary course of business of the Borrower or any Subsidiary which could reasonably be expected to have a Material Adverse Effect.

**8.4 Conduct of Business.** The Borrower will, and will cause each other Loan Party to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted or those reasonably related or ancillary thereto and do all things necessary to remain duly incorporated or organized, validly existing and in good standing as a domestic corporation or limited liability company in its jurisdiction of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted unless, in the good faith judgment of the Borrower, the termination of or failure to preserve and keep in full force and effect such corporate existence would not, individually or in the aggregate, have a Material Adverse Effect..

**8.5 Taxes and Claims.** The Borrower will, and will cause each of its Subsidiaries to:

(a) Timely file complete and correct United States federal and state income and applicable and material foreign, state and local Tax Returns required by law, in each case with due regard for any extension of time within which to file such Tax Return, and pay when due all Taxes, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with GAAP in the Borrower’s most recent audited financial statements, which deferment of payment is permissible so long as no Lien, other than a Permitted Lien has been entered and the Borrower’s and its Subsidiaries’ title to, and its/their right to use, its/their Properties are not materially adversely affected thereby; and

(b) Pay and perform (i) all Obligations under this Agreement and the other Note Documents and (ii) except where failure to do so could not reasonably be expected to result in a Default hereunder or have a Material Adverse Effect, all other Indebtedness, obligations and liabilities in accordance with customary trade practices; provided that the Borrower or such Subsidiary may contest any item described in clause (ii) above in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP in Borrower’s most recent audited financial statements.

## **8.6 Insurance.**

(a) The Borrower will, and will cause each of its Subsidiaries to, maintain with reputable insurance companies insurance in such amounts and covering such risks as is otherwise consistent with sound business practice, including, without limitation, (i) property and casualty insurance on all of its Property, (ii) general liability insurance, workers compensation insurance, business interruption insurance, and directors and officers liability insurance, and (iii) maintain such insurance as is required by the terms of any Collateral Document.

## **8.7 Compliance with Laws and Material Contracts.**

(a) The Borrower will, and will cause each of its Subsidiaries to, comply with any and all Requirements of Law to which it may be subject including, without limitation, all Environmental Laws, and obtain any and all Licenses necessary to the ownership of its Property or to the conduct of its businesses, except where the failure to so comply could not reasonably be expected to result in a Material Adverse Effect. The Borrower will, and will cause each of its Subsidiaries to, timely satisfy all material assessments, fines, costs and penalties imposed by any Governmental Authority against such Person or any Property of such Person except to the extent such assessments, fines, costs, or penalties are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary has set aside on its books adequate reserves in accordance with GAAP. The Borrower will, and will cause each of its Subsidiaries to, comply with any and all Material Contracts.

(b) The Borrower will file or furnish, on a timely basis in accordance with the applicable requirements of the Securities Act or the Exchange Act (as the case may be), all statements (including without limitation, financial statements), reports, schedules, forms and other documents (other than any immaterial Form 3, 4, 5 or 8-K filings or any filings relating solely to benefit plans), required to be filed or furnished with or to the SEC.

**8.8 Maintenance of Properties.** The Borrower will, and will cause each of its Subsidiaries to, do all things necessary to maintain, preserve, protect and keep its Property (other than Property that is obsolete, surplus, or no longer used or useful in the ordinary conduct of its business) in good repair, working order and condition (ordinary wear and tear and casualty and condemnation excepted), make all necessary and proper repairs, renewals and replacements such that its business can be carried on in connection therewith and be properly conducted at all times and pay and discharge when due the cost of repairs and maintenance to its Property, and pay all rentals when due for all real estate leased by such Person.

**8.9 Issue Taxes.** The Borrower will, and will cause each of its Subsidiaries to, pay all Taxes, if any, in connection with the issuance of the Notes. The obligations of the Borrower hereunder shall survive the payment of the Obligations and the termination of the Note Documents.

**8.10 Environmental Covenants.** The Borrower will, and will cause each of its Subsidiaries to use and operate all of its facilities and Properties in compliance with all Environmental Laws, keep all necessary Licenses in effect and remain in compliance therewith, and handle all Hazardous Materials in compliance with all applicable Environmental Laws, except where such non-compliance could not reasonably be expected to result in a Material Adverse Effect;

**8.11 Further Assurances.** The Borrower will, and will cause each of its Subsidiaries to, take any action reasonably requested by the Purchaser in order to effectuate the purposes and terms contained in this Agreement or any of the Note Documents.

**8.12 Replacement of Notes.** Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of any Note, and, in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement in form and substance reasonably satisfactory to the Borrower, or, in the case of any such mutilation, upon surrender and cancellation of the Note, as the case may be, the Borrower will issue a new Note of like tenor, in lieu of such lost, stolen, destroyed or mutilated Note.

**8.13 Registration Rights.** Borrower hereby agrees to register the shares of Common Stock issuable upon conversion of the Notes and exercise of the Warrants in accordance with Schedule 8.13 attached hereto, which schedule is hereby incorporated by reference herein.

**8.14 Board Observer**

(a) For so long as the Obligations are outstanding, the Purchaser shall have the right to appoint one representative (the “**Observer**”) as a non-voting observer (the “**Observer**”) to the board of directors of the Borrower (the “**Board**”) and each of its committees, which Observer shall be reasonably acceptable to the Borrower. The initial Observer shall be the Purchaser and the Borrower hereby approves the designation of the Purchaser as the initial Observer. Any subsequent Observer shall be designated by written notice from the Purchaser to the Borrower. The Observer shall have the right to attend (which attendance may occur telephonically at the election of the Observer) and participate in all meetings of the Board and any committees thereof. The Observer shall have no right to vote on any matter presented to the Board or any committee thereof. The Borrower shall give the Observer written notice of each meeting thereof at the same time and in the same manner as the other members of the Board or such committee receive notice of such meetings. The Borrower shall permit the Observer to attend and participate in all meetings thereof. The Observer shall be entitled to receive all written materials and other information given to other members of the Board and such committees in connection with such meeting or otherwise (including, for the avoidance of doubt, such monthly information rights in the same manner and scope prepared for use by management and the Board), at the same time such materials and information are given to the other members of the Board and such committees, and the Observer shall keep such materials and information confidential, and shall abide by the Borrower’s insider trading policy. If the Borrower or any Subsidiary proposes to take any action by written consent in lieu of a meeting of the Board, then the Borrower or such Subsidiary shall give written notice thereof to the Observer describing the nature and substance of such action and including the text of such written consents at the same time as such written consents are provided to the members of the Board. The Borrower shall pay and reimburse the reasonable and documented out-of-pocket costs and expenses of the Observer incurred in connection with traveling to and attending such meetings of the Board and committees thereof. Notwithstanding anything contained in this Section 8.14 to the contrary, the Observer designated hereunder may be excluded from any meeting (or portion thereof), or denied access to any materials, if and to the extent the Board reasonably and in good faith determines (i) such recusal is reasonably necessary based on the advice of counsel to preserve attorney-client privilege, (ii) there exists, with respect to any deliberation or board or committee materials, an actual or potential conflict of interest between the Observer, and the Borrower or its Subsidiaries, as applicable, or (iii) based on the advice of counsel, such recusal is required by Applicable Laws.

**8.15 Subsidiary.**

(a) If the Borrower or any Subsidiary creates, forms or acquires any Subsidiary on or after the date of this Agreement, the Borrower will, and will cause such Subsidiaries (other than Immaterial Subsidiaries) to, within ten (10) Business Days after the creation, formation or acquisition of such new Subsidiary (or at such later time as the Purchaser may agree in writing), grant to Purchaser a perfected first priority security interest in and Lien on all of the issued and outstanding Capital Stock of such Subsidiary, in order to secure the Obligations (except that, solely to the extent such pledge would result in material adverse tax consequences to the Borrower and/or its Subsidiaries, no pledge shall be made of (i) in excess of sixty-five percent (65%) of the voting Capital Stock (but 100% of the non-voting Capital Stock) of any first-tier Subsidiary that is a CFC or any CFC Holdco or (ii) any of the equity interest of any lower-tier Subsidiary that is a CFC the parent of which is also a CFC) and (iii) cause such Subsidiary to join the Guaranty and Collateral Agreement and secure said Obligations as a “Grantor” under the Guaranty and Collateral Agreement with a perfected first priority security interest in and Lien on all of the accounts, Inventory, documents, instruments, chattel paper, general intangibles, goods, machinery, equipment, investment property, other tangible and intangible personal property, real property and other assets and the books and records of such Subsidiary (except that, with respect to property of a Domestic Subsidiary that constitutes voting Capital Stock in a CFC or CFC Holdco solely to the extent such pledge would result in material adverse tax consequences to the Borrower and/or its Subsidiaries, any such pledge, security interest or Lien shall be limited to sixty-five percent (65%) of the voting Capital Stock of such Purchaser.

(b) No Subsidiary shall at any time acquire any material assets or operations unless such Subsidiary shall have complied with the requirements of this Section 8.15 applicable to newly created, formed or acquired Subsidiaries.

ARTICLE 9  
NEGATIVE COVENANTS

Until the payment in full in cash of all amounts outstanding under the Notes and all other Obligations hereunder and under the other Note Documents (other than contingent indemnification or expense reimbursement obligations for which no claim has been made) or such later date as set forth below, the Borrower hereby covenants and agrees with the Purchaser as follows:

**9.1 Distributions.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, make or declare or incur any liability to make any Distributions in respect of the Capital Stock of such Person, except that (i) a Subsidiary of the Borrower may declare and pay dividends on its outstanding Capital Stock to the Borrower or to a Wholly-owned Subsidiary of the Borrower that is a Loan Party; (ii) the Borrower may declare and pay dividends with respect to its Capital Stock (other than Disqualified Capital Stock) payable solely in additional shares of its Capital Stock; (iii) each Loan Party may purchase common Capital Stock or common Capital Stock options from present or former non-executive officers or employees of the Borrower or any of its Subsidiaries upon the death, disability or termination of employment of such non-executive officer or employee; provided that no Default or Event of Default then exists or would result therefrom and the aggregate amount of payments made under this clause (iii) shall not exceed \$100,000 in the aggregate during any Fiscal Year.

**9.2 Indebtedness.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, create, incur or suffer to exist any Indebtedness (directly or indirectly), except:

- (a) the Obligations;
- (b) Indebtedness existing on the date hereof and described in Schedule 9.2;
- (c) Capital Lease Obligations and purchase money Indebtedness in an aggregate amount not to exceed \$250,000 at any time outstanding;



(d) endorsement of items for deposit or collection of commercial paper received in the ordinary course of business;

(e) Indebtedness with respect to surety and appeal bonds, performance bonds, bid bonds, completion guarantees and similar obligations incurred in the ordinary course of business;

(f) accrual of interest, accretion or amortization of original issue discount, in each case, on Indebtedness permitted hereunder;

(g) Indebtedness in respect of bid, performance or surety bonds, workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of the Borrower or any Subsidiary in the ordinary course of business, including guarantees or obligations of the Borrower or any Subsidiary with respect to letters of credit supporting such bid, performance or surety bonds, workers' compensation claims, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed); provided that neither the Borrower nor any Domestic Subsidiary shall incur such Indebtedness for the account of, for the benefit of, or in support of any Foreign Subsidiary;

(h) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts that are promptly repaid incurred in the ordinary course of business;

(i) unsecured Indebtedness in the ordinary course of business in respect of the following bank products or services extended to any Loan Party in an aggregate amount not to exceed \$200,000 at any time: (i) cash management services and (ii) commercial credit card and merchant card services;

(j) Indebtedness of (i) any Loan Party owing to any other Loan Party solely to the extent such Indebtedness is unsecured, (ii) any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party, or (iii) any Loan Party owing to any other Subsidiary that is not a Loan Party solely to the extent such Indebtedness is unsecured; and

(k) guarantees of obligations (i) of any Loan Party of the Indebtedness of any other Loan Party; (ii) by any Subsidiary (which is not a Loan Party) of the Indebtedness of any Loan Party, or (iii) by any Subsidiary (which is not a Loan Party) of the Indebtedness of any other Subsidiary (that is not a Loan Party), provided that, the guarantees permitted under this Section 9.2(k) shall not be permitted unless the Indebtedness so guaranteed is otherwise permitted by the terms hereof.

**9.3 Mergers.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, enter into any merger or consolidation or dissolve itself (or suffer any dissolution) except that, solely to the extent that such mergers, consolidations or dissolutions do not diminish the value of the Notes, (a) (i) any Subsidiary of a Loan Party (other than the Borrower) may be merged or consolidated with or into a Loan Party that is a Domestic Subsidiary (provided that such Loan Party that is a Domestic Subsidiary shall be the continuing or surviving Person) or (ii) any Subsidiary that is not a Loan Party may be merged or amalgamated with or into a Subsidiary that is not a Loan Party, and (b) any Subsidiary of the Borrower may dissolve pursuant to any dissolution that results in the assets of such Subsidiary being transferred to the Borrower or any other Loan Party.

**9.4 Sales of Assets.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, sell, assign, License, lease, convey, exchange, transfer or otherwise dispose of its Property (each, a "**Disposition**") (including, without limitation, any Capital Stock of any Subsidiary owned by the Borrower or another Subsidiary) to any other Person (including without limitation, Borrower or any other Loan Party shall not cause a Disposition to any Subsidiary or Affiliate that is not a Loan Party), except:

(a) Dispositions of Inventory in the ordinary course of business;

(b) Dispositions of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrower or any of its Subsidiaries in the ordinary course of business;

(c) leases, non-exclusive licenses or sublicenses of real or personal property in the ordinary course of business, in each case subject to the Liens granted under the Note Documents;

(d) Dispositions permitted by clause (b) of Section 9.4;

(e) Dispositions, settlements and write-offs of accounts receivable in the ordinary course of business;

(f) Dispositions of Property to the extent that (i) such Property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property and, in each case, so long as the Purchaser has a Lien with respect to such replacement property with the same priority as the Lien of Purchaser with respect to the Property disposed of;

(g) Dispositions which constitute, or which are subject to, a Casualty Event;

(h) Dispositions by (i) any Loan Party to any other Loan Party (other than a Foreign Subsidiary), and (ii) any Subsidiary that is not a Loan Party to the Borrower or any other Subsidiary of the Borrower; and

(i) (i) any lapse of Intellectual Property by any Loan Party that is not economically desirable in the conduct of the Loan Parties' business or (ii) any abandonment, cancellation, non-renewal or discontinuance of Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), such lapse is not materially adverse to the interests of the Purchaser and such Intellectual Property is not then being used by the Loan Parties in the ordinary course of business.

(j)

**9.5 Liens.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, create, incur or suffer to exist, any Lien in, of or on its or their Property (whether now owned or hereafter acquired, or upon any income, profits or proceeds therefrom), except the following (“**Permitted Liens**”):

(a) Subject to Section 8.3 hereof, Liens for Taxes, assessments or governmental charges or levies on its Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books, so long as the Borrower's or Subsidiary's title to, and its right to use, its Properties are not materially adversely affected thereby;

(b) Subject to Section 8.3 hereof, Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar Liens arising in the ordinary course of business which secure payment of obligations not more than 30 days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books, so long as the Borrower's or Subsidiary's title to, and its right to use, its Properties are not materially adversely affected thereby;

(c) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;

(d) (i) Utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character, as arise in the ordinary course of business and that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary course of business of the Borrower or any Subsidiary and (ii) minor defects in title, in each case, which do not materially interfere with the conduct of the Borrower's and its Subsidiaries' business or the utilization thereof in the business of the Borrower or its Subsidiaries;

(e) Liens existing on the date hereof and described in Schedule 9.5;

(f) Liens securing the Obligations;

(g) Liens securing Indebtedness permitted under Section 9.1(c); provided that (i) such Liens shall be created substantially simultaneously with the acquisition or lease of the related asset, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original purchase price of such property at the time it was acquired;

(h) Liens arising out of judgments, attachments or awards not resulting in an Event of Default under Section 10.1 or securing appeal or other surety bonds relating to such judgments;

(i) Liens (i) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (ii) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers;

(j) leases, licenses or sublicenses of the properties of the Borrower or its Subsidiaries, in each case as otherwise permitted under Section 9.4 hereof and entered into in the ordinary course of the Borrower's or its Subsidiaries' business so long as such leases, licenses or sublicenses do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of the Borrower or its Subsidiaries, or (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

(k) (i) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or its Subsidiaries, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements and (ii) Liens of a collection bank arising under Section 4-210 of the UCC on items in the course of collection;

- hereunder;
- (l) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases otherwise permitted
  - (m) statutory Liens of landlords and lessors in respect of rent not in default;
  - (n) the title and interest of a lessor or sublessor in and to personal property leased or subleased, in each case extending only to such personal property; and
  - (o) non-exclusive licenses of Intellectual Property rights in the ordinary course of business.

**9.6 Affiliates.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, enter into any transaction or arrangement (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate, except for (a) transactions permitted by this Agreement, and (b) transactions in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's operating business and upon fair and reasonable terms and that are no less favorable to the Borrower or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate; provided that, none of the foregoing shall permit any Disposition by the Borrower or a Domestic Subsidiary to a Foreign Subsidiary, or any Disposition by the Borrower or any other Loan Party to any Subsidiary or Affiliate that is not a Loan Party.

**9.7 Restrictive Agreements.** The Borrower will not, and will not cause or permit any of its Subsidiaries to, become or be a party to any contract or agreement which materially impairs such Person's ability to perform under this Agreement, or under any other Note Document.

**9.8 Certain Restricted Issuances of Capital Stock** EXCEPT FOR THE ISSUANCE OF EXCLUDED SHARES, THE BORROWER SHALL NOT ISSUE (A) ANY SHARES OF COMMON STOCK AT A PURCHASE PRICE LESS THAN THE CONVERSION PRICE (AS SUBJECT TO ADJUSTMENT FOR STOCK SPLITS AND STOCK COMBINATIONS AFFECTING THE COMMON STOCK) OR ISSUE ANY COMMON STOCK EQUIVALENTS WITH A CONVERSION PRICE OR EXERCISE PRICE LESS THAN THE CONVERSION PRICE (AS SUBJECT TO ADJUSTMENT FOR STOCK SPLITS AND STOCK COMBINATIONS AFFECTING THE COMMON STOCK), (B) ANY SHARES OF COMMON STOCK OR COMMON STOCK EQUIVALENTS TO THE EXTENT THE EFFECTIVE PURCHASE OR CONVERSION PRICE OR THE NUMBER OF UNDERLYING SHARES FLOATS OR RESETS OR OTHERWISE VARIES OR IS SUBJECT TO ADJUSTMENT (DIRECTLY OR INDIRECTLY) BASED ON MARKET PRICES OF THE COMMON STOCK OR (C) ANY WARRANTS OR OTHER RIGHTS TO PURCHASE COMMON STOCK THAT, WHEN VALUED ON A BLACK SCHOLES BASIS, DECREASES THE PURCHASE PRICE FOR SUCH WARRANTS OR OTHER RIGHTS BELOW THE CONVERSION PRICE (AS SUBJECT TO ADJUSTMENT FOR STOCK SPLITS AND STOCK COMBINATIONS AFFECTING THE COMMON STOCK).

#### ARTICLE 10 EVENTS OF DEFAULT

**10.1 Events of Default.** An "Event of Default" shall occur hereunder upon:

- (a) Failure of the Borrower to pay the principal of any Note (or any installment thereof) as and when due (whether at a scheduled installment date or maturity, upon acceleration or otherwise), or failure of the Borrower to pay within three (3) Business Days after the same shall become due (i) any interest upon any Note, (ii) any fees or any other Indebtedness or Obligations to the Purchaser under any of the Note Documents or (iii) any other obligations under any of the Note Documents.

(b) Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries to the Purchaser under or in connection with this Agreement, the Notes or any other Note Document or any certificate or information delivered in connection with any of the foregoing shall be materially false when made.

(c) Failure of the Borrower or any of its Subsidiaries to comply with any term, covenant, or provision contained in Sections 8.1, 8.2, 8.3, 8.4, 8.6, 8.7(a), 8.14, 8.15 or Article 9 of this Agreement.

(d) Failure of the Borrower or any of its Subsidiaries to perform or observe any other term, covenant or provision contained in this Agreement (other than those specified elsewhere in this Section 10.1) or any other Note Document and any such failure shall remain unremedied for fifteen (15) days after occurrence.

(e) (i) Failure of the Borrower or any of its Subsidiaries to pay when due or within any applicable grace period therefor any payments under any Indebtedness or Material Contract, in excess of \$500,000 (other than the Obligations); (ii) the default by the Borrower or any of its Subsidiaries in the performance (beyond the applicable grace period with respect thereto, if any) of any other term, provision or condition contained in any agreement, contract or instrument under which any such Indebtedness or Material Contract was created or is governed, the effect of which default is (y) to cause, or to permit the holder or holders of such other Indebtedness to cause, such Indebtedness or any other Material Contract, to become due prior to its stated maturity (z) to cause or result in a Material Adverse Effect; (iii) any other event shall occur or condition exist, the effect of which event or condition is to cause, or to permit the holder or holders of any Indebtedness to cause, such Indebtedness to become due prior to its stated maturity; or (iv) any Indebtedness of the Borrower or any of its Subsidiaries shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof.

(f) The Borrower or any Subsidiary shall (i) file or consent to the entry of an order for relief with respect to it under any federal, state or foreign bankruptcy, insolvency, receivership, liquidation or similar law as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, administrator, liquidator or similar official for it or any substantial part of its Property, (iv) institute any proceeding seeking an order for relief under any federal, state or foreign bankruptcy, insolvency, receivership, administration, liquidation or similar law as now or hereafter in effect seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any such law relating to bankruptcy, insolvency or reorganization or relief of debtors, fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it or file an answer admitting the material allegations of a petition filed against itself in any such proceeding, (v) dissolve, wind up or liquidate, (vi) take any corporate, organizational or similar action to authorize or effect any of the foregoing actions set forth in this Section 10.1(f), (vii) fail to contest in good faith any appointment or proceeding described in Section 10.1(g), (viii) not be Solvent, or (ix) admit in writing its inability to pay its debts generally as they become due.

(g) Without the application, approval or consent of the Borrower or any Subsidiary, as applicable, a receiver, trustee, examiner, liquidator, administrator, or similar official shall be appointed for such Loan Party or any substantial part of its Property, or a proceeding described in Section 10.1(f) shall be instituted against such Loan Party and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days.

(h) Any court, government, or Governmental Authority shall condemn, seize or otherwise appropriate, or take custody or control of, all or any material portion of the Property of the Borrower or any Subsidiary.

(i) The Borrower or any Subsidiary shall fail within 30 days to pay, bond or otherwise discharge one or more (i) judgments or orders for the payment of money aggregating in excess of \$500,000 (or the equivalent thereof in currencies other than U.S. Dollars) in the aggregate, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgment(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith.

(j) The occurrence of a Reportable Event with respect to any Plan; the filing of a notice of intent to terminate a Pension Plan by the Borrower, any ERISA Affiliate or any Subsidiary, the institution of proceedings to terminate a Pension Plan by the PBGC or any other Person; the withdrawal in a “complete withdrawal” or a “partial withdrawal” as defined in Sections 4203 and 4205, respectively, of ERISA by the Borrower, any ERISA Affiliate or any Subsidiary of the Borrower from any Multiemployer Plan; the incurrence of any material increase in the contingent liability of the Borrower or any of its Subsidiaries with respect to any “employee welfare benefit plan” as defined in Section 3(1) of ERISA which covers retired employees and its beneficiaries; or the Unfunded Liabilities of all Single Employer Plans shall exceed (in the aggregate) \$500,000, in each such case which, either individually or in the aggregate, would be reasonably expected to result in liability to any Loan Party in excess of \$500,000.

(k) The institution by the Borrower, any ERISA Affiliate or any Subsidiary of steps to terminate any Plan if, in order to effectuate such termination, the Borrower, such ERISA Affiliate or such Subsidiary, as the case may be, would be required to make a contribution to such Plan, or would incur a liability or obligation to such Plan, in excess of \$500,000 with respect to any other Plan, or the institution by the PBGC of steps to terminate any Pension Plan, which would reasonably be expected to result in material liability to any Loan Party.

(l) [Intentionally Omitted].

(m) Any Collateral Document shall for any reason fail to create a valid and perfected first priority (subject to any Permitted Liens) security interest in any collateral purported to be covered thereby, except as permitted by the terms of any Collateral Document, or any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document.

(n) Any Note Document, at any time after the Closing Date, and for any reason other than as expressly permitted thereunder, ceases to be in full force and effect; or the Borrower or any other Loan Party contests in any manner the validity or enforceability of any Note Document or any provision thereof; or the Borrower or any other Loan Party denies that it has any or further liability or obligation under any Note Document, or purports to revoke, terminate or rescind any Note Document.

(o) The occurrence of a Change of Control, or a Fundamental Changes (as defined in the Notes).

(p) The occurrence of a Material Adverse Effect.

(q) The occurrence of a Triggering Event (as defined in the Notes) (to the extent not covered by any of the other provisions of this Section 10.1).

(r) Any subordination or intercreditor agreement relating to any other Indebtedness of any Loan Party subordinated to the Obligations, or any subordination provisions of any note or other document running to the benefit of the Purchaser in respect of such Indebtedness, shall cease for any reason to be in full force and effect or any Loan Party or any of their Subsidiaries shall so assert in writing.

(s) Any Loan Party or any Subsidiary shall be enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business.

(t) Any Loan Party, any of its Subsidiaries, or any member of the senior management thereof shall be indicted for, convicted of or found culpable of a felony under Applicable Law that would reasonably be expected to (i) materially and adversely impair (A) the ability of the Loan Parties to operate their business, (B) any Note Document, or (C) any rights or remedies of the Purchaser under any Note Document, or (ii) result in a material declination in value of the Collateral. Any member of the senior management of the Loan Parties shall be indicted for, convicted of or found culpable of a felony under Applicable Law relating to any Loan Party or any of its Subsidiaries involving fraud, financial misconduct, theft or embezzlement.

(u) [Intentionally Omitted].

(v) Except as otherwise expressly permitted hereunder, any Loan Party shall (i) take any action, or shall make a determination, whether or not yet formally approved by any Loan Party's management or board of directors (or equivalent governing body), to (A) suspend the operation of all or a material portion of its business in the ordinary course, (B) suspend the payment of any material obligations in the ordinary course or suspend the performance of any material obligations in the ordinary course or suspend the performance under the Material Contracts in the ordinary course of business, or (C) employ an agent or other third party to conduct a wind-down of any material portion of its business or (ii) be enjoined, restrained or in any way prevented by the order of any Governmental Authority from conducting any part of their business unless such order would not have a Material Adverse Effect.

(w) [Intentionally Omitted].

(x) [Intentionally Omitted].

(y) Any arbitration, action, claim, suit, litigation or proceeding before any court or any Governmental Authority shall have been commenced or threatened by the Borrower, any Loan Party or any other Subsidiary against the Purchaser or any of their respective Affiliates.

**10.2 Acceleration.** If an Event of Default occurs and is continuing under Section 10.1(f) or (g), then the outstanding principal of and interest on the Notes shall automatically become immediately due and payable or, if greater, an amount equal to the product of (y) the Event Equity Value and (z) the Underlying Shares issuable upon conversion of the principal amount of the Notes, plus all accrued but unpaid interest on the principal amount of the Notes, shall automatically become immediately due and payable, in either case, without presentment, demand, protest or notice of any kind, all of which are expressly waived. If any other Event of Default occurs and is continuing, the Purchaser, by written notice to the Borrower, may declare the principal of and interest on the Notes to be due and payable immediately or, if greater, an amount equal to the product of (y) the Event Equity Value and (z) the Underlying Shares issuable upon conversion of the principal amount of the Notes, plus all accrued but unpaid interest on the principal amount of the Notes, to be due and immediately payable. Upon any such declaration of acceleration, such principal and interest (or such greater amount set forth in this Section 10.2) shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are expressly waived, and the Purchaser shall be entitled to exercise all of its rights and remedies hereunder and under such Note or any other Note Document whether at law or in equity.

**10.3 Set-Off.** Upon the occurrence and during the continuation of an Event of Default, in addition to all other rights and remedies that may then be available to the Purchaser, the Purchaser is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower) to set off and apply any and all Indebtedness at any time owing by the Purchaser to or for the credit or the account of the Borrower or any of its Subsidiaries against all amounts which may be owed to the Purchaser by the Borrower or any of its Subsidiaries in connection with this Agreement or any other Note Document. The Purchaser of the Notes taking action under this Section 10.3 shall promptly provide notice to the Borrower of any such action taken; provided that the failure of the Purchaser to provide such notice shall not prejudice its rights hereunder.

**10.4 Suits for Enforcement.** In case any one or more Events of Default described in Section 10.1 shall have occurred and be continuing, unless such Events of Default shall have been waived, the Purchaser of each Note with respect to which any such Event of Default has occurred may proceed to protect and enforce its rights under this Article 10 by suit in equity or action at law. It is agreed that in the event of any such action, or any action between the Purchaser of the Notes and the Borrower (including its officers and agents) in connection with a breach or enforcement of this Agreement, the Purchaser of the Notes shall be entitled to receive all reasonable and documented out-of-pocket fees, costs and expenses incurred, including without limitation such fees and expenses of outside counsel (whether or not litigation is commenced) and fees, costs and expenses of appeals.

**10.5 License.** The Borrower and its Subsidiaries hereby grant to the Purchaser a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of the Borrower or Subsidiary for the purpose of: (a) completing the manufacture of any in-process materials following any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by the Borrower or Subsidiary for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all collateral following any Event of Default.

#### ARTICLE 11 MISCELLANEOUS

**11.1 Survival of Representations and Warranties.** All of the representations and warranties made herein shall survive the execution and delivery of this Agreement, any investigation by or on behalf of the Purchaser, acceptance of the Notes and payment therefor, or termination of this Agreement. Except as otherwise expressly provided by its terms, this Agreement and each other Note Document shall terminate and be of no further force and effect on the earlier of (a) the date on which the Obligations (other than contingent indemnification obligations for which no claim has been made) have been paid in full in cash (or been converted in full into Common Stock in accordance with the terms of the Notes), as set forth in writing by the Purchaser, and (b) such time as the parties hereto mutually agree to the termination thereof.



**11.2 Notices.** All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, or email (with receipt confirmed), courier service or personal delivery:

(a) if to Purchaser:

Edward D. Bagley  
2350 Oak Hill Drive  
Salt Lake City, Utah 84121  
Email: dal.bagley@comcast.net

(b) if to the Borrower or any Subsidiary:

ClearOne, Inc.  
5225 Wiley Post Way, Suite 500  
Salt Lake City, Utah 84116  
Email: Zee.Hakimoglu@clearone.com  
Telephone: (801) 303-3385  
Attention: Zee Hakimoglu, Chief Executive Officer

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

Seyfarth Shaw  
700 Milam Street, Suite 1400  
Houston, TX 77002  
Email: mcoffin@seyfarth.com  
Telephone: (713) 225-1337  
Attention: Mark Coffin

All such notices and communications shall be deemed to have been duly given: if personally delivered, when delivered by hand; if mailed, five (5) Business Days after being deposited in the mail, postage prepaid; if delivered by courier, one (1) Business Day after being deposited with a reputable overnight courier, with charges prepaid; or if emailed, when receipt is acknowledged.

### **11.3 Successors and Assigns.**

(a) This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. Subject to applicable securities laws, the Purchaser may, upon notice to, but without the consent of the Borrower, transfer the Notes held by it in whole or in part and may assign its rights under the Note Documents to one or more assignees; provided that any such transfer or assignment by the Purchaser to one or more of its Affiliates may be made at any time without requiring the consent of any other Person. In addition, the Purchaser may at any time, without the consent of, or notice to, the Borrower sell participations to any Person in all or a portion of the Purchaser's rights and/or obligations under this Agreement and the other Note Documents; provided that the Purchaser's obligations under this Agreement and the other Note Documents shall remain unchanged, and the Borrower shall continue to deal solely and directly with the Purchaser in connection with the provisions of this Agreement and the other Note Documents. Notwithstanding anything herein to the contrary, no assignments may be made to, and no participations may be sold to, a Loan Party or any of its Affiliates. Notwithstanding anything herein to the contrary, the Purchaser may, at any time, create a security interest in, pledge or assign, all or any portion of its rights under and interest in the Note Documents and the Notes in favor of any secured creditor of the Purchaser, and such secured creditor may enforce such pledge or security interest in any manner permitted under Applicable Law. Neither the Borrower nor any Subsidiary may assign any of its rights, or delegate any of its obligations, under this Agreement, or the Notes without the prior written consent of the Purchaser, and any such purported assignment by the Borrower or any such Subsidiary without the written consent of the Purchaser shall be void and of no effect. No Person other than the parties hereto and its successors and permitted assigns is intended to be a beneficiary of any of the Note Documents.

(b) The Borrower shall maintain at one of its offices in the United States a copy of each assignment agreement delivered to it and a register for the recordation of the names and addresses of the Purchaser, and the commitments of, and principal amounts (and stated interest) of the Notes owing to, the Purchaser pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower and the Purchaser shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and the Purchaser, at any reasonable time and from time to time upon reasonable prior notice.

(c) Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant’s interest in the Notes or other obligations under the Note Documents (the “**Participant Register**”); provided that no Purchaser shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant’s interest in any commitments, loans, letters of credit or its other obligations under any Note Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Purchaser shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

#### **11.4 Amendment and Waiver**

(a) No failure or delay on the part of any of the parties hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided for in this Agreement are cumulative and are not exclusive of any remedies that may be available to the parties hereto at law, in equity or otherwise.

(b) Any amendment, waiver, supplement or modification of or to any provision of this Agreement or the Notes and any consent to any departure by any party from the terms of any provision of this Agreement or the Notes, shall be effective (i) only if it is made or given in writing and signed by the Borrower and the Purchaser and (ii) only in the specific instance and for the specific purpose for which made or given; provided that, notwithstanding the foregoing, without the prior written consent of the Purchaser affected thereby, an amendment, waiver, supplement or modification of this Agreement, the Notes or any consent to departure from a term or provision hereof or thereof may not: (A) reduce the rate of or extend the time for payment of principal or interest on the Notes; (B) reduce the principal amount of the Notes; (C) make the Notes payable in money other than that stated in the Notes; (D) reduce the amount or extend the time of payment of fees or other compensation payable to the Purchaser hereunder; or (E) change any provision of this Section 11.4(b).

(c) Except where notice is specifically required by this Agreement, no notice to or demand on the Borrower or any of its Subsidiaries in any case shall entitle the Borrower or any of its Subsidiaries to any other or further notice or demand in similar or other circumstances.

**11.5 Signatures; Counterparts.** Facsimile and electronic transmissions of any executed original document and/or retransmission of any executed facsimile or electronic transmission shall be deemed to be the same as the delivery of an executed original. At the request of any party hereto, the other parties hereto shall confirm facsimile transmissions by executing duplicate original documents and delivering the same to the requesting party or parties. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**11.6 Headings.** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**11.7 GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

**11.8 JURISDICTION, JURY TRIAL WAIVER, ETC.**

(a) EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR ANY AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF UTAH SITTING IN SALT LAKE COUNTY OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, OR ANY APPELLATE COURT FROM ANY THEREOF, AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY A GENERALLY RECOGNIZED OVERNIGHT COURIER OR REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS ADDRESS SET FORTH IN SECTION 11.2, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, NOTHING IN THIS AGREEMENT SHALL LIMIT THE RIGHT OF THE PURCHASER TO BRING ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR ANY NOTE DOCUMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN ANY JURISDICTION IN WHICH ANY COLLATERAL IS LOCATED.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OF THE OTHER NOTE DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. EACH OF THE LOAN PARTIES (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE PURCHASER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (ii) ACKNOWLEDGES THAT THE PURCHASER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, AND THE OTHER NOTE DOCUMENTS TO WHICH IT IS PARTY BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

**11.9 Severability.** If any one or more of the provisions contained in this Agreement, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions of this Agreement. The parties hereto further agree to replace such invalid, illegal, or unenforceable provision of this Agreement with a valid, legal, and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal, or unenforceable provision.

**11.10 Rules of Construction.** Unless the context otherwise requires, “or” is not exclusive, and references to sections or subsections refer to sections or subsections of this Agreement.

**11.11 Entire Agreement.** This Agreement, together with the exhibits and schedules hereto and the other Note Documents, is intended by the parties as a final expression of its agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement, together with the exhibits and schedules hereto, and the other Note Documents supersede all prior agreements and understandings between the parties with respect to such subject matter.

**11.12 Indemnification.**

(a) In addition to all other sums due hereunder or provided for in this Agreement, the Borrower and Purchaser shall each indemnify and hold harmless the other and each of its respective Affiliates, and each of their respective managers, officers, directors, agents, employees, Subsidiaries, partners, members, attorneys, accountants and controlling persons (each, an “**Indemnified Party**”) to the fullest extent permitted by law from and against any and all reasonable and documented out-of-pocket losses, claims, damages, expenses (including, without limitation, fees, disbursements and other charges of outside counsel and costs of investigation incurred by an Indemnified Party in any action or proceeding between the Borrower (or any of its Subsidiaries) and such Indemnified Party (or Indemnified Parties) or between an Indemnified Party (or Indemnified Parties) and any third party or otherwise) or other liabilities or losses (collectively, “**Liabilities**”), in each case resulting from or arising out of any breach of any representation or warranty, covenant or agreement of a Party or any of its Subsidiaries in this Agreement or any other Note Document, including without limitation, the failure to make payment when due of amounts owing pursuant to this Agreement or any other Note Document, on the due date thereof (whether at the scheduled maturity, on the applicable installment date, by acceleration or otherwise) or any legal, administrative or other actions (including, without limitation, actions brought by any holders of equity or Indebtedness of the Borrower or any of its Subsidiaries or derivative actions brought by any Person claiming through or in the Borrower’s or any such Subsidiary’s name), proceedings or investigations (whether formal or informal), or written threats thereof, based upon, relating to or arising out of the Note Documents, the transactions contemplated thereby, or any Indemnified Party’s role therein or in the transactions contemplated thereby, or the gross negligence, or willful misconduct of the Purchaser on the one hand or the Borrower or any of its Affiliates and its respective directors, officers, and employees on the other hand; *provided, however, that* neither Party shall be liable under this Section 11.12 to an Indemnified Party to the extent that it is finally judicially determined that such Liabilities resulted from the willful misconduct, or gross negligence of an Indemnified Party; *provided, further, that* if and to the extent that such indemnification is unenforceable for any reason, such indemnifying Party shall make the maximum contribution to the payment and satisfaction of such Liabilities which shall be permissible under Applicable Laws. In connection with the obligation of the Parties to indemnify for expenses as set forth above, each Party further agrees, upon presentation of appropriate invoices, to reimburse each Indemnified Party for all such reasonable and documented out-of-pocket expenses (including, without limitation, fees, disbursements and other charges of outside counsel and costs of investigation incurred by an Indemnified Party in connection with any Liabilities) as they are incurred by such Indemnified Party. The obligations of each Party under this Section 11.12 shall survive the payment in full of the other Obligations and the termination of this Agreement.

(b) Each Indemnified Party under this Section 11.12 will, promptly after the receipt of notice of the commencement of any action, investigation, claim or other proceeding against such Indemnified Party in respect of which indemnity may be sought from the indemnifying Party under this Section 11.12, notify the indemnifying Party in writing of the commencement thereof. The omission of any Indemnified Party to so notify the other Party of any such action shall not relieve the indemnifying Party from any liability which it may have to such Indemnified Party, except to the extent that such omission impairs the indemnifying Party's ability to defend the action, claim or other proceeding. In case any such action, claim or other proceeding shall be brought against any Indemnified Party and it shall notify the indemnifying Party of the commencement thereof, the indemnifying Party shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its judgment; provided that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action, claim or proceeding in which the Borrower or Purchaser, on the one hand, and an Indemnified Party, on the other hand, is, or may become, a party, such Indemnified Party shall have the right to employ separate counsel at the other Party's expense and to control its own defense of such action, claim or proceeding if, in the opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between the other Party, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable. The Borrower and Purchaser agrees that it will not, without the prior written consent of the other Party, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened in writing to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of the Borrower or the Purchaser on the one hand and each other Indemnified Party on the other hand from all liability arising or that may arise out of such claim, action or proceeding. The rights accorded to Indemnified Parties hereunder shall be in addition to any rights that any Indemnified Party may have at common law, by separate agreement or otherwise.

**11.13 [Intentionally Omitted].**

**11.14 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other Note Documents. In the event an ambiguity or question of intent or interpretation arises under any provision of this Agreement or any Note Document, this Agreement or such other Note Document shall be construed as if drafted jointly by the parties thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement or any other Note Document. No knowledge of, or investigation, including without limitation, due diligence investigation, conducted by, or on behalf of, the Purchaser shall limit, modify or affect the representations set forth in Article 6 of this Agreement or the right of the Purchaser to rely thereon.

**11.15 Confidential Information.** The Purchaser agrees to maintain the confidentiality of information obtained by it pursuant to any Note Document, except that such information may be disclosed (i) with the Borrower's consent, (ii) to the extent such information presently is or hereafter becomes (A) publicly available other than as a result of a breach of this Section 11.15 or (B) available to the Purchaser from a source (other than any Loan Party) not known by the Purchaser to be subject to disclosure restrictions, (iii) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority or any insurance industry association, (iv) to any other party hereto, (v) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 11.15, (v) in connection with the exercise or enforcement of any right or remedy under any Note Document or in connection with any litigation or other proceeding to which Purchaser is a party or bound, (ix) to any nationally recognized rating agency that requires access to information about a Purchaser's investment portfolio in connection with ratings issued with respect to the Purchaser, or (x) to the Purchaser's independent auditors and other professional advisors as to which such information has been identified as confidential. In the event of any conflict between the terms of this Section 11.15 and those of any other Contractual Obligation entered into with any Loan Party (whether or not a Note Document), the terms of this Section 11.15 shall govern.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by its respective officers hereunto duly authorized as of the date first written.

**BORROWER:**

**CLEARONE, INC.**

By: /s/ Zeynep Hakimoglu  
Name: Zeynep Hakimoglu  
Its: President & CEO

**GUARANTORS:**

**NETSTREAMS INC.**

By: /s/ Zeynep Hakimoglu  
Name: Zeynep Hakimoglu  
Its: Director

**NETSTREAMS LLC**

By: /s/ Zeynep Hakimoglu  
Name: Zeynep Hakimoglu  
Its: Director

[Signature Page to Note Purchase Agreement]

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**PURCHASER:**

/s/ Edward D. Bagley  
Name: Edward D. Bagley



**SCHEDULE 2.1**

Allocations

<b>Purchaser</b>	<b>Principal Amount</b>	<b>Purchase Price*</b>	<b>Warrant Shares</b>
Edward D. Bagley	\$3,000,000.00	\$3,000,000.00	340,909

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**FORM OF NOTE**

See attached

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**FORM OF WARRANT**

See attached

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**GUARANTY AND COLLATERAL AGREEMENT**

**dated as of December [\_\_\_], 2019**

**by and among**

**CLEARONE, INC.,**

**and**

**THE OTHER PARTIES HERETO,  
as Grantors,**

**and**

**Edward D. Bagley  
as Purchaser**

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## GUARANTY AND COLLATERAL AGREEMENT

THIS GUARANTY AND COLLATERAL AGREEMENT, dated as of December [\_\_\_], 2019 (this "Agreement"), is entered into by and among CLEARONE, INC., a Delaware corporation (the "Borrower"), Netstreams Inc., a Delaware corporation, Netstreams LLC, a Texas limited liability company (each, a "Guarantor" and, together with any other Person that becomes a guarantor under the Note Purchase Agreement (as hereafter defined), the "Guarantors"; and together with Borrower, each individually a "Grantor" and collectively, the "Grantors"), in favor of Edward D. Bagley, an individual, as purchaser party to the Note Purchase Agreement (the "Purchaser").

The Purchaser has agreed to purchase the Notes from Borrower pursuant to the Note Purchase Agreement. It is a condition to the obligation of Purchaser to execute and deliver the Note Purchase Agreement and purchase the Notes, that each Guarantor guaranty the payment and performance of the Notes and each Grantor grant liens in all or substantially all of its assets to secure the same, all as set forth in this Agreement.

Each Grantor is affiliated with each other Grantor. Borrower and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and indirect benefit (financial and otherwise) from the purchase of the Notes under the Note Purchase Agreement. It is a condition precedent to Purchaser's obligation to purchase the Notes under the Note Purchase Agreement that the Grantors shall have executed and delivered this Agreement to Purchaser.

In consideration of the promises and to induce Purchaser to enter into the Note Purchase Agreement and to induce the Purchaser to purchase the Notes thereunder, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor (intending to be legally bound) hereby agrees with Purchaser as follows:

### SECTION 1 DEFINITIONS.

1.1 Unless otherwise defined herein, terms defined in the Note Purchase Agreement and used herein shall have the meanings assigned thereto in the Note Purchase Agreement, and, if not defined in the Note Purchase Agreement, such terms shall have the meaning assigned thereto in the UCC.

1.2 When used herein the following terms shall have the following meanings:

"Agreement" has the meaning set forth in the preamble hereto.

"Applicable Insolvency Laws" means all applicable laws governing bankruptcy, reorganization, arrangement, adjustment of debts, relief of debtors, dissolution, insolvency, fraudulent transfers or conveyances or other similar laws (including, without limitation, 11 U.S.C. Sections 544, 547, 548 and 550 and other "avoidance" provisions of Title 11 of the Bankruptcy Code, as amended or supplemented).

"Chattel Paper" means all "chattel paper" as such term is defined in Section 9-102(a)(11) of the UCC and, in any event, including without limitation with respect to any Grantor, all Electronic Chattel Paper and Tangible Chattel Paper.

“Collateral” means (a) all of the personal property now owned or at any time hereafter arising or acquired by any Grantor or in which any Grantor now has or at any time in the future may acquire any right, title or interest, wherever located, including, without limitation, all of each Grantor’s now owned or hereafter arising or acquired Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health Care Insurance Receivables, indemnification rights and benefits under or pursuant to any purchase agreement, Instruments, insurance policies of any kind maintained by any Grantor, Intellectual Property, Inventory, Investment Property (including, without limitation, Pledged Equity), Leases, Letter-of-Credit Rights, Money, Supporting Obligations and Identified Claims, Vehicles and title documents with respect to Vehicles (including, for the avoidance of doubt, all contract rights, subscription deposits, royalties, license rights, license fees and all other forms of obligations owing to a Grantor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by a Grantor), (b) all books and records pertaining to any of the foregoing, (c) all Proceeds and products of and accessions to any of the foregoing, and (d) all collateral security and guaranties given by any Person with respect to any of the foregoing. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof. Notwithstanding the foregoing, the “Collateral” shall not include Excluded Assets.

“Collateral Access Agreement” means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Grantor’s books and records, Equipment or Inventory, in each case, in form and substance reasonably satisfactory to Purchaser, pursuant to which, among other things, such Person waives or subordinates any Lien it may have on the Collateral, and agrees to permit Purchaser to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral.

“Copyrights” means all copyrights and copyright registrations arising under the laws of the United States or any other country or political subdivision thereof (whether registered or unregistered and whether published or unpublished), including, without limitation, the copyright registrations and recordings thereof and applications in connection therewith listed on Schedule 4, and (i) all reissues, continuations, extensions or renewals thereof, and the right to obtain all reissues, confirmations, extensions and renewals thereof, (ii) all income, royalties, damages, proceeds and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriation, violation, impairment and dilutions thereof, (iii) the right to sue or recover for past, present and future infringements and dilutions thereof, (iv) the goodwill of each Grantor’s business symbolized by the foregoing and connected therewith, and (v) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“Excluded Assets” means, with respect to any Grantor:

(a) any of such Grantor’s right, title or interest in any license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder, to the extent, but only to the extent, that such a grant would, under the express terms of such license, contract or agreement result in a breach of the terms of, or constitute a default under, such license, contract or agreement (other than to the extent that any such term (i) has been waived or (ii) would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 of the UCC or other applicable provisions of the UCC of any relevant jurisdiction or any other applicable law (including Applicable Insolvency Laws) or principles of equity); provided, that (A) immediately upon the ineffectiveness, lapse, termination or waiver of any such provision, the Collateral shall include, and the applicable Grantor shall be deemed to have granted a security interest in, all such right, title and interest as if such provision had never been in effect and (B) the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Purchaser’s unconditional continuing security interest in and Liens upon any rights or interests of a Grantor in or to the proceeds of, or any monies due or to become due under, any such license, contract or agreement;

(b) “intent to use” trademark and service mark applications; and

(c) those assets as to which the Purchaser in its sole discretion determines that the cost, burden, difficulty or consequence of obtaining or perfecting such a security interest outweighs the benefit to the Purchaser and the Secured Parties of the security to be afforded thereby.

“Filing Collateral” means Collateral which may be perfected by the filing of a UCC financing statement in the appropriate filing office or an applicable security agreement with the United States Patent and Trademark Office or the United States Copyright Office (or, if at any time applicable, any other governmental office, department or agency or as appropriate, such equivalent agency or agencies in foreign countries).

“Fixtures” means “fixtures” as such term is defined in Section 9-102(a)(41) of the UCC and, in any event, including with respect to any Grantor, all of the following, whether now owned or hereafter acquired by a Grantor: plant fixtures, business fixtures, other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor.

“General Intangibles” means all general intangibles, including, without limitation, all Payment Intangibles, contract rights (including, without limitation, all rights of such Grantor to receive moneys due and to become due to it under any such applicable contract or in connection therewith, all rights of such Grantor to damages arising thereunder and all rights of such Grantor to perform and to exercise all remedies thereunder), rights to payment, rights arising under common law, statutes, or regulations, choses or things in action, goodwill (including the goodwill associated with any Trademark, Patent, or Copyright), Patents, Trademarks, Copyrights, URLs and domain names, industrial designs, other industrial or Intellectual Property or rights therein or applications therefor, whether under license or otherwise, programs, programming materials, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, computer programs, information contained on computer disks or tapes, software, literature, reports, catalogs, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims and uncertificated equity interests not constituting a security.

“Guaranteed Obligations” means, with respect to each Guarantor, all Obligations of the Borrower and of the other Guarantors, whether existing on the date hereof or hereafter incurred, created or arising and whether or not from time to time reduced or extinguished or hereafter increased or incurred, whether or not recovery may be or hereafter may become barred by any statute of limitations, and whether enforceable or unenforceable as against the Borrower or any of the other Guarantors, now or hereafter in effect, or due or to become due, including, without limitation, all principal, interest (including without limitation, interest accruing at the then applicable rate provided in the Note Purchase Agreement after the maturity thereof and interest accrued or accruing at the then applicable rate provided in the Note Purchase Agreement upon the commencement or during the pendency of any Insolvency Proceeding, regardless of whether such interest or a claim for post-filing or post-petition interest is allowed or allowable in such Insolvency Proceeding), and any applicable prepayment fee in respect of the Notes or repurchase or redemption obligations in respect of the Notes or the Warrants, and all other monetary obligations of the Borrower and of the other Grantors arising under, out of, in respect of or in connection with the Note Purchase Agreement, the Notes, the Warrants or any of the other Note Documents, including but not limited to fees, costs, expenses and indemnities, in all cases whether primary or secondary, direct or indirect, absolute or contingent, liquidated or unliquidated, due or to become due, or now existing or hereafter incurred.

“Identified Claims” means the Commercial Tort Claims described on Schedule 6 as such schedule shall be supplemented from time to time.

“Intellectual Property” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including the Copyrights, the Intellectual Property Licenses, the Patents, the Trademarks, Trade Secrets, Internet domain names, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom and customer lists, data, inventions (whether patentable or not) and software.

“Intellectual Property Licenses” means all agreements (whether written or oral) naming (or granting) any Grantor as licensor or licensee, including those listed on Schedule 4, granting any right (a) under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any such Copyright, (b) to manufacture, use or sell any invention covered in whole or in part by a Patent, and (c) to use any Trademark.

“Intercompany Note” means any promissory note evidencing loans made by any Grantor to any other Grantor.

“Investment Property” means the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC, (b) all “financial assets” as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting “investment property” as so defined, and all Pledged Equity.

“Issuers” means the collective reference to each issuer of any Investment Property.

“Note Purchase Agreement” means the Note Purchase Agreement dated as of December 8, 2019 by and among Borrower, the other Grantors, the Purchaser, as amended, supplemented, restated or otherwise modified from time to time.

“Paid in Full” or “Payment in Full” means the payment in full in cash of all Obligations, other than contingent indemnification and expense reimbursement obligations for which no claims have been asserted, in accordance with the terms of the Note Purchase Agreement (subject to any rights of reinstatement set forth herein).

“Patents” means all patents and patent applications in the United States, any other country or political subdivision thereof, including, without limitation, the patents and patent applications listed on Schedule 4, and (i) all continuation, divisional and continuation-in-part applications and reissues and reexaminations thereof, and all rights to obtain any reissues or extensions thereof, (ii) all income, royalties, proceeds, damages and payments now and hereafter due or payable or asserted under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (iii) the right to sue or recover for past, present and future infringements, misappropriation, violation or other impairment thereof, and (iv) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“Pledged Equity” means the Capital Stock of each Grantor of which the Borrower is the sole record and beneficial owner, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of Capital Stock of any Person that may be issued or granted to, or held by, any Grantor at any time while this Agreement is in effect, and any and all distributional interests, dividends, cash, certificates, liquidation rights and interests, options, rights, warrants, instruments or other property (whether real, personal or mixed) from time to time received, receivable or otherwise distributed in respect of or in exchange or substitution for any and all of such Capital Stock, and all rights to receive any and all income, gain, profit, loss or other items allocated or distributed to the owner of such equity interests (including, without limitation, under or pursuant to any operating agreement, if applicable).



“Proceeds” means all “proceeds” as such term is defined in Section 9-102(a)(64) of the UCC, including, without limitation, any and all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto; provided, however, without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Grantor or Purchaser from time to time with respect to any of the Investment Property.

“Receivable” means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts).

“Secured Obligations” means (a) in the case of the Borrower, the Obligations, and (b) in the case of the Guarantors, the Guaranteed Obligations.

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

“Trade Secrets” means anything that would constitute a trade secret under Applicable Law and information that derives independent economic value (actual or potential) from not being generally known to and not being readily ascertainable by proper means by a person able to obtain economic value from its use or disclosure, and all other inventions (whether patentable or not), industrial designs, discoveries, improvements, ideas, designs, models, formulae, patterns, compilations, databases, data collections, drawings, blueprints, mask works, devices, methods, techniques, processes, know-how, confidential information, proprietary information, customer lists, software, and technical information.

“Trademarks” means all trademarks, trade names, registered trademarks, trademark applications, corporate names, business names, fictitious business names, service marks, trade styles, logos and other source or business identifiers (whether registered or unregistered), in each case in the United States or any other country or political subdivision thereof, including, without limitation, the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 4, and (i) all registrations and recordings thereof and applications thereof, renewals and extensions thereof, and the right to obtain all extensions and renewals thereof, (ii) all income, royalties, damages, proceeds, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue or recover for past, present and future infringements and dilutions thereof, (iv) the goodwill of each Grantor’s business symbolized by the foregoing and connected therewith, and (v) all of each Grantor’s rights corresponding to the foregoing throughout the world; provided, however, any intent-to-use United States trademark application for which an amendment to allege use or statement of use has not been filed and accepted by the United States Patent and Trademark Office shall not be considered Collateral (provided that each such intent-to-use application shall be considered Collateral immediately and automatically upon such filing and acceptance).

“UCC” means the Uniform Commercial Code as in effect on the Closing Date and from time to time in the State of New York, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code (or its equivalent) as in effect on or after the date hereof in any other jurisdiction, “UCC” means the Uniform Commercial Code (or its equivalent) as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

“Vehicles” means all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law.

## SECTION 2 GUARANTY.

### 2.1 Guaranty.

(a) Subject to the terms hereof, each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably, as a primary obligor and not only a surety, guarantees to Purchaser the prompt and complete payment when due (whether at the stated maturity, or earlier by acceleration or otherwise) of the Guaranteed Obligations. The guarantee contained in this Section 2 (this “Guaranty”) is a primary and original obligation of each Guarantor, is not merely the creation of a surety relationship, and is an absolute, unconditional, irrevocable, and continuing guaranty of payment (not collection) which shall remain in full force and effect without respect to future changes in conditions. This Guaranty constitutes a guaranty of payment and not of collection. If any Grantor fails to make any payment of any Secured Obligations on or before the due date thereof and after the expiration of the applicable notice and cure period, if any, Guarantor immediately shall (upon Purchaser’s written demand) cause such payment to be made.

(b) Anything herein or in any other Note Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Note Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable foreign, federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 2.2). This Section 2.1(b) is intended solely to preserve the rights of the Purchaser hereunder, and no Guarantor or any other Person shall have any right or claim under this Section 2.1(b) or otherwise as against the Purchaser that would not otherwise be available to such Person under Applicable Insolvency Laws.

(c) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty contained in this Section 2 or affecting the rights and remedies of Purchaser hereunder.

(d) The guaranty contained in this Section 2 shall remain in full force and effect until all of the Secured Obligations shall have been Paid in Full. Guarantor agrees that Guarantor’s liability hereunder shall be immediate and shall not be contingent upon the exercise or enforcement of any lien, security interest, mortgage or realization upon any security or collateral that Purchaser may at any time possess or be entitled. Guarantor consents and agrees that Purchaser shall be under no obligation to marshal any assets of any Grantor or any other Person or against or in payment of any or all of the Secured Obligations.

(e) No payment made by Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by Purchaser from Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the remaining unpaid Secured Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to Purchaser, and each Guarantor shall remain liable to Purchaser for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by Purchaser, no Guarantor shall be entitled to be subrogated to any of the rights of Purchaser against Borrower or any other Guarantor or any collateral security or guaranty or right of offset held by Purchaser for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Secured Obligations are Paid in Full; provided that, no Guarantor shall exercise any such rights of subrogation at any time if the Purchaser (with their designees, in each case) have acquired all or any of the Collateral by credit bid or strict foreclosure. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Secured Obligations shall not have been Paid in Full or at any time until Purchaser (or their designees, in each case, as applicable) ceases to own all or any portion of the Collateral if such Person has acquired all or any of the Collateral by credit bid or strict foreclosure, such amount shall be held by such Guarantor in trust for Purchaser, segregated from the funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to Purchaser in the exact form received by such Guarantor (duly endorsed by such Guarantor to Purchaser, if required), to be applied against the Secured Obligations, whether matured or unmatured, in accordance with Section 6.10 of this Agreement or such order as Purchaser shall determine in its discretion. Guarantor agrees that the execution of the Guaranty shall not be deemed to make Guarantor a "creditor" of any Grantor, and that for purposes of Applicable Insolvency Laws, Guarantor shall not be deemed a "creditor" of such Grantor.

2.4 Amendments, etc. with respect to the Secured Obligations.

(a) Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by Purchaser may be rescinded by Purchaser and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Purchaser and the Note Purchase Agreement and the other Note Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Purchaser may deem advisable from time to time in accordance with the Note Purchase Agreement and the other Note Documents. Purchaser shall not have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guaranty contained in this Section 2 or any property subject thereto.

(b) Without discharging any Guarantor from any of its obligations hereunder Purchaser may, from time to time, at its sole discretion and without notice to or the consent of any Guarantor, take any or all of the following actions: (i) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (ii) retain or obtain the primary or secondary obligation of any obligor or obligors, in addition to the undersigned, with respect to any of the Secured Obligations, (iii) amend, modify, or supplement any terms of the Note Documents or extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any of the undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (iv) release any guaranty or right of offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (v) resort to the undersigned (or any of them) for payment of any of the Secured Obligations when due, whether or not Purchaser shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other of the undersigned or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations. This Guaranty includes any and all Secured Obligations arising under successive transactions continuing, compromising, extending, increasing, modifying, releasing, or renewing the Secured Obligations, changing the interest rate, payment terms, or other terms and conditions thereof, or creating new or additional Secured Obligations after prior Secured Obligations have been satisfied in whole or in part. To the maximum extent permitted by law, Guarantor hereby waives any right to revoke this Guaranty as to future Obligations. If such a revocation is effective notwithstanding the foregoing waiver, Guarantor acknowledges and agrees that (a) no such revocation shall be effective until written notice thereof has been received by Purchaser, (b) no such revocation shall apply to any Secured Obligations in existence on such date (including, but not limited to, any subsequent continuation, extension, or renewal thereof, or change in the interest rate, payment terms, or other terms and conditions thereof), (c) no such revocation shall apply to any Secured Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of Purchaser in existence on the date of such revocation, (d) no payment by Guarantor, Grantor, or from any other source, prior to the date of such revocation shall reduce the maximum obligation of Guarantor hereunder, and (e) any payment by Borrower or from any source other than Guarantor, subsequent to the date of such revocation, shall first be applied to that portion of the Secured Obligations as to which the revocation is effective and which are not, therefore, guaranteed hereunder, and to the extent so applied shall not reduce the maximum obligation of Guarantor hereunder.

2.5 Waivers. Each Guarantor waives, until Payment in Full, to the furthest extent permitted by applicable law, any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by Purchaser upon the guaranty contained in this Section 2 or acceptance of the guaranty contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guaranty contained in this Section 2, and all dealings between Borrower and any of the Guarantors, on the one hand, and Purchaser, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Section 2. To the furthest extent permitted by applicable law, each Guarantor waives, until Payment in Full: (a) diligence, presentment, protest, demand for payment and notice of default, dishonor or nonpayment and all other notices whatsoever to or upon Borrower or any of the Guarantors with respect to the Secured Obligations, (b) notice of the existence or creation or non-payment of all or any of the Secured Obligations and (c) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guaranty of any Secured Obligations. Each Guarantor hereby waives, until Payment in Full: (1) notice of acceptance hereof; (2) notice of any loan or other financial accommodations made or extended to Borrower or the creation or existence of any Secured Obligations; (3) notice of the amount of the Secured Obligations, subject, however, to Guarantor's right to make inquiry of Purchaser to ascertain the amount of the Secured Obligations at any reasonable time; (4) notice of any adverse change in the financial condition of Borrower or of any other fact that might increase Guarantor's risk hereunder or the dollar amount of Guarantor's liability; (5) notice of any event of default by Borrower under any instrument, writing or agreement with Purchaser including the Note Documents; and (6) all other notices (except if such notice is specifically required to be given to Guarantor hereunder or under any other applicable Note Document) and demands to which Guarantor might otherwise be entitled. Each Guarantor consents to any and all forbearances and extensions of the time of payment of the Note Purchase Agreement or any of the other Note Documents, and to any and all changes in the terms, covenants and conditions thereof hereafter made or granted, and to any part of the collateral therefor; it being the intention and agreement hereof that Guarantor shall remain unconditionally liable as a principal as, to and until Payment in Full has occurred, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Borrower or Guarantor. Each Guarantor hereby further waives, until Payment in Full: (x) any rights to assert against Purchaser any defense (legal or equitable), setoff, counterclaim, or claim which Guarantor may now or at any time hereafter have against Borrower or any other party liable to Purchaser (other than the defense that the Secured Obligations shall have been Paid in Full); and (y) any defense, setoff, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Secured Obligations or any security therefor (including, but not limited to, any of the Note Documents). Without limiting the generality of the foregoing or any other provisions of this Guaranty, each Guarantor agrees that this Guaranty shall not be discharged, limited, impaired or affected by: (A) the transfer of all or any part of the property or assets described in any of the Note Documents; (B) any sale, pledge, surrender, indulgence, alteration, substitution, exchange, modification or other disposition of any of the Secured Obligations, all of which Purchaser is expressly authorized to make from time to time; (C) any failure, neglect or omission on the part of Purchaser to realize or protect any of the Secured Obligations, or any personal property or real property or lien security given as security therefor, or to exercise any lien upon or right of appropriation of monies, credits or property of Borrower toward liquidation of the Indebtedness, or performance of the covenants guaranteed hereby; (D) any proceedings with respect to the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, the marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, imposition or readjustment of, or other similar proceedings affecting Borrower or any other Guarantor or any of their respective assets, it being expressly understood and agreed that no such proceeding shall affect, modify, limit or discharge the liability or obligation of Guarantor hereunder in any manner whatsoever, and that Guarantor shall continue to remain absolutely liable under this Guaranty to the same extent, and in the same manner, as if such proceedings had not been instituted, (E) any lack of validity or enforceability of the Note Purchase Agreement, any of the other Note Documents, or any other document, instrument or agreement referred to therein or evidencing all or any portion of the Guaranteed Obligations or any assignment or transfer of any of the foregoing; (F) any act or failure to act by the Borrower, any other Loan Party or any other Person which may adversely affect such Guarantor's subrogation rights or rights of contribution (or any similar right of recovery), if any, against the Borrower to recover payments made under this Guaranty; (G) any release, amendment or waiver of, or consent to any departure from, any guaranty of all or any portion of the Guaranteed Obligations (or any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect of this Agreement); and (H) any other circumstance which might otherwise constitute a defense available to, or a discharge of, a Guarantor hereunder (other than the defense that the Secured Obligations have been Paid In Full).

2.6 Payments. Each Guarantor hereby guaranties that payments hereunder shall be paid to Purchaser without set-off, recoupment, deduction or counterclaim or any other reduction in immediately available United States dollars at the office of Purchaser specified in the Note Purchase Agreement or as otherwise specified by the Purchaser in writing prior to any such payments.

2.7 Reinstatement. The guaranty contained in this Section 2 shall remain in full force and effect and continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be reduced, restored or returned by Purchaser (whether as a “voidable preference”, “fraudulent conveyance”, “fraudulent transfer” or otherwise) upon the commencement of, or otherwise in relation to, any Insolvency Proceeding of or in respect of the Borrower or any other Loan Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer, official or designee for, the Borrower or any Guarantor or any substantial part of the property of the Borrower or any Guarantor, or otherwise, all as though such payments had not been made. In the event that any payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or otherwise reduced, restored or returned by Purchaser, the Guaranteed Obligations shall be reinstated to the extent of the payment so rescinded, reduced, restored or returned and shall be reduced only by the amount paid and not so rescinded, reduced, restored or returned. If claim is ever made on the Purchaser for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations, and the Purchaser or such Purchaser repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body of competent jurisdiction or (ii) any settlement or compromise of any such claim effected by the Purchaser or such Purchaser with any such claimant (including the Borrower or a trustee in bankruptcy for the Borrower), then and in such event each Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on such Guarantor notwithstanding any revocation hereof or the cancellation of the Note Purchase Agreement, any of the other Note Documents, or any other instrument evidencing any liability of the Borrower, and such Guarantor shall be and remain liable to the Purchaser or such Purchaser for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Purchaser or such Purchaser.

### SECTION 3 GRANT OF SECURITY INTEREST.

3.1 Grant. Each Grantor hereby unconditionally grants, and collaterally pledges, assigns and transfers to Purchaser a valid and continuing security interest in and Lien on all of such Grantor’s Collateral, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Secured Obligations and would be owed by Grantors, or any of them, to Purchaser but for the fact that they are unenforceable or not allowable due to the existence of any bankruptcy or other Insolvency Proceeding involving any Grantor.

### SECTION 4 REPRESENTATIONS AND WARRANTIES.

To induce Purchaser to enter into the Note Purchase Agreement and to induce the Purchaser to purchase the Notes thereunder, each Grantor hereby represents and warrants to Purchaser, which representations and warranties shall survive the execution and delivery hereof, that:

4.1 Title; No Other Liens. Except for Permitted Liens, such Grantor owns each item of its Collateral free and clear of any and all Liens of others; provided that Pledged Equity shall not be subject to any Liens except the Lien created hereby. No financing statement or other public notice of a Lien with respect to all or any part of the Collateral is on file or of record in any public office, except filings evidencing Permitted Liens and filings for which termination statements have been delivered to Purchaser.

4.2 Perfected First Priority Liens. On the Closing Date, the security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 1 (which, in the case of all filings and other documents referred to on Schedule 1, copies thereof have been delivered to Purchaser in completed and duly executed form) will constitute valid perfected security interests in all of the Filing Collateral in favor of Purchaser as collateral security for the Secured Obligations, enforceable in accordance with the terms hereof and (b) are subject to no other Liens on the Collateral except for Permitted Liens; provided that Pledged Equity shall not be subject to any Liens except the Lien created hereby. The filings and other actions specified on Schedule 1 constitute all of the filings and other actions necessary to perfect all security interests granted hereunder on the Filing Collateral.

4.3 Grantor Information. Schedule 2 sets forth, as of the Closing Date, (a) such Grantor's jurisdiction of organization, (b) the location of such Grantor's chief executive office, (c) such Grantor's exact legal name as it appears on its organizational documents and (d) such Grantor's organizational identification number (to the extent a Grantor is organized in a jurisdiction which assigns such numbers) and federal employer identification number (to the extent a Grantor is organized in a jurisdiction which assigns such numbers).

4.4 Collateral Locations. Schedule 3 sets forth, as of the Closing Date, (a) each place of business of such Grantor (including its chief executive office), (b) all locations where all Inventory and the Equipment owned by such Grantor is kept (other than mobile goods and goods which are in transit) and (c) whether each such Collateral location specified in clause (b) and place of business (including such Grantor's chief executive office) is owned or leased (and if leased, specifies the complete name and notice address of each lessor). On the Closing Date, no Collateral is located in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 3. As of the date hereof, no bill of lading, warehouse receipt or other document or instrument of title is outstanding with respect to any Collateral other than Inventory in transit in the ordinary course of business or to a customer of a Grantor.

4.5 Certain Property. None of the Collateral constitutes, or is the Proceeds of, Farm Products, Health Care Insurance Receivables, vessels or aircraft.

4.6 Investment Property.

(a) The Pledged Equity pledged by such Grantor hereunder constitutes all the issued and outstanding equity interests of each Issuer of Pledged Equity owned by such Grantor.

(b) All of the Pledged Equity has been duly and validly issued and is fully paid and nonassessable, where such concepts are applicable. None of the Pledged Equity of or issued by a partnership or limited liability company is subject to any capital call or additional capital requirement.

(c) The execution, delivery and performance of this Agreement by such Grantor in accordance with its terms will not violate the governing documents of such Grantor or any material agreements, instruments or documents to which such Grantor is a party. To the extent the Pledged Equity is evidenced by certificates, all of such certificates have been delivered to Purchaser on the date hereof, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor.

(d) Such Grantor is not and will not become a party to or otherwise bound by any stockholders agreement, limited partnership agreement, limited liability company operating agreement, or other similar agreement which restricts in any manner the rights of any present or future holder of any Pledged Equity to transfer the Pledged Equity (other than restrictions imposed by federal and state securities laws). None of the Pledged Equity is subject to any option, call, warrant, purchase right, preemptive right, right of first refusal or similar contractual or other right or restriction of any Person (other than laws affecting the transfer of securities generally).

(e) All Pledged Equity that is issued by an Issuer that is a corporation is represented by a certificate and constitutes a "security" subject to Article 8 of the UCC. None of the Pledged Equity that is issued by an Issuer that is not a corporation (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is not a "security" governed by Article 8 of the UCC and is evidenced by certificates or by its terms expressly provides that it is a "security" governed by Article 8 of the UCC unless certificates evidencing such Pledged Equity have been delivered to Purchaser, or (iii) is an investment company security.

#### 4.7 Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument (other than drafts deposited in the ordinary course of business) or Chattel Paper in excess of \$25,000 individually or \$100,000 in the aggregate at any time for all such Instruments or Chattel Paper, which has not been delivered to Purchaser.

(b) On the Closing Date, except as set forth on Schedule 7, no contract or agreement is between such Grantor and a Governmental Authority. If the aggregate of Receivables where a Governmental Authority is an obligor exceed \$25,000 at any time, (i) such Grantor shall promptly notify Purchaser thereof in writing and (ii) if requested by Purchaser, such Grantor shall promptly deliver a separate assignment of its right to payment of such Receivable to Purchaser pursuant to the Assignment of Claims Act of 1940 using forms provided by Purchaser evidencing (satisfactory to Purchaser) such assignment.

(c) The amounts represented by such Grantor to Purchaser from time to time as owing to such Grantor in respect of the Receivables (to the extent such representations are required by any of the Note Documents) will at all such times be accurate in all material respects.

#### 4.8 Intellectual Property.

(a) Schedule 4 lists, as of the Closing Date, all (i) registered Intellectual Property owned by such Grantor in its own name on the date hereof and the jurisdiction of registration and (ii) Intellectual Property Licenses (other than immaterial software licenses entered into in the ordinary course of business). This security interest granted pursuant to this Agreement constitutes a valid, continuing and perfected security interest in favor of the Purchaser in such Copyrights, Intellectual Property Licenses, Patents and Trademarks, subject to completion of the filings and other actions specified on Schedule 1 and, in the case of any Copyrights, Patents and Trademarks for which such filings or other actions are insufficient, subject to all appropriate filings being made with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency within or outside the United States.

(b) On the Closing Date, all Intellectual Property and pending applications for registration of Intellectual Property owned by such Grantor is valid, subsisting, unexpired and enforceable and has not been abandoned.

4.9 Depository and Other Accounts. All deposit, securities and operating accounts maintained by such Grantor are described on Schedule 5 hereto, which description includes for each such account the name of such Grantor maintaining such account, the name and address of the financial institution at which such account is maintained, the account number of such account, and the type and use of such account.

4.10 Note Purchase Agreement. Each Grantor (other than Borrower solely with respect to this Agreement) makes each of the representations and warranties applicable to such Grantor made by the Borrower in **Article 6** of the Note Purchase Agreement (which representations and warranties shall be deemed to have been renewed upon the selling of additional notes or the extension of other credit accommodations). Such representations and warranties are incorporated herein by this reference as if fully set forth herein.

4.11 Financial Condition of Grantor; Etc. (a) Each Guarantor is currently informed of the financial condition of each other Grantor and of all other circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonpayment of the Secured Obligations, (b) each Guarantor shall continue to keep informed of the financial condition of each other Grantor and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Secured Obligations, and (c) the transactions contemplated hereby were effectuated without actual intent to hinder, delay or defraud present or future creditors of such Guarantor or such Grantor.



4.12 Books and Records. Each Grantor agrees that Purchaser's books and records showing the Secured Obligations among Purchaser and Grantors may be admissible in any action or proceeding and may be used as rebuttably presumptive evidence upon Guarantor and Grantors for the purpose of establishing the items therein set forth and may constitute prima facie proof thereof.

4.13 Instruments. Each Instrument, Certificated Security or Chattel Paper owned by such Grantor that evidences any amount payable under or in connection with any of the Collateral in excess of \$25,000 individually or \$100,000 in the aggregate at any time has been delivered to Purchaser on the date hereof (except to the extent consisting of drafts deposited in the ordinary course of business), duly endorsed in a manner reasonably satisfactory to Purchaser, to be held as Collateral pursuant to this Agreement (or in the case of Electronic Chattel Paper, such Grantor has caused Purchaser to have control thereof within the meaning set forth in Section 9-105 of the UCC).

## SECTION 5 COVENANTS

Each Grantor covenants and agrees with Purchaser that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral in excess of \$25,000 individually or \$100,000 in the aggregate at any time owned by such Grantor shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, in each case, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to Purchaser, duly endorsed in a manner reasonably satisfactory to Purchaser, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Purchaser to have control thereof within the meaning set forth in Section 9-105 of the UCC; provided that the foregoing requirements of this Section 5.1 shall not apply to any drafts deposited in the ordinary course of business. In the event that a Default or Event of Default shall have occurred and be continuing, upon the request of Purchaser, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to Purchaser and at such time being held by any Grantor shall promptly be (but in no event later than within three (3) Business Days of any such request) delivered to Purchaser, duly endorsed in a manner reasonably satisfactory to Purchaser, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Purchaser to have control thereof within the meaning set forth in Section 9-105 of the UCC.

### 5.2 Maintenance of Perfected Security Interest; Further Documentation

(a) Such Grantor shall cooperate with Purchaser in maintaining the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Note Documents to dispose of the Collateral or incur Permitted Liens (in each case in accordance with the terms and conditions of the Note Documents); provided that Pledged Equity shall not be subject to any Lien except the Lien created hereby.

(b) Such Grantor shall furnish to Purchaser from time to time upon Purchaser's reasonable request statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as Purchaser may reasonably request from time to time, all in reasonable detail.

(c) At any time and from time to time, upon the written request of Purchaser, and at the sole expense of such Grantor, such Grantor shall promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as Purchaser may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any appropriate financing, amendment or continuation statements under the UCC (or other similar laws) in effect in any appropriate jurisdiction with respect to the security interests created hereby, and (ii) in the case of Investment Property and any other relevant Collateral, taking any actions reasonably necessary to enable Purchaser to obtain “control” with respect thereto. Each Grantor acknowledges and agrees that its signature to this Agreement as a Grantor shall bind it to each and every provision of this Agreement in its capacity as “a Grantor” and as an Issuer (as applicable).

5.3 Changes in Locations, Name, etc. Such Grantor shall not, except upon fifteen (15) (or thirty (30) with respect to clauses (ii) and (iii) below) days’ prior written notice to Purchaser (or such shorter notice period as shall be satisfactory to Purchaser in its sole commercially reasonable discretion) and delivery to Purchaser of (a) all additional financing statements and other documents reasonably requested by Purchaser as to the validity, perfection and priority of the security interests and other Liens provided for herein, and (b) if applicable, a written supplement to Schedule 3 showing any additional location at which Inventory or Equipment shall be kept:

(i) permit any of the Inventory or Equipment with a fair market value in excess of \$100,000 individually, or \$400,000 in the aggregate at any time among all Grantors, to be kept at any location other than those listed on Schedule 3 (other than mobile goods and goods that are in transit) unless such Grantor has delivered a Collateral Access Agreement in favor of Purchaser with respect to such location prior to relocating such Inventory or Equipment thereto; or

(ii) change its name, jurisdiction of organization or the location of its chief executive office from that specified on Schedule 2 or in any subsequent notice delivered pursuant to this Section 5.3; or

(iii) change its legal identity or corporate structure.

5.4 Notices. Promptly after obtaining knowledge thereof, such Grantor shall advise Purchaser, in reasonable detail in writing, of:

(a) any Lien (other than Permitted Liens) on any of the Collateral; and

(b) the occurrence of any other event which could reasonably be expected to have a material adverse effect on the Liens created hereby or the aggregate value of the Collateral.

## 5.5 Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any certificate, option or rights in respect of the equity interests of any Issuer of Pledged Equity, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of Purchaser, hold the same in trust for Purchaser and promptly deliver the same forthwith to Purchaser in the exact form received, duly indorsed by such Grantor to Purchaser, if required, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if Purchaser so requests, signature guaranteed, to be held by Purchaser, subject to the terms hereof, as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, (i) unless Purchaser provides express prior written notice to the contrary, any sums paid upon or in respect of the Pledged Equity or other Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to Purchaser to be held by it hereunder as additional Collateral for the Secured Obligations, and (ii) in case any distribution of capital shall be made on or in respect of the Pledged Equity or other Investment Property or any property shall be distributed upon or with respect to the Pledged Equity or other Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof; the property so distributed shall, unless otherwise subject to a perfected Lien in favor of Purchaser, be promptly delivered to Purchaser to be held by it hereunder as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of a Default or an Event of Default, if any sums of money or property so paid or distributed in respect of the Pledged Equity or other Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to Purchaser, hold such money or property in trust for the Purchaser, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of Purchaser, such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, except, in each case, as permitted by the Note Purchase Agreement, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Pledged Equity or other Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Note Purchase Agreement), (iii) create, incur or permit to exist any Lien in favor of any Person with respect to any of the Pledged Equity or other Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens (except that Pledged Equity shall not be subject to any Lien except the Lien created hereby) or (iv) enter into or permit to exist any agreement or undertaking, including, without limitation, the governing documents of any Issuer and shareholders' agreements or operating agreement as applicable, restricting the right or ability of such Grantor or Purchaser to sell, assign or transfer any of the Pledged Equity or other Investment Property or Proceeds thereof, except as permitted by the Note Purchase Agreement.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it shall be bound by the terms of this Agreement relating to the Investment Property issued by it and shall comply with such terms insofar as such terms are applicable to it, (ii) it shall notify Purchaser promptly in writing of the occurrence of any of the events described in Section 5.5(a) with respect to the Investment Property issued by it, (iii) the terms of Sections 6.3(c) and 6.7 shall apply to such Issuer with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 regarding the Investment Property issued by it and (iv) it will not recognize, acknowledge or permit the pledge, transfer, grant of control or other disposition of the Investment Property issued by it (or any portion thereof) other than to or as requested by Purchaser pursuant to Section 6 unless otherwise permitted under the terms of this Agreement or the Note Purchase Agreement.

(d) Each Grantor shall cause any Pledged Equity that is issued by an Issuer that is a corporation to be and to continue to be represented by a certificate and to constitute and to continue to constitute a "security" subject to Article 8 of the UCC and shall not cause any Pledged Equity that is issued by an Issuer that is not a corporation to (i) be dealt in or traded on a securities exchange or in a securities market, (ii) be an investment company security, or (iii) (x) be, by its terms, silent on whether such Pledged Equity is or is not a "security" governed by Article 8 of the UCC, (y) by its terms expressly provide that it is not a "security" governed by Article 8 of the UCC if such Pledged Equity is evidenced by certificates or (z) by its terms expressly provide that it is a "security" governed by Article 8 of the UCC unless certificates evidencing such Pledged Equity have been delivered to Purchaser in accordance with Section 4.6 hereof. Each Grantor shall mark its books and records (and shall cause the Issuer of the Pledged Equity of such Grantor to mark its books and records) to reflect the security interest granted pursuant to this Agreement.

## 5.6 Receivables.

(a) Other than in the ordinary course of business and in amounts which are not material to such Grantor or as otherwise permitted by the Note Purchase Agreement, such Grantor shall not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could adversely affect the value thereof.

(b) Such Grantor shall deliver to Purchaser a copy of each demand, notice or document received by such Grantor that questions or calls into doubt the validity or enforceability of more than [ten percent (10.0%)] of the aggregate amount of the then outstanding Receivables for such Grantor.

## 5.7 Intellectual Property.

(a) Such Grantor shall (and shall use commercially reasonable efforts to cause its licensees to) (i) continue to use each Trademark owned by such Grantor and necessary for the conduct of its business in order to maintain such Trademark in full force free from any claim of abandonment for non-use, except to the extent that such Grantor determines in its reasonable business judgment that any such use of such Trademark is no longer necessary for the conduct of such Grantor's business, and (ii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable law to maintain such Trademark.

(b) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any Intellectual Property necessary for the conduct of its business (as determined by such Grantor in its reasonable business judgment) in a manner which intentionally infringes the Intellectual Property rights of any other Person.

(c) Such Grantor will notify Purchaser promptly if it knows that any application or registration relating to any Intellectual Property owned by such Grantor and necessary for the conduct of its business is about to become forfeited, abandoned or dedicated to the public, or of any adverse determination (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any Intellectual Property necessary for the conduct of its business or such Grantor's right to register the same or to own and maintain the same except, in each case, to the extent such forfeiture, abandonment, dedication, adverse determination, or development relates to Intellectual Property that is not material to the operations of the business of the Grantors and could not reasonably be expected to have a Material Adverse Effect.

(d) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Purchaser within thirty (30) calendar days of the filing with the SEC of the Borrower's quarterly report on Form 10-Q or annual report on Form 10-K, as applicable. Upon the request of Purchaser, such Grantor shall duly execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as Purchaser may reasonably request to evidence Purchaser's security interest in any such Copyright, Patent or Trademark owned by such Grantor and the goodwill and general intangibles of such Grantor relating thereto or represented thereby. Upon receipt from the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof of notice of registration of any Copyright(s), each Grantor shall promptly (but in no event later than five (5) Business Days following such receipt) notify Purchaser in writing of such registration by delivering documentation sufficient for Purchaser to perfect Purchaser's Liens on such Copyright(s).

(e) Such Grantor will take all reasonable and necessary steps to maintain and pursue each such application (and to obtain the relevant registration) and to maintain each such registration of all Intellectual Property owned by it and necessary for or material to the conduct of such Grantor's business, except to the extent that such Grantor determines in its reasonable business judgment that such Intellectual Property is no longer necessary for or material to the conduct of such Grantor's business and such action (or inaction) with respect thereto is permitted under the Note Purchase Agreement. Grantor shall, to the extent commercially reasonable in Grantor's good faith business judgment: (i) file and prosecute diligently any Patent or Trademark applications pending as of the date hereof or hereafter that are necessary for the conduct of Grantor's business, (ii) make application on unpatented but patentable inventions and on Trademarks that are necessary for or material to the conduct of Grantor's business, and (iii) preserve and maintain all rights in the Intellectual Property that are necessary for or material to the conduct of Grantor's business (including, but not limited to, with respect to Trademarks, the filing of affidavits of use and incontestability, where applicable, under §§8 and 15 of the Lanham Act (15 U.S.C. § 1058, 1065) and applications for renewal and, to the extent commercially reasonable, initiating opposition or cancellation proceedings or litigation against users of the same or confusingly similar marks who seriously threaten the validity or rights of Grantor in its Trademarks), except, in each case, where such Grantor, in its reasonable and good faith opinion, determines that the costs of engaging in such prosecution, application, preservation or maintenance activities exceeds the likely benefit to be obtained therefrom. Any and all costs and expenses incurred in connection with Grantor's obligations under this Section shall be borne by Grantor.

(f) Upon request of Purchaser, in order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office or any similar offices or agencies in any other country or any political subdivision thereof, each Grantor shall duly and promptly execute and deliver to Purchaser one or more short form intellectual property security agreements (in form and substance reasonably acceptable to Purchaser) to evidence Purchaser's lien and security interest on all of Grantor's registered Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby. The provisions of any such short form intellectual property security agreement are supplemental to the provisions of this Agreement, and nothing contained in such short form intellectual property security agreement shall limit any of the rights or remedies of Purchaser hereunder.

(g) Grantors acknowledge and agree that Purchaser shall have no duties with respect to the Trademarks, Patents, Copyrights, or Intellectual Property Licenses. Without limiting the generality of this Section 5.7, Grantors acknowledge and agree that Purchaser shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks, Patents, Copyrights, or Intellectual Property Licenses against any other Person, but Purchaser may do so at its sole option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be solely at the cost of Borrower.

5.8 [Intentionally omitted]

5.9 Inventory. Each Grantor shall:

(a) maintain its existing Inventory, and cause all future acquired Inventory, (i) to be of good and merchantable quality (except for obsolete or discontinued items of Inventory which have been adequately reserved for in accordance with GAAP, consistently applied) and (ii) adequate for the conduct of the business of the Grantor in the ordinary course as currently conducted; and

(b) record all Inventory on the books of the Grantor at the lower of cost or market value determined in accordance with GAAP, consistently applied.

5.10 Other Matters.

(a) Each Grantor authorizes Purchaser to, at any time and from time to time, file appropriate financing statements, continuation statements, and amendments thereto that describe the Collateral as “all assets” of each Grantor, or words of similar effect, and which contain any other information required pursuant to the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to Purchaser promptly upon request. Any such financing statement, continuation statement, or amendment may be filed at any time in any appropriate jurisdiction. Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Purchaser, subject to such Grantor’s rights under Section 9-509(d)(2) of the UCC.

(b) Each Grantor shall, at any time and from time to time, take such steps as Purchaser may reasonably request for Purchaser (i) to the extent required by Section 5.3 of this Agreement, to obtain an acknowledgement (or bailee agreement), in form and substance reasonably satisfactory to Purchaser, of any bailee having possession of any of the Collateral, stating that the bailee holds such Collateral for Purchaser, (ii) to the extent required by this Agreement, to obtain “control” of any letter-of-credit rights, or electronic chattel paper, with any agreements establishing control to be in form and substance reasonably satisfactory to Purchaser, and (iii) to the extent required by this Agreement, otherwise to insure the continued perfection and priority of Purchaser’s security interest in any of the Collateral and of the preservation of its rights therein. If any Grantor shall at any time, acquire a “commercial tort claim” in excess of \$50,000, such Grantor shall promptly notify Purchaser thereof in writing and supplement Schedule 6, therein providing a reasonable description and summary thereof, and upon delivery thereof to Purchaser, such Grantor shall grant and be deemed to thereby grant to Purchaser (and such Grantor hereby grants to Purchaser) a security interest and lien in and to such commercial tort claim and all Proceeds thereof, all upon the terms of and governed by this Agreement.

(c) Without limiting the generality of the foregoing, if any Grantor at any time holds or acquires an interest in any electronic chattel paper or any “transferable record”, as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify Purchaser in writing thereof and, at the request of Purchaser, shall take such action as Purchaser may reasonably request to vest in Purchaser “control” under Section 9-105 of the UCC of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

5.11 No Pledge of Equity in Subsidiaries. No Grantor shall grant a security interest in, encumber or in any other manner permit any Lien (other than in favor of Purchaser) to exist in or on, all or any portion of the equity in any of its Subsidiaries.

5.12 Note Purchase Agreement. Each of the Grantors covenants that it shall, and, if necessary, shall cause or enable each Grantor to, fully comply with each of the covenants and other agreements set forth in the Note Purchase Agreement.

5.13 No Pledge of Equity in Guarantors. Borrower agrees that, so long as any of the Secured Obligations remain outstanding, except to the extent permitted under the terms of the Note Purchase Agreement, Borrower shall remain, directly or indirectly, the holder of one hundred percent (100%) of the equity in the Guarantors; and without the prior written consent of Purchaser, Borrower shall not assign, sell, convey, gift, transfer, pledge, hypothecate, grant a security interest in, encumber or in any other manner permit any Lien (other than in favor of Purchaser) to exist in or on, all or any portion of the equity in or of any Guarantor.

## SECTION 6 REMEDIAL PROVISIONS.

### 6.1 Certain Matters Relating to Receivables.

(a) Purchaser at any time shall (or its agents or designees) at the expense of Grantors, have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as Purchaser may reasonably require in connection with such test verifications, including without limitation, Purchaser shall have the right to verify with any Account Debtor or any other Person, the validity, amount or any other matter relating to any Receivables, or any other Accounts. At any time upon Purchaser's request and at the expense of Grantors, Grantors shall cause independent public accountants or other auditors satisfactory to Purchaser to furnish to Purchaser reports showing reconciliations, agings and test verifications of, and trial balances for, the Receivables; provided, that so long as no Event of Default has occurred and is continuing, Grantors shall only be responsible for the expenses incurred by such accountants and auditors two (2) times during any calendar year.<sup>1</sup>

(b) Purchaser hereby authorizes each Grantor to collect such Grantor's Receivables, and Purchaser may curtail or terminate such authority at any time upon the occurrence and during the continuance of an Event of Default. If requested by Purchaser at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be forthwith (and, in any event, within two (2) Business Days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to Purchaser if required, in a collateral account maintained under the sole dominion and control of Purchaser, subject to withdrawal by Purchaser only as provided in Section 6.6, and (ii) until so turned over, shall be held by such Grantor in trust for Purchaser, segregated from the funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At any time upon Purchaser's request, each Grantor shall deliver to Purchaser all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including all original orders, invoices and shipping receipts. Notwithstanding the foregoing, Grantor shall be required to provide copies of such items prior to the occurrence of an Event of Default, and originals of such items after the occurrence of an Event of Default.

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<sup>1</sup> Note: NPA to specifically provide that monthly Borrowing Base work/analysis by the third party examiner engaged by the Purchaser is subject to reimbursement by Borrower.

## 6.2 Communications with Obligors; Grantors Remain Liable.

(a) Purchaser in its own name or in the name of others (including any Grantor) may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to Purchaser's satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of Purchaser at any time upon the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that the Receivables have been assigned to Purchaser and that payments in respect thereof shall be made directly to Purchaser.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable in respect of each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither Purchaser nor any Purchaser shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by Purchaser of any payment relating thereto, nor shall Purchaser be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(d) For the purpose of enabling Purchaser to exercise rights and remedies under this Agreement effective after the occurrence and during the continuance of an Event of Default, each Grantor hereby grants to Purchaser an irrevocable, nonexclusive worldwide license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. At any time after the occurrence and during the continuance of an Event of Default, Purchaser may refuse to allow Grantor to, and at its sole discretion Purchaser may, exercise quality control over the products and services offered under the applicable Trademark to prevent invalidation or abandonment.

## 6.3 Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and Purchaser shall have given notice to the relevant Grantor of Purchaser's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor will be permitted (i) to receive all cash dividends and distributions paid in respect of the Pledged Equity, to the extent permitted in the Note Purchase Agreement, and (ii) to exercise all voting and other rights with respect to the Investment Property; provided, that no vote shall be cast or other right exercised or action taken which would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Note Purchase Agreement, this Agreement or any other Note Document.



(b) If an Event of Default shall occur and be continuing and Purchaser shall give written notice of its intent to exercise such rights to the relevant Grantor or Grantors, without any further action by any Person (i) Purchaser shall have the right to receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Obligations in accordance with Section 6.5 hereof, (ii) Purchaser shall have the right to cause any or all of the Investment Property to be registered in the name of Purchaser or its nominee, and (iii) Purchaser or its nominee may exercise (x) all voting, consent, and other rights and powers pertaining to such Investment Property at any meeting of holders of the equity interests of the relevant Issuer or Issuers or otherwise (or by written consent or proxy) and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or Purchaser of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Purchaser may determine), all without liability except to account for property actually received by it, but Purchaser shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to, and each such Issuer that is a Grantor hereby agrees to promptly, comply with any instruction received by such Issuer from Purchaser that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions or consent of such Grantor or any other Person, including without limitation, instructions as to the transfer of other disposition of such Investment Property, to pay and remit to Purchaser or its nominee all dividends, distributions and other amounts payable to such Grantor in respect of such Investment Property (upon redemption of such Investment Property, dissolution of such Issuer or otherwise), and to transfer to, and register such Investment Property in the name of, Purchaser or its nominee or transferee. Each Grantor agrees that each Issuer shall be fully protected in so complying with such instructions made in accordance with the terms and conditions of this Agreement.

6.4 Proceeds to be Turned Over to Purchaser. In addition to the rights of Purchaser specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for Purchaser, segregated from the funds of such Grantor, and shall (unless Purchaser provides prior express written notice to the contrary) forthwith upon receipt by such Grantor, be turned over to Purchaser in the exact form received by such Grantor (duly endorsed by such Grantor to Purchaser, if required). All Proceeds received by Purchaser hereunder shall be held by Purchaser in a collateral account maintained under its sole dominion and control. All Proceeds, while held by Purchaser in any collateral account (or by such Grantor in trust for Purchaser) established pursuant hereto, shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

6.5 Application of Proceeds. Subject to the provisions of Section 3.3 of the Note Purchase Agreement, at such intervals as may be agreed upon by the Borrower and Purchaser, or, if an Event of Default shall have occurred and be continuing, at any time at Purchaser's election, Purchaser may apply all or any part of Proceeds from the sale of, or other realization upon, all or any part of the Collateral in payment of the Secured Obligations in accordance with Section 6.10 of this Agreement. Any part of such funds which Purchaser elects not to apply and deems not required as collateral security for the Secured Obligations shall be paid over from time to time by Purchaser to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same. Any balance of such Proceeds remaining after the Secured Obligations shall have been Paid in Full shall be paid over to the applicable Grantor or to whomsoever may be lawfully entitled to receive the same.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, Purchaser may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, Purchaser, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any advertisement or notice expressly required by law, the Note Purchase Agreement or any other Note Document) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived, except to the extent expressly required by law, the Note Purchase Agreement or any other Note Document), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of Purchaser or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Purchaser shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at Purchaser's request, to promptly assemble the Collateral and make it available to Purchaser at places which Purchaser shall reasonably select, whether at such Grantor's premises or elsewhere. Upon the occurrence and during the continuance of an Event of Default, Purchaser shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable and documented out-of-pocket costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Purchaser hereunder, including reasonable and documented attorneys' fees, to the payment in whole or in part of the Secured Obligations, in accordance with Section 6.5, and only after such application and after the payment by the Purchaser of any other amount required by any provision of law, to any Grantor. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against Purchaser arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition. If an Event of Default shall occur and be continuing, the Purchaser shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by Purchaser.

6.7 Sales of Pledged Equity.

(a) Each Grantor recognizes that Purchaser may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Purchaser shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(b) Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to use its best efforts to do or cause to be done all such other acts as may be reasonably necessary to make such sale or sales of all or any portion of the Pledged Equity pursuant to this Section 6.7 valid and binding and in compliance with applicable law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.7 will cause irreparable injury to Purchaser, that Purchaser has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Note Purchase Agreement.

6.8 Intellectual Property. Upon the occurrence and during the continuance of any Event of Default, each Grantor hereby authorizes: (a) the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all Patents to Purchaser as assignee of each Grantor's entire interest therein; (b) the Register of Copyrights, United States Copyright Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all certificates of registration or renewal for all of the Copyrights to Purchaser as assignee of each Grantor's entire interest therein; and (c) the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries) to issue any and all certificates of registration or renewal for all of the Trademarks to Purchaser as assignee of each Grantor's entire interest therein and in the goodwill of such Grantor's business connected therewith and symbolized thereby. Grantor agrees that upon the occurrence and during the continuance of an Event of Default, the use by Purchaser of all Intellectual Property of Grantor shall be worldwide and as extensive as the rights of Grantor to use such Intellectual Property, and without any liability for royalties or other related charges from Purchaser to Grantor.

6.9 Waiver; Deficiency. Each Grantor waives and agrees not to assert any rights or privileges which it may acquire under Section 9-626 of the UCC to the extent permitted by applicable law. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Secured Obligations in full and the fees and disbursements of any attorneys employed by Purchaser to collect such deficiency.

6.10 Application of Proceeds. All net proceeds from the enforcement of the Obligations shall be applied by the Purchaser in its discretion.

## SECTION 7 PURCHASER

### 7.1 Purchaser's Appointment as Attorney-in-Fact; Irrevocable Proxy, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints Purchaser and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact, such power of attorney to be exercisable solely upon the occurrence and during the continuance of an Event of Default, with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives Purchaser the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Purchaser for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Purchaser may request to evidence Purchaser's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Purchaser or as Purchaser shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as Purchaser may deem appropriate; (7) assign any Intellectual Property License, Copyright, Patent or Trademark, throughout the world for such term or terms, on such conditions, and in such manner, as Purchaser shall in its sole discretion determine; (8) vote any right or interest with respect to any Investment Property; (9) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as Purchaser may deem appropriate; and (10) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Purchaser were the absolute owner thereof for all purposes, and do, at Purchaser's sole option and such Grantor's expense, at any time, or from time to time, all acts and things which Purchaser deems necessary to protect, preserve or realize upon the Collateral and Purchaser's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

UNTIL THE SECURED OBLIGATIONS HAVE BEEN PAID IN FULL IN CASH, EACH GRANTOR HEREBY IRREVOCABLY DESIGNATES AND APPOINTS PURCHASER, AS ITS TRUE AND LAWFUL PROXY, WITH FULL POWER OF SUBSTITUTION, EXERCISABLE UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, FOR AND IN ITS NAME, PLACE AND STEAD TO VOTE ANY AND ALL INVESTMENT PROPERTY OWNED OR HELD BY SUCH GRANTOR OR STANDING IN ITS NAME, AND DO ALL THINGS WHICH ANY GRANTOR MIGHT DO IF PRESENT AND ACTING ITSELF. ONCE EXERCISED BY PURCHASER, THE RIGHT TO VOTE GRANTED PURSUANT TO THIS PROXY SHALL BE EXCLUSIVE TO PURCHASER AND NO GRANTOR SHALL THEREAFTER BE ENTITLED TO EXERCISE ANY RIGHT TO VOTE IN RESPECT OF ANY INVESTMENT PROPERTY, UNTIL PAYMENT IN FULL OR OTHERWISE WITH THE PRIOR WRITTEN CONSENT OF PURCHASER. THE PROXY, AUTHORIZATIONS, AGENCIES, POWERS OF ATTORNEY AND OTHER POWERS GRANTED BY THE GRANTORS UNDER AND PURSUANT TO THIS AGREEMENT ARE IRREVOCABLE AND COUPLED WITH AN INTEREST (INCLUDING, BUT NOT LIMITED TO, THE NOTE PURCHASE AGREEMENT AND THIS AGREEMENT) AND ARE GIVEN TO SECURE THE OBLIGATIONS UNDER THE NOTE PURCHASE AGREEMENT, THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS. SUCH APPOINTMENT OF PURCHASER AS PROXY AND ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN THE ARTICLES OF ORGANIZATION, LIMITED LIABILITY COMPANY AGREEMENTS OR OTHER ORGANIZATIONAL DOCUMENTS OF EACH GRANTOR OR THE LIMITED LIABILITY COMPANY ACT OF THE STATE OF INCORPORATION OF EACH GRANTOR.

Anything in this Section 7.1(a) to the contrary notwithstanding, Purchaser agrees that it will not exercise any rights under the power of attorney or the irrevocable proxy provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, Purchaser, at its sole option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Each Grantor hereby ratifies all that such attorneys shall lawfully (in accordance with applicable law) do or cause to be done by virtue hereof.

(d) All powers, proxies, authorizations, grants of attorney in fact and agencies contained in this Agreement survive the bankruptcy, dissolution or winding up of any relevant Grantor.

Each Grantor covenants and agrees that on the date that is thirty (30) days prior to the date of expiration (by operation of Applicable Law) of the irrevocable proxy granted pursuant to this Section 7.1, each Grantor shall (and shall automatically be deemed to) grant the Purchaser a new irrevocable proxy, on the same terms as those previously granted pursuant to this Section 7.1. Upon the reasonable written request of the Purchaser, such Grantor agrees to deliver to the Purchaser, on behalf of the Purchaser, such further evidence of such irrevocable proxy or such further irrevocable proxies to enable the Purchaser to vote the Pledged Stock after an Event of Default shall have occurred and be continuing.

7.2 Duty of Purchaser. Purchaser's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Purchaser deals with similar property for its own account. Neither Purchaser nor any of its respective officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on Purchaser hereunder are solely to protect Purchaser's interests in the Collateral and shall not impose any duty upon Purchaser to exercise any such powers. Purchaser shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder.

SECTION 8 MISCELLANEOUS.

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 11.4 of the Note Purchase Agreement.

8.2 Notices. All notices, requests and demands to or upon Purchaser or any Grantor hereunder shall be addressed to Borrower and effected in the manner provided for in Section 11.2 of the Note Purchase Agreement and each Grantor hereby appoints Borrower as its agent to receive notices hereunder.

8.3 Indemnification by the Grantors. EACH GRANTOR, JOINTLY AND SEVERALLY, HEREBY AGREES TO AND SHALL INDEMNIFY, EXONERATE AND HOLD PURCHASER FREE AND HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, LOSSES, LIABILITIES, DAMAGES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES (COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"), INCURRED BY OR ASSERTED AGAINST THE PURCHASER AS A RESULT OF, OR ARISING OUT OF, OR RELATING TO (a) THE SALE OF ANY OF THE NOTES, (b) THE USE, HANDLING, RELEASE, EMISSION, DISCHARGE, TRANSPORTATION, STORAGE, TREATMENT OR DISPOSAL OF ANY HAZARDOUS SUBSTANCE AT ANY PROPERTY OWNED OR LEASED BY ANY GRANTOR, (c) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS WITH RESPECT TO CONDITIONS AT ANY PROPERTY OWNED OR LEASED BY ANY GRANTOR OR THE OPERATIONS CONDUCTED THEREON, (d) THE INVESTIGATION, CLEANUP OR REMEDIATION OF OFFSITE LOCATIONS AT WHICH ANY LOAN PARTY OR THEIR RESPECTIVE PREDECESSORS ARE ALLEGED TO HAVE DIRECTLY OR INDIRECTLY DISPOSED OF HAZARDOUS SUBSTANCES OR (e) THE EXECUTION, DELIVERY, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT OR ANY TRANSACTION IN CONNECTION THEREWITH, EXCEPT FOR ANY SUCH INDEMNIFIED LIABILITIES ARISING ON ACCOUNT OF THE PURCHASER, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS DETERMINED BY A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION. IF AND TO THE EXTENT THAT THE FOREGOING UNDERTAKING MAY BE UNENFORCEABLE FOR ANY REASON, EACH GRANTOR HEREBY AGREES TO MAKE THE MAXIMUM CONTRIBUTION TO THE PAYMENT AND SATISFACTION OF EACH OF THE INDEMNIFIED LIABILITIES WHICH IS PERMISSIBLE UNDER APPLICABLE LAW. ALL OBLIGATIONS PROVIDED FOR IN THIS SECTION 8.3 SHALL SURVIVE REPAYMENT OF THE SECURED OBLIGATIONS, CANCELLATION OF THE NOTES, ANY FORECLOSURE UNDER, OR ANY MODIFICATION, RELEASE OR DISCHARGE OF, ANY OR ALL OF THE COLLATERAL DOCUMENTS AND TERMINATION OF THIS AGREEMENT.

8.4 Enforcement Expenses.

(a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on written demand Purchaser for all documented out-of-pocket costs and expenses (including attorneys' fees) incurred in collecting against any Guarantor under the guaranty contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement or any other Note Document.

(b) Each Grantor agrees to pay, and to save Purchaser harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other Taxes (other than Excluded Taxes) which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.4 shall survive repayment of all (and shall be) Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.5 Captions. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

8.6 Nature of Remedies. All Secured Obligations of each Grantor and rights of Purchaser expressed herein or in any other Note Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Purchaser, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

8.7 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective legal delivery thereof and shall be deemed an original signature hereunder for all purposes.

8.8 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

8.9 Entire Agreement. This Agreement, together with the other Note Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

8.10 Successors; Assigns. This Agreement shall be binding upon the Grantors, the Purchaser and their respective successors and assigns, and shall inure to the benefit of the Grantors, the Purchaser and the successors and assigns of the Purchaser. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Note Documents. Notwithstanding the foregoing in this Section, no Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of the Purchaser.

8.11 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

8.12 Forum Selection; Consent to Jurisdiction; Waiver of Jury Trial.

(a) EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, OR ANY AGREEMENTS OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF UTAH SITTING IN SALT LAKE COUNTY OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, OR ANY APPELLATE COURT FROM ANY THEREOF, AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS ADDRESS SET FORTH IN SECTION 11.2 OF THE NOTE PURCHASE AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, NOTHING IN THIS AGREEMENT SHALL LIMIT THE RIGHT OF THE PURCHASER TO BRING ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES, OR ANY NOTE DOCUMENTS, OR TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN ANY JURISDICTION IN WHICH ANY COLLATERAL IS LOCATED.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, THE NOTES, OR ANY OF THE OTHER NOTE DOCUMENTS, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS. EACH GRANTOR (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT PURCHASER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (ii) ACKNOWLEDGES THAT PURCHASER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, AND THE OTHER NOTE DOCUMENTS TO WHICH IT IS PARTY BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

8.13 Set-off. Each Grantor agrees that Purchaser has all rights of set-off, recoupment and bankers' lien provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default exists, Purchaser may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with Purchaser or such Purchaser.

8.14 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Note Documents to which it is a party;

(b) Neither Purchaser nor any Purchaser has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Note Documents, and the relationship between the Grantors, on the one hand, and Purchaser, on the other hand, in connection herewith or therewith is that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Note Documents or otherwise exists by virtue of the transactions contemplated hereby among the Grantors, Purchaser.

8.15 Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Section 8.15 of the Note Purchase Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in the form of Annex I hereto.



8.16 Releases. Upon the Payment in Full of the Secured Obligations, the security interests granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral will, revert to Grantors, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Purchaser and each Grantor hereunder will terminate. At the request and sole expense of any Grantor following any such termination, Purchaser will deliver to the Grantors any Collateral held by Purchaser hereunder, and execute and deliver to the Grantors and authorize the filing of such documents as the Grantors shall reasonably request to evidence such termination (at the cost of Grantors). Upon any disposition of property permitted by the Note Purchase Agreement, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor with no further action on the part of any Person. Upon any sale or disposition (including by merger or consolidation) of all of the stock of a Grantor that is expressly permitted by the Note Purchase Agreement, the Liens granted herein by such Grantor shall be deemed to automatically revert to such Grantor and such Grantor shall automatically be released and discharged from its obligations hereunder, in each case, with no further action on the part of any Person. The Purchaser shall, at Grantors' expense, execute and deliver or otherwise authorize the filing of such documents as Grantors shall reasonably request to evidence such release, including any necessary financing statement amendments.

8.17 Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Note Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by Purchaser, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Grantor or any other Person against Purchaser, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, Purchaser may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by Purchaser to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Purchaser against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

8.18 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor or any Issuer for liquidation or reorganization, should Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's or Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made (and this Section shall survive repayment of the Secured Obligations). In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by its respective officers hereunto duly authorized as of the date first written.

**BORROWER:**

**CLEARONE, INC.**

By: \_\_\_\_\_

Name:

Title:

**GUARANTORS:**

**NETSTREAMS INC.**

By: \_\_\_\_\_

Name:

Title:

**NETSTREAMS LLC**

By: \_\_\_\_\_

Name:

Title:

**PURCHASER:**

**EDWARD D. BAGLEY**

\_\_\_\_\_

*[Signature Page to Guaranty and Collateral Agreement]*

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**SCHEDULE 1  
FILINGS**

<b>Grantor</b>	<b>Filing Requirement or Other Action</b>	<b>Filing Office</b>
CLEARONE, INC	UCC Filing	Delaware Secretary of State
		<input type="checkbox"/>

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**SCHEDULE 2  
GRANTOR INFORMATION**

<b>GRANTOR (exact legal name)</b>	<b>STATE OF ORGANIZATION</b>	<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER</b>	<b>CHIEF EXECUTIVE OFFICE</b>
ClearOne Inc.	Delaware		
Netstreams Inc.	Delaware		
Netstreams LLC.	Texas		

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**SCHEDULE 3  
COLLATERAL LOCATIONS**

<b>GRANTOR</b>	<b>COLLATERAL</b>	<b>COLLATERAL LOCATION OR PLACE OF BUSINESS (INCLUDING CHIEF EXECUTIVE OFFICE)</b>	<b>OWNER/LESSOR (IF LEASED)</b>
CLEARONE, INC.			
Netstreams Inc.			
Netstreams LLC			

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**SCHEDULE 4  
INTELLECTUAL PROPERTY**

1. Copyrights

<b>Grantor</b>	<b>Country</b>	<b>Copyright</b>	<b>Registration No.</b>	<b>Registration Date</b>

2. Patents

<b>Registrant</b>	<b>Country</b>	<b>Application No.</b>	<b>Filing Date</b>	<b>Registration No.</b>	<b>Issue Date</b>	<b>Title</b>	<b>Status</b>

3. Trademarks

<b>Registrant</b>	<b>Trademark</b>	<b>Country</b>	<b>Application No.</b>	<b>Filing Date</b>	<b>Reg. No.</b>	<b>Issue Date</b>	<b>Status</b>

4. Licensed Copyrights, Patents and Trademark

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**SCHEDULE 5  
DEPOSITARY AND OTHER ACCOUNTS**

<b>GRANTOR<sup>2</sup></b>	<b>FINANCIAL INSTITUTION (Name and address)</b>	<b>ACCOUNT NUMBER</b>	<b>TYPE AND USE OF ACCOUNT</b>

<sup>2</sup> Confirm the owners of each account.

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**SCHEDULE 6  
COMMERCIAL TORT CLAIMS**

None.

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**SCHEDULE 7  
CONTRACTS OR AGREEMENTS BETWEEN  
GRANTOR AND GOVERNMENTAL AUTHORITY**

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**SCHEDULE 8**  
**CERTAIN EXCLUDED ASSETS<sup>3</sup>**

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<sup>3</sup> Provide name of Grantor that is party of the license, contract or agreement, the other parties thereto, the name and date of the license, contract or agreement (and list any amendments or other modifications), and a summary of why a security interest grant would, under the express terms of such license, contract or agreement result in a breach of the terms of, or constitute a default under, such license, contract or agreement.

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## ANNEX I

### FORM OF JOINDER TO GUARANTY AND COLLATERAL AGREEMENT

This JOINDER AGREEMENT (this "Agreement") dated as of [\_\_\_\_\_, 20\_\_] is executed by the undersigned for the benefit of Edward Dallin Bagley (together with his successors and assigns, in such capacity, collectively, "Purchaser"), in connection with that certain Guaranty and Collateral Agreement dated as of [\_\_\_\_\_, 2019 among CLEARONE, INC., a Delaware corporation (the "Borrower"), Netstreams Inc., a Delaware corporation, and Netstreams LLC, a Texas limited liability company (each, a "Guarantor" and, together with any other Person that becomes a guarantor under the Note Purchase Agreement, the "Guarantors"; and together with Borrower, each individually a "Grantor" and collectively, the "Grantors"), in favor of Purchaser (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Collateral Agreement"). Capitalized terms not otherwise defined herein are being used herein as defined in the Guaranty and Collateral Agreement.

Each Person signatory hereto is required to execute this Agreement pursuant to Section 8.15 of the Guaranty and Collateral Agreement.

In consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each signatory (intending to be legally bound) hereby agrees as follows:

1. Each such Person unconditionally and absolutely assumes all the obligations of a Grantor [and a Guarantor] under the Guaranty and Collateral Agreement and agrees that such Person is and shall be a Grantor [and a Guarantor] and bound as a Grantor [and a Guarantor] under the terms of the Guaranty and Collateral Agreement, as if such Person had been an original signatory to such agreement. In furtherance of the foregoing, such Person hereby unconditionally grants, pledges, collaterally assigns and transfers to Purchaser, a valid and continuing security interest in and Lien on all of such Person's right, title and interest in and to the Collateral owned by such Person to secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations.

2. Schedules 1, 2, 3, 4, 5, 5.9, 6, 7 and 8 of the Guaranty and Collateral Agreement are hereby amended to add the information relating to each such Person set out on Schedules 1, 2, 3, 4, 5, 6, 7 and 8 respectively, hereof. Each such Person hereby makes to Purchaser the representations and warranties set forth in the Guaranty and Collateral Agreement applicable to such Person and the applicable Collateral and confirms that such representations and warranties are true and correct in all material (without duplication of any materiality qualifiers) respects after giving effect to such amendment to such Schedules.

3. In furtherance of its obligations under Section 5.2 of the Guaranty and Collateral Agreement, each such Person agrees to deliver to Purchaser appropriately complete UCC financing statements naming such person or entity as debtor and Purchaser as secured party, and describing its Collateral and such other documentation as Purchaser (or its successors or assigns) may reasonably require to evidence, protect and perfect the Liens created by the Guaranty and Collateral Agreement, as modified hereby. Each such Person acknowledges the authorizations given to Purchaser under Section 5.10(b) of the Guaranty and Collateral Agreement and otherwise.

4. Each such Person's address for notices under the Guaranty and Collateral Agreement shall be the address of Borrower set forth in the Note Purchase Agreement and each such Person hereby appoints Borrower as its agent to receive notices hereunder.

5. This Agreement shall be deemed to be part of, and a modification to, the Guaranty and Collateral Agreement and shall be governed by all the terms and provisions of the Guaranty and Collateral Agreement, with respect to the modifications intended to be made to such agreement, which terms are incorporated herein by reference, are ratified and confirmed and shall continue in full force and effect as valid and binding agreements of each such person or entity enforceable against such person or entity. Each such Person hereby waives notice of Purchaser's acceptance of this Agreement. Each such Person will deliver an executed original of this Agreement to Purchaser.

6. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

7. The provisions of Section 8.12(b) of the Guaranty and Collateral Agreement pertaining to Jury Trial Waiver are hereby incorporated into this Agreement by reference to the fullest extent as if the text of such provision were set forth in its entirety herein.

[NEW GRANTOR], a [\_\_\_\_\_]
[\_\_\_\_\_]

By: \_\_\_\_\_
Name: \_\_\_\_\_
Title: \_\_\_\_\_

NEITHER THIS NOTE NOR THE SECURITIES INTO WHICH THIS NOTE ARE CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, THIS NOTE AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS NOTE MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES.

No. 1  
Date: [\_\_\_\_\_] , 2019

\$3,000,000.00

**CLEARONE, INC.**  
**SENIOR SECURED CONVERTIBLE NOTE**

FOR VALUE RECEIVED, CLEARONE, INC., a Delaware corporation (the "**Company**"), hereby unconditionally promises to pay to the order of Edward D. Bagley or his registered assigns (the "**Holder**"), the principal sum of Three Million Dollars \$(3,000,000.00), on [\_\_\_\_\_] , 2023 (the "**Maturity Date**"), or such earlier date as this Senior Secured Convertible Note (the "**Note**") is required or permitted to be repaid as provided hereunder or in the Purchase Agreement (as defined in Section 1 below), and to pay interest to the Holder on the then outstanding principal amount of this Note in accordance with the provisions hereof. In addition, the Company shall pay to the order of the Holder interest on any principal, interest or other amount payable hereunder that is not paid in full when due (whether at the time of any stated interest or principal payment date, at maturity or by prepayment, acceleration or declaration or otherwise) for the period from and including the due date of such payment to but excluding the date the same is paid in full, at a rate per annum equal to five percent (5%) above the Interest Rate (as defined herein)(but in no event in excess of the maximum rate permitted under applicable law) (the "**Default Rate**").

Interest payable under this Note shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which interest is payable.

Payments of principal and interest shall be made in lawful money of the United States of America to the Holder at its address as provided in Section 11.2 of the Purchase Agreement or by wire transfer to such account specified from time to time by the Holder hereof for such purpose as provided in Section 12.

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This Note is one of the “Notes” referred to in the Purchase Agreement in the aggregate principal amount of Three Million Dollars (\$3,000,000.00) (collectively, the “Notes”). The Notes are secured by a first priority security interest in the Collateral (as defined in the Collateral Documents).

1. **Definitions.** In addition to the terms defined elsewhere in this Note, (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Note Purchase Agreement, dated as of December 8, 2019 (the “Purchase Agreement”), among the Company, the Guarantors party thereto and the Holder, and (b) the following terms have the meanings indicated:

“**Closing Price**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market or any other national securities exchange, the closing bid price per share of Common Stock for such date (or the nearest preceding date) on the primary Eligible Market or exchange on which the Common Stock is then listed or quoted; (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the most recent closing bid price per share of Common Stock so reported; (c) if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Board of Directors of the Company.

“**Common Stock**” means the common stock, par value \$0.001 per share, of the Company.

“**Conversion Date**” means the date a Conversion Notice is delivered to the Company (as determined in accordance with the notice provisions hereof) together with a Conversion Schedule pursuant to Section 6(a).

“**Conversion Notice**” means a written notice in the form attached hereto as Schedule 1.

“**Conversion Price**” means \$2.11 subject to adjustment from time to time pursuant to Section 10.

“**Daily Trading Volume**” means on any given Trading Day the total volume of Common Stock traded on an Eligible Market as reported by Bloomberg L.P.

“**Eligible Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca or the NYSE MKT (or any successor to any of the foregoing).

“**Equity Conditions**” means, with respect to the Common Stock issuable to the Holder pursuant to the Note Documents (including, without limitation, in respect of any Mandatory Conversion (as defined in Section 6(b)), that each of the following conditions is satisfied or waived by Holder: (i) on each day during the applicable Equity Conditions Measuring Period, all shares of Common Stock then issued and issuable immediately upon conclusion of that Equity Conditions Measuring Period shall be eligible for sale pursuant to a then effective and non-suspended Registration Statement (as defined in Schedule 8.21 to the Purchase Agreement) or pursuant to Rule 144 (as defined in Schedule 8.21 to the Purchase Agreement) without any restriction or limitation and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the applicable Equity Conditions Measuring Period, the Common Stock is designated for listing and eligible for trading on The NASDAQ Capital Market or any other Eligible Market and shall not have been suspended from trading on such exchange or market resulting in the Common Stock not being traded on an Eligible Market; (iii) any applicable shares of Common Stock issuable or to be issued in connection with the event requiring determination may be issued in full without violating any provision of the Note Documents or the rules or regulations of The NASDAQ Capital Market or any other applicable Eligible Market and are, or upon issuance will be, duly authorized and listed and eligible for trading on an Eligible Market; (iv) during the applicable Equity Conditions Measuring Period, there shall not have occurred either (a) the public announcement of a Fundamental Change (as defined in Section 10(c)) which has not been abandoned, terminated or consummated or (b) a Triggering Event (but, for this purpose, excluding any time periods set forth in such definition) which is not cured prior to the end of the applicable Equity Conditions Measuring Period or waived by the Holder; (v) during the applicable Equity Conditions Measuring Period, no default or Event of Default nor any event or circumstance that with the passage of time and without being cured would constitute a default or an Event of Default has occurred and not been cured or waived in writing by the Holder; (vi) if the Holder or its Affiliates is a reporting person under Section 16(a) of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), the receipt of the applicable shares of Common Stock (or other securities) by such Holder shall be deemed an exempt purchase pursuant to Section 16(b) of the 1934 Act; (vii) the aggregate number of shares of Common Stock issuable by the Company under the Notes, upon any Mandatory Conversion, shall not exceed the Volume Limit; (viii) the Company has confirmed to the Holder that the Holder is not, and will not be, in possession of what is, or of what the Company believes could be deemed, material, non-public information on any Trading Day during the period commencing on the Conversion Date in respect of such Mandatory Conversion and ending on the date that is ten (10) Trading Days immediately following the Conversion Date in respect of such Mandatory Conversion; provided, however, that if there exists any such material, nonpublic information prior to such period, it shall have been disclosed on a Current Report on Form 8-K, a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K no later than the Trading Day immediately preceding the Conversion Date in respect of such Mandatory Conversion; and (ix) the Company has confirmed to the Holder that the Holder is not, and will not be, be restricted from trading shares of Common Stock due to a black-out period restricting the Company’s officers and directors from trading on any Trading Day during the period commencing on the Conversion Date in respect of such Mandatory Conversion and ending on the date that is ten (10) Trading Days immediately following the Conversion Date in respect of such Mandatory Conversion.

“**Equity Conditions Measuring Period**” means the period beginning fifteen (15) Trading Days prior to the applicable date of determination and ending on and including the applicable date of determination.

“**Event Equity Value**” means the average of the Closing Prices for the five (5) Trading Days preceding the date of delivery of the notice requiring payment of the Event Equity Value, provided that if the Company does not make such required payment (together with any other payments, expenses and liquidated damages then due and payable under the Note Documents) when due or, in the event the Company disputes in good faith the occurrence of the event pursuant to which such notice relates, does not instead deposit such required payment (together with such other payments, expenses and liquidated damages then due) in escrow with an independent third party escrow agent within five (5) Trading Days of the date such required payment is due, then the Event Equity Value shall be one hundred twenty-five percent (125%) of the greater of (a) the average of the Closing Prices for the five (5) Trading Days preceding the date of delivery of the notice requiring payment of the Event Equity Value and (b) the average of the Closing Prices for the five (5) Trading Days preceding the date on which such required payment (together with such other payments, expenses and liquidated damages) is paid in full.

“**Interest Rate**” means a variable annual rate, determined as of the beginning of each calendar quarter, equal to the sum of (y) the greater of (i) the Prime Rate (as published in the Wall Street Journal (New York edition) as of the beginning of such calendar quarter or, if the Wall Street Journal ceases to publish the Prime Rate, a similar reference rate selected by the Board of Directors of the Company) and (ii) five and one-quarter percent (5.25%), plus (z) two and one-half percent (2.5%).

“**Original Issue Date**” means [\_\_\_\_\_], 2019.

“**Trading Day**” means (a) any day on which the Common Stock is listed or quoted and traded on an Eligible Market, or (b) if the Common Stock is not then listed or quoted and traded on any Eligible Market, then any Business Day.

“**Triggering Event**” means any of the following events: (a) the Common Stock is not listed or quoted, or is suspended from trading, on an Eligible Market for a period of ten (10) or more Trading Days (which need not be consecutive Trading Days) in any 180 Trading Day period; (b) the conversion rights of the Holder and the other holders of the Notes pursuant to any Note Document are suspended for any reason; (c) the Company fails to have available a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock available to issue Underlying Shares under the Notes and the Warrants or fails to have full authority, including under all laws, rules and regulations of any Trading Market, to issue such Underlying Shares; (d) at any time after the Closing Date, any Common Stock issuable pursuant to the Notes or Warrants is not listed on an Eligible Market; (e) after the effectiveness of the Registration Statement, the Registration Statement is suspended for ten (10) or more Trading Days (which need not be consecutive Trading Days) in any 180 Trading Day period (other than any suspension agreed to by the Holder); (f) the Company or any Subsidiary fails to make any cash payment required under any Note Document to which it is a party and such failure is not cured within five (5) days after notice of such default is first given to the Company by the Holder; (g) the Company or any Subsidiary (i) breaches any of its representations and warranties under any Note Document to which it is a party that is qualified by materiality, (ii) breaches in any material respect any of its representations and warranties under any Note Document to which it is a party that is not qualified by materiality or (iii) breaches any of its covenants or obligations under any Note Document to which it is a party (including any of the covenants set forth in Articles 8 and 9 of the Purchase Agreement), which breach has not been cured or waived in writing by the Holder; or (h) there has occurred any change, event or circumstance that has had or could reasonably be expected to result in a Material Adverse Effect.



“**Underlying Shares**” means the shares of Common Stock issuable (i) upon conversion of the Notes, (ii) upon exercise of the Warrants and (iii) in satisfaction of any other obligation or right of the Company to issue shares of Common Stock pursuant to the Note Documents, and in each case, any securities issued or issuable in exchange for or in respect of such securities.

“**Volume Limit**” means, with respect to any Mandatory Conversion, the product of (y) four (4) and (z) the arithmetic average of the Daily Trading Volume for each of the twenty (20) consecutive Trading Days preceding the Conversion Date applicable to such Mandatory Conversion.

“**Warrants**” means the warrants to purchase 340,909 shares of Common Stock which were issued to the Purchasers at the closing of the transactions contemplated by the Purchase Agreement.

2. Principal and Interest.

(a) The Company shall pay interest to the Holder on the then outstanding principal amount of this Note at a variable rate per annum equal to the Interest Rate. Interest shall be payable monthly in arrears in cash on the last day of each month, except if such day is not a Business Day in which case such interest shall be payable on the next succeeding Business Day (each, an “**Interest Payment Date**”). The first Interest Payment Date shall be December 31, 2019 and shall be pro-rated for the number of days elapsed from the Original Issue Date through December 31, 2019. Upon conversion of any portion of the principal amount of this Note into Common Stock in accordance with Section 6 (whether pursuant to Section 6(a) or 6(b)), the Company shall pay to the Holder, in cash, the accrued interest with respect to the principal amount of this Note so converted by no later than the second (2<sup>nd</sup>) Business Day following the applicable Conversion Date.

(b) On each Payment Date, the Company shall make a periodic cash amortization payment in respect of the principal balance of the Notes in accordance with Section 3.2(a)(ii) of the Purchase Agreement.

(c) The Company shall have the right to prepay the Notes, from time to time, in cash following the one year anniversary of the Original Issue Date in accordance with Section 3.2(b) of the Purchase Agreement (including the payment of the prepayment premium specified therein).

(d) The Company is obligated to prepay all or any portion of the Notes upon the occurrence of certain events as specified in, and in accordance with, Section 3.2(c) of the Purchase Agreement, including, without limitation, the payment of the premium specified therein. The prepayment of all or any portion of the Notes in accordance with Sections 3.2(b) and 3.2(c) of the Purchase Agreement shall be allocated in accordance with Section 3.3 of the Purchase Agreement.

(e) Except as expressly provided in Sections 3.2(a)(ii), 3.2(b) and 3.2(c) of the Purchase Agreement and except as expressly provided in this Note, the Note may not be prepaid in whole or in part absent the written consent of the Holder.

### 3. Ranking and Covenants.

(a) (i) No Indebtedness of the Company or any Subsidiary shall be senior to or on a parity with the Notes in right of payment, whether with respect to interest, damages or upon liquidation or dissolution or otherwise and (ii) the Company will not, and will not permit any Subsidiary to, directly or indirectly, enter into, create, incur, assume or suffer to exist any Indebtedness of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom, except to the extent expressly permitted by, and subject to any approval required under, the Note Documents.

(b) The covenants set forth in the Purchase Agreement (including Articles 8 and 9 of the Purchase Agreement and the affirmative and negative covenants set forth therein) are incorporated by reference herein and are for the benefit of the holders of the Notes. The covenants set forth in Articles 8 and 9 of the Purchase Agreement may only be amended or waived by the written consent of the Holder.

(c) The Company covenants that it will at all times reserve and keep available out of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Underlying Shares as required under the Notes and Warrants, the number of Underlying Shares which are then issuable and deliverable upon the conversion of (and otherwise in respect of) each Note (taking into account the adjustments set forth in Section 10) and exercise of the Warrants (without giving effect to any limitations set forth therein), free from preemptive rights or any other contingent purchase rights of any other Person. The Company covenants that all Underlying Shares so issuable and deliverable shall, upon issuance in accordance with the terms of the Notes and/or Warrants, be duly and validly authorized and issued and fully paid and nonassessable.

4. Registration of Notes. The Company shall register the Notes upon records to be maintained by the Company for that purpose (the “**Note Register**”) in the name of each record holder thereof from time to time. The Company may deem and treat the registered Holder of this Note as the absolute owner hereof for the purpose of any conversion hereof or any payment of interest or principal hereon, and for all other purposes, absent actual notice to the contrary.

5. Registration of Transfers and Exchanges. Subject to compliance with applicable federal and state securities laws, this Note and all rights hereunder are transferable in whole or in part upon the books of the Company by the Holder hereof; provided, however, that the transferee shall agree in writing to be bound by the terms and subject to the conditions of this Note, the Purchase Agreement and the other Note Documents to which the transferring Holder is a party. The Company shall register the transfer of any portion of this Note in the Note Register upon surrender of this Note to the Company at its address for notice set forth herein. Upon any such registration or transfer, a new Note, in substantially the form of this Note (any such new Note, a “**New Note**”), evidencing the portion of this Note so transferred shall be issued to the transferee and a New Note evidencing the remaining portion of this Note not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Note by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Note. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge or other fee will be imposed in connection with any such registration of transfer or exchange.

6. Conversion.

(a) At the Option of the Holder. All or any portion of this Note shall be convertible into shares of Common Stock, at the option of the Holder, at any time and from time to time from and after the Original Issue Date. The number of Underlying Shares issuable upon any conversion hereunder shall equal the outstanding principal amount of this Note to be converted divided by the Conversion Price on the Conversion Date (and any accrued interest on the principal amount of this Note that is being converted shall be paid, in cash, by the Company by no later than the second (2) Business Day following the Conversion Date). The Holder shall effect conversions under this Section 6(a) by delivering to the Company a Conversion Notice together with a schedule in the form of Schedule 2 attached hereto (the “**Conversion Schedule**”). If the Holder is converting less than all of the principal amount of this Note, the Company shall honor such conversion to the extent permissible hereunder and shall promptly deliver to the Holder a Conversion Schedule indicating the principal amount which has not been converted. Any conversion of this Note (whether pursuant to Section 6(a) or 6(b)) in excess of the monthly principal amortization payment required to be paid on the next Payment Date shall, at the election of the Holder, be credited and applied against the next subsequent monthly principal amortization payment or any other monthly principal amortization payment, as designated by the Holder in its sole discretion.

(b) At the Option of the Company. If at any time (i) the VWAP exceeds 200% of the Conversion Price then in effect for at least ninety (90) consecutive Trading Days (such ninety (90) consecutive Trading Day period that commences after the first anniversary of the Closing Date, the “**Mandatory Conversion Measuring Period**”) and the VWAP continues to exceed 200% of the Conversion Price for each Trading Day following the Mandatory Conversion Measuring Period through and including the Conversion Date, and (ii) the Equity Conditions are satisfied for each day of such Mandatory Conversion Measuring Period and continue to be satisfied for each day following the Mandatory Conversion Measuring Period through and including the Conversion Date, then the Company may elect to require the Holder to convert (a “**Mandatory Conversion**”) a portion of the outstanding principal amount of this Note, up to its entirety, into Common Stock by delivering an irrevocable written notice of such election to the holders of the Notes within five (5) Trading Days following the end of such Mandatory Conversion Measuring Period (the “**Mandatory Conversion Notice**”). For purposes of example only, if the Conversion Price is \$1.00, then the VWAP would need to be greater than \$2.00 for each Trading Day in the relevant period for the condition set forth in Section 6(b)(i) to be satisfied. The Mandatory Conversion Notice shall state: (i) the Conversion Date applicable to such Mandatory Conversion, which shall be the tenth (10<sup>th</sup>) Trading Day after the delivery of such Mandatory Conversion Notice; (ii) the aggregate principal amount of the Notes to be converted pursuant to the Mandatory Conversion; (iii) the number of shares of Common Stock to be issued to the Holder upon such Mandatory Conversion (taking into account the limitations set forth in Section 6(c) hereof); and (iv) that the Mandatory Conversion conditions (including the Equity Conditions) have been satisfied at all times during the Mandatory Conversion Measuring Period and through and including the delivery of the Mandatory Conversion Notice. The principal amount of the Notes convertible as provided in Section 6(b) of the Notes shall be limited to a number of shares of Common Stock equal to the Volume Limit as of the Conversion Date applicable to such Mandatory Conversion. The principal amount of this Note convertible as provided in this Section 6(b) shall be limited by Section 6(c). The tenth (10th) Trading Day after the delivery of such Mandatory Conversion Notice will be the “**Conversion Date**” for such Mandatory Conversion. If any of the Mandatory Conversion conditions (including any of the Equity Conditions) do not continue to be satisfied after the delivery by the Company of the Mandatory Conversion Notice and prior to the Conversion Date, the Company shall promptly deliver to the holders of the Notes a notice of such failure and each holder shall have the right, in its sole discretion, to either (I) waive such failure, in which case the Company shall complete the Mandatory Conversion in accordance with this Section 6(b), or (II) elect that the conversion of such holder’s Notes pursuant to the Mandatory Conversion not occur. Notwithstanding the foregoing, the Company may effect only one (1) Mandatory Conversion during any one hundred fifty (150) consecutive Trading Days. If the Holder delivers a Conversion Notice following its receipt of the Mandatory Conversion Notice and prior to the Conversion Date applicable to such Mandatory Conversion, the principal amount of the Notes converted by the Holder as part of such Conversion Notice shall reduce the principal amount of the Holder’s Note to be converted on the Conversion Date applicable to such Mandatory Conversion, unless the Holder elects otherwise in its Conversion Notice.

If the Company elects to cause a Mandatory Conversion of any portion of this Note pursuant to this Section 6(b), then it must simultaneously take the same action in the same proportion with respect to all other Notes. If the Company elects a Mandatory Conversion pursuant to Section 6(b) of the Notes with respect to less than the principal amount of all of the Notes then outstanding, then the Company shall require conversion of the Notes from each holder of the Notes in an amount equal to the product of (i) the aggregate principal amount of the Notes which the Company has elected to cause to be converted pursuant to Section 6(b) of the Notes, multiplied by (ii) a fraction, the numerator of which is the principal amount of such holder’s Note and the denominator of which is the principal amount of the Notes then outstanding.

7. Mechanics of Conversion; Restrictive Legends.

(a) Upon conversion of this Note, the Company shall promptly (but in no event later than three (3) Trading Days after the Conversion Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate a certificate for the Underlying Shares issuable upon such conversion (or the Holder or its designee shall receive a credit for such Underlying Shares issuable upon such conversion to its balance account with DTC through its Deposit Withdrawal Agent Commission System). The Holder, or any Person so designated by the Holder to receive Underlying Shares, shall be deemed to have become the holder of record of such Underlying Shares as of the Conversion Date. The Company shall, upon request of the Holder, use its reasonable best efforts to deliver the Underlying Shares hereunder electronically through The Depository Trust Company (the “DTC”), and to credit the number of shares of Common Stock to which the Holder shall be entitled to the Holder’s or its designee’s balance account with the DTC through its Deposit Withdrawal Agent Commission System. If the Company is not presently eligible to deliver its Common Stock electronically through DTC, the Company shall use its best efforts to take all action necessary to become so eligible promptly following the Closing Date.

(b) The Holder shall not be required to deliver the original Note in order to effect a conversion hereunder. Execution and delivery of the Conversion Notice shall have the same effect as cancellation of the original Note and issuance of a New Note representing the remaining outstanding principal amount; provided that the cancellation of the original Note shall not be deemed effective until a certificate for such Underlying Shares is delivered to the Holder, or the Holder or its designee receives a credit for such Underlying Shares to its balance account with DTC through its Deposit Withdrawal Agent Commission System. Upon surrender of this Note following one or more partial conversions, the Company shall promptly deliver to the Holder a New Note representing the remaining outstanding principal amount. The Holder shall deliver the original Note to the Company within thirty (30) days after the conversion of the entire Note hereunder, provided, that the Holder’s failure to so deliver the original Note shall not affect the validity of such conversion or any of the Company’s obligations under this Note, and the Company’s sole remedy for the Holder’s failure to deliver the original Note shall be to obtain an affidavit of lost note from the Holder.

(c) The Company’s obligations to issue and deliver Underlying Shares upon conversion of this Note in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any set-off, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Underlying Shares (other than such limitations contemplated by this Note).

(d) If by the fifth (5<sup>th</sup>) Trading Day after a Conversion Date the Company fails to deliver or cause to be delivered to the Holder such Underlying Shares in such amounts and in the manner required pursuant to Section 7(a), then the Holder will have the right to rescind such conversion (including any Mandatory Conversion).

(e) If by the third (3<sup>rd</sup>) Trading Day after a Conversion Date the Company fails to deliver or cause to be delivered to the Holder such Underlying Shares in such amounts and in the manner required pursuant to Section 7(a), and if after such third (3<sup>rd</sup>) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Underlying Shares which the Holder anticipated receiving upon such conversion (a “**Buy-In**”), then the Company shall, at the option of the Holder (in its sole discretion), either (i) pay cash to the Holder (in addition to any other remedies available to or elected by the Holder) in an amount equal to the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Company’s obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Price on the date of the event giving rise to the Company’s obligation to deliver such certificate.

(f) Each certificate for Underlying Shares shall bear a restrictive legend only if (i) there is not then an effective Registration Statement covering the resale of the Underlying Shares and naming the Holder as a selling stockholder thereunder and (ii) the Underlying Shares are not freely transferable by the Holder without volume restrictions pursuant to Rule 144; provided, that, no such restrictive legend shall be required if, in the opinion of counsel for the Holder or the Company, the securities represented thereby are not, at such time, required by law to bear such legend.

#### 8. Events of Default.

(a) At any time or times following the occurrence of an Event of Default, the Holder shall have the rights and remedies set forth in Article 10 of the Purchase Agreement, including the right of acceleration set forth in Section 10.2 of the Purchase Agreement.

(b) If this Note is accelerated in accordance with Article 10 of the Purchase Agreement and is not redeemed, in cash, in accordance with, and for the payment required under, Section 10.2 of the Purchase Agreement (the “**EofD Redemption Amount**”), then, in addition to all other remedies that may be available, the Holder may require the Company to pay all or any portion of the EofD Redemption Amount from time to time in shares of Common Stock of the Company as specified in one or more written notices from the Holder to the Company, with the number of such shares of Common Stock to be issued pursuant to any written notice from the Holder to the Company to be determined by dividing the EofD Redemption Amount to be paid in shares of Common Stock, as specified by the Holder in such written notice to the Company, by 93% of the lower of (y) the Market Price as of the date such EofD Redemption Amount became due and payable to the Holder and (z) the Market Price as of the date of such written notice by the Holder to the Company. In the event the Holder exercises its rights under this paragraph, the Company agrees promptly to take all actions as may be required, including without limitation seeking to obtain stockholder approval if required, in order to comply with its obligations under this paragraph. The term “**Market Price**” means, with respect to any date of determination, the arithmetic average of the VWAP for each of the twenty (20) consecutive Trading Days prior to such date of determination.

9. Charges, Taxes and Expenses. Issuance of certificates for Underlying Shares upon conversion of (or otherwise in respect of) this Note shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Underlying Shares or Notes in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Note or receiving Underlying Shares in respect hereof.

10. Certain Adjustments. The Conversion Price is subject to adjustment from time to time as set forth in this Section 10.

(a) Stock Dividends and Splits. If the Company, at any time while this Note is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this Section 10(a), shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this Section 10(a) shall become effective immediately after the effective date of such subdivision or combination.

(b) Pro Rata Distributions. If the Company, at any time while this Note is outstanding, distributes to all holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock described in Section 10(a)), (iii) rights or warrants to subscribe for or purchase any security, or (iv) cash or any other asset (in each case, “**Distributed Property**”), then the Company shall deliver to the Holder (on the effective date of such distribution), the Distributed Property that the Holder would have been entitled to receive in respect of the Underlying Shares for which this Note could have been converted immediately prior to the date on which holders of Common Stock became entitled to receive such Distributed Property.

(c) Fundamental Changes. If, at any time while this Note is outstanding, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or more transactions, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, (iv) the Company effects any reorganization, reclassification or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock described in Section 10(a)), or (v) there is a Change of Control (each case in clauses (i) through (v) above, a “**Fundamental Change**”), then upon any subsequent conversion of this Note, the Holder shall have the right to receive (except to the extent previously distributed to the Holder pursuant to Section 10(b)), for each Underlying Share that would have been issuable upon such conversion absent such Fundamental Change), the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Change if it had been, immediately prior to such Fundamental Change, the holder of one share of Common Stock (the “**Alternate Consideration**”). If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Change, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Change. In the event of a Fundamental Change, the Company or the successor or purchasing Person, as the case may be, shall execute with the Holder a written agreement providing that:

(x) this Note shall thereafter entitle the Holder to purchase the Alternate Consideration;

(y) in the case of any such successor or purchasing Person, upon such consolidation, merger, statutory exchange, combination, sale or conveyance such successor or purchasing Person shall be jointly and severally liable with the Company for the performance of all of the Company's obligations under this Note and the other Note Documents; and

(z) if registration or qualification is required under the 1934 Act or applicable state law for the public resale by the Holder of shares of stock and other securities so issuable upon exercise of this Note, such registration or qualification shall be completed prior to such reclassification, change, consolidation, merger, statutory exchange, combination or sale.

If, in the case of any Fundamental Change, the Alternate Consideration includes shares of stock, other securities, other property or assets of a Person other than the Company or any such successor or purchasing Person, as the case may be, in such Fundamental Change, then such written agreement shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holder as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing. At the Holder's request, any successor to the Company or surviving Person in such Fundamental Change shall issue to the Holder a new Note consistent with the foregoing provisions and evidencing the Holder's right to convert such Note into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Change is effected shall include terms requiring any such successor or surviving Person to comply with the provisions of this Section 10(c) and ensuring that this Note (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Change. If any Fundamental Change constitutes or results in a Change of Control, then the Company (or any such successor or surviving entity) will purchase each Note (unless such Holder declines to accept such payment in accordance with Section 3.2(c)(v) of the Purchase Agreement) for a purchase price, payable in cash, equal to the greater of (x) the purchase price specified in Section 3.2(c)(i)(I) of the Purchase Agreement, and (y) the product of (i) Event Equity Value and (ii) the Underlying Shares issuable upon conversion of the principal amount of each Note, plus all accrued but unpaid interest on each Note. Any repurchase of the Notes in connection with a Fundamental Change shall be made in the order of priority set forth in Section 3.3 of the Purchase Agreement (provided, that, any repurchase or repayment that is allocated to the principal amount of the Notes shall be applied to the principal payments in reverse chronological order).



(d) Calculations. All calculations under this Section 10 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 10, the Company at its expense will promptly compute such adjustment in accordance with the terms hereof and prepare and deliver to the Holder a certificate describing in reasonable detail such adjustment and the transactions giving rise thereto, including all facts upon which such adjustment is based.

(f) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for a Fundamental Change or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the holders of the Notes a notice describing the material terms and conditions of such transaction, at least twenty (20) Trading Days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to ensure that the holders of the Notes are given the practical opportunity to convert the Notes prior to such time so as to participate in or vote with respect to such transaction.

11. No Fractional Shares. The Company shall not issue or cause to be issued fractional Underlying Shares on conversion of this Note. If any fraction of an Underlying Share would, except for the provisions of this Section 11, be issuable upon conversion of this Note, the number of Underlying Shares to be issued will be rounded up to the nearest whole share.

12. Notices. Any and all notices or other communications or deliveries hereunder (including any Conversion Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 12 prior to 5:00 p.m. (New York City time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 12 on a day that is not a Trading Day or later than 5:00 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next Business Day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement, unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 12.

13. Miscellaneous.

(a) This Note shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Subject to the restrictions on transfer set forth herein, this Note may be assigned by the Holder. The Company shall not be permitted to assign this Note absent the prior written consent of the Holder.

(b) Except as expressly set forth herein, nothing in this Note shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause under this Note.

(c) **THE COMPANY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS NOTE OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THE COMPANY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

(d) This Note shall be governed by and construed under the law of the State of New York, without giving effect to the conflicts of law principles thereof. The Company and, by accepting this Note, the Holder, each irrevocably submits to the exclusive jurisdiction of the courts of the State of New York located in New York County and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Note and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Note. The Company and, by accepting this Note, the Holder, each irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. The Company and, by accepting this Note, the Holder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(e) If action is instituted to collect on this Note, the Company promises to pay all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with such action. The Company shall pay the reasonable attorneys' fees incurred by the Holder in connection with any amendment to, or waiver of, this Note or any other Note Document.

(f) In case any one or more of the provisions of this Note shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Note shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Note.

(g) In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Stock (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Stock), combination or other similar recapitalization or event occurring after the date hereof, each reference in this Note to a price (if not otherwise adjusted) shall be amended to appropriately account for such event.

(h) This Note, together with the other Note Documents, constitutes the entire agreement of the parties with respect to the subject matter hereof. No provision of this Note may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and the Holder or, in the case of a waiver, by the Holder. Any waiver executed by the Holder shall be binding on the Company and all holders of the Notes. No waiver of any default with respect to any provision, condition or requirement of this Note shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

(i) This Note is one of the Notes referred to in the Purchase Agreement and is secured by the Collateral described therein. The Guaranty and Collateral Agreement grants the Collateral Agent, on behalf of the Holder and the other holders of the Notes, certain rights with respect to the Collateral upon an Event of Default. The Subsidiaries have guaranteed the obligations of the Company under the Notes pursuant to the Guaranty and Collateral Agreement.

(j) The Holder shall have no rights as a holder of Common Stock as a result of being a holder of this Note, except as required by law or rights expressly provided in this Note.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by a duly authorized officer as of the date first above indicated.

**CLEARONE, INC.**

By \_\_\_\_\_  
Name:  
Title:

**Acknowledged and Agreed to by:**

Edward D. Bagley

\_\_\_\_\_

**Schedule 1**

**FORM OF CONVERSION NOTICE**

(To be executed by the registered Holder in order to convert Note)

The undersigned hereby elects to convert the specified principal amount of the Senior Secured Convertible Note (the “**Note**”) into shares of common stock, par value \$0.001 per share (the “**Common Stock**”), of CLEARONE, INC., a Delaware corporation, according to the conditions hereof, as of the date written below.

Date to Effect Conversion

\_\_\_\_\_  
Principal amount of Notes owned prior to conversion

\_\_\_\_\_  
Principal amount of Notes to be converted  
(including accrued but unpaid interest thereon)

Number of shares of Common Stock to be Issued

\_\_\_\_\_  
Applicable Conversion Price

\_\_\_\_\_  
Principal amount of Notes owned subsequent to Conversion

\_\_\_\_\_  
Name of Holder

By  
Name:  
Title:

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NEITHER THIS WARRANT NOR THE SECURITIES FOR WHICH THIS WARRANT IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES OR BLUE SKY LAWS. NOTWITHSTANDING THE FOREGOING, THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT.

CLEARONE, INC.

WARRANT

Warrant No. 1

Dated: \_\_\_\_\_, 2019

CLEARONE, INC., a Delaware corporation (the "**Company**"), hereby certifies that, for value received, Edward D. Bagley or his assigns (the "**Holder**"), is entitled to purchase from the Company up to a total of 340,909 (subject to adjustment as provided herein) fully paid and non-assessable shares of common stock, \$0.001 par value per share (the "**Common Stock**"), of the Company (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price equal to \$1.76 per share (as adjusted from time to time as provided in Section 9, the "**Exercise Price**"), at any time and from time to time from and after the date hereof (the "**Issuance Date**") and through and including [\_\_\_\_\_], 2026 (as subject to extension as set forth herein, the "**Expiration Date**"), and subject to the following terms and conditions. This Warrant (this "**Warrant**") is being issued pursuant to that certain Note Purchase Agreement, dated as of December 8, 2019 (the "**Note Purchase Agreement**"), by and among the Company, as borrower, the various guarantors party thereto, and the Holder, as purchaser.

**1. Definitions.** In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein or in the Note Purchase Agreement shall have the meanings set forth below:

- (a) "**Business Day**" means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.
  - (b) "**Change of Control**" shall have the meaning ascribed to it in the Note Purchase Agreement.
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(c) “**Closing Price**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on an Eligible Market or any other national securities exchange, the closing bid price per share of Common Stock for such date (or the nearest preceding date) on the primary Eligible Market or exchange on which the Common Stock is then listed or quoted; (b) if the Common Stock is then listed or quoted on the OTC Bulletin Board, the most recent closing bid price per share of Common Stock so reported; (c) if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder.

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

(e) “**Effective Date**” means the date that a Registration Statement or Registration Statements covering the Registrable Securities has been declared effective by the Commission.

(f) “**Eligible Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE Arca or the NYSE MKT (or any successor to any of the foregoing).

(g) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

(h) “**Person**” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

(i) “**Prospectus**” means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

(j) “**Registrable Securities**” means the Warrant Shares (including any Warrant Shares issuable pursuant to the anti-dilution provisions hereof), together with any securities issued or issuable in exchange for the Warrant Shares or upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that Warrant Shares held by a Holder shall cease to be “Registrable Securities” on the earliest to occur of (i) the date on which a registration statement covering such securities has been declared effective by the Commission and such shares have been disposed of pursuant to such effective registration statement, (ii) the date that such securities have been disposed of pursuant to Rule 144, or (iii) the date on which all such shares may be disposed of by an Investor in one transaction pursuant to Rule 144 without being subject to the public information, volume and manner of sale conditions and restrictions under Rule 144.



(k) **“Registration Statement”** means the initial registration statement required to be filed under paragraph (a)(i) of Schedule 8.13 of the Note Purchase Agreement and any additional registration statements contemplated by paragraph (a)(i) of Schedule 8.13 of the Note Purchase Agreement, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

(l) **“Required Effectiveness Date”** means with respect to (i) the initial Registration Statement required pursuant to paragraph (a)(i) of Schedule 8.13 of the Note Purchase Agreement, the one hundred eightieth (180<sup>th</sup>) day following the Issuance Date and (ii) any additional Registration Statement required pursuant to paragraph (a)(i) of Schedule 8.13 of the Note Purchase Agreement, the one hundred eightieth (180<sup>th</sup>) day following the date thereof; provided, however, in the event the Company is notified by the Commission that the Registration Statement will not be reviewed or is no longer subject to further review and comments, the Required Effectiveness Date as to such Registration Statement shall be the fifth (5<sup>th</sup>) Trading Day following the date on which the Company is so notified if such date precedes the dates required above.

(m) **“Rule 144”** means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

(n) **“Securities Act”** means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

(o) **“Trading Day”** means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, or (b) if the Common Stock is not then listed or quoted and traded on any Trading Market, then any Business Day.

(p) **“Trading Market”** means The NASDAQ Capital Market or any other primary Eligible Market or national securities exchange on which the Common Stock is then listed or quoted.

(q) **“VWAP”** means, on any particular Trading Day or for any particular period, the volume weighted average trading price per share of Common Stock on such Trading Day or for such particular period on the Eligible Market on which the Common Stock is then traded as reported by Bloomberg L.P., through its “Volume at Price” functions, or any successor performing similar functions, or, if the foregoing does not apply, the average of the highest Closing Price and the lowest closing ask price of the Common Stock on the OTC Bulletin Board or, if none of the foregoing applies, the average of the highest Closing Price and the lowest closing ask price of the Common Stock of any of the market makers for the Common Stock as reported in the “pink sheets” by OTC Markets Group Inc.; *provided, however*, that during any period the VWAP is being determined, the VWAP shall be subject to adjustment from time to time for stock splits, stock dividends, combinations and similar events as applicable.

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “**Warrant Register**”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the sole and absolute record and beneficial owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. Subject to compliance with applicable federal and state securities laws, this Warrant and all rights hereunder are transferable in whole or in part upon the books of the Company by the Holder hereof at any time and without restriction; provided, however, that the transferee shall agree in writing to be bound by the terms and subject to the conditions of this Warrant. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new warrant to purchase Common Stock, in substantially the form of this Warrant (any such new warrant, a “**New Warrant**”), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of this Warrant.

4. Exercise and Duration of Warrants.

(a) This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Issuance Date to and including the Expiration Date. At 6:30 P.M., New York City time on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value; provided that, if the average of the Closing Prices for the five (5) Trading Days immediately prior to (but not including) the Expiration Date exceeds the Exercise Price on the Expiration Date, then this Warrant shall be deemed to have been exercised in full (to the extent not previously exercised) on a “cashless exercise” basis at 6:30 P.M. New York City time on the Expiration Date. Notwithstanding anything to the contrary herein, the Expiration Date shall be extended for each day following the Effective Date that the Registration Statement is not effective. For U.S. federal income tax purposes, each Holder and the Company shall treat any “cashless exercise” as a reorganization under Section 368(a)(1)(E) of the Internal Revenue Code.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the “**Exercise Notice**”), appropriately completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a “cashless exercise” if so indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an “**Exercise Date**.” The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares. The Holder shall deliver the original Warrant to the Company within thirty (30) days after the full exercise of this Warrant, provided, however, that the Holder’s failure to so deliver the original Warrant shall not affect the validity of such exercise or any of the Company’s obligations under this Warrant and the Company’s sole remedy for the Holder’s failure to deliver the original Warrant shall be to obtain an affidavit of lost warrant from the Holder.

(c) If upon the Expiration Date, any portion of this Warrant remains unexercised, then the Company shall issue to the Holder a new warrant to purchase Common Stock, in substantially the same form of this Warrant, with a new expiration date of seven (7) years from the original Expiration Date, and with an exercise price equal to the Exercise Price then in effect under this Warrant (i.e., the original Exercise Price as adjusted in accordance with the terms hereof) and exercisable for the number of Warrant Shares equal to the quotient of (A) the greater of the Black-Scholes value of the remaining unexercised portion of this Warrant (without regard to any limitations on the exercise hereof) (x) on the original Issuance Date and (y) on the original Expiration Date, in each case as determined in accordance with Exhibit A of this Warrant, divided by (B) the Exercise Price then in effect under this Warrant.

5. Delivery of Warrant Shares.

(a) Subject to Section 5(c) below, upon exercise of this Warrant, the Company shall promptly (but in no event later than three (3) Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate for the Warrant Shares issuable upon such exercise or credit the Holder's balance account with DTC for the Warrant Shares issuable upon such exercise, in either case, free of restrictive legends unless a Registration Statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective and the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144. The Holder, or any Person so designated by the Holder to receive Warrant Shares, shall be deemed to have become holder of record of such Warrant Shares as of the Exercise Date. If within three (3) Trading Days after the Exercise Date, the Company shall fail to issue and deliver a certificate to the Holder and register such shares of Common Stock on the Company's share register or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder, then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each day after such third (3<sup>rd</sup>) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to two percent (2%) of the product of (A) the aggregate number of shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 5(a).

(b) Subject to Section 5(c) below, this Warrant is exercisable, either in its entirety or, from time to time, for a portion of the number of Warrant Shares. Upon surrender of this Warrant following one or more partial exercises, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) In addition to any other rights available to a Holder, if the Company fails to credit the Holder's balance account with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder or at the Holder's option deliver or cause to be delivered to the Holder a certificate representing Warrant Shares, in either case, by the third (3<sup>rd</sup>) Trading Day after the Exercise Date, and if after such third (3<sup>rd</sup>) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares that the Holder anticipated receiving from the Company (a "**Buy-In**"), then the Company shall, at the option of the Holder (in its sole discretion), either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to credit the Holder's balance account with DTC for the number of Warrant Shares to which the Holder is entitled upon the Holder's exercise hereunder or at the Holder's option deliver to the Holder a certificate or certificates representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Price on the date of the event giving rise to the Company's obligation to credit such Holder's balance account with DTC or deliver such certificate.

(d) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof (including, but not limited to, the exercise of this Warrant) are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares (other than such limitations contemplated by this Warrant). 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 credit the Holder's balance account with DTC upon exercise of the Warrant as required pursuant to the terms hereof.

(e) Each certificate for Warrant Shares shall bear a restrictive legend only if (i) there is not then an effective Registration Statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder and (ii) the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144; provided, that, no such restrictive legend shall be required if, in the opinion of counsel for the Holder or the Company, the securities represented thereby are not, at such time, required by law to bear such legend.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder or an affiliate thereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures as the Company may prescribe.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will take all such action as may be necessary to assure that such shares of Common Stock may be issued as provided herein without violation by the Company of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) **Pro Rata Distributions.** If the Company, at any time while this Warrant is outstanding, distributes to holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) cash or any other asset (in each case, “**Distributed Property**”), then in each such case the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution shall be adjusted (effective on such record date) to equal the product of such Exercise Price times a fraction of which the denominator shall be the average of the Closing Prices for the five (5) Trading Days immediately prior to (but not including) such record date and of which the numerator shall be such average less the then fair market value of the Distributed Property distributed in respect of one outstanding share of Common Stock, as determined by the Company’s independent certified public accountants that regularly examine the financial statements of the Company (an “**Appraiser**”). In such event, the Holder, after receipt of the determination by the Appraiser, shall have the right to select an additional appraiser (which shall be a nationally recognized accounting firm), in which case such fair market value shall be deemed to equal the average of the values determined by each of the Appraiser and such appraiser. As an alternative to the foregoing adjustment to the Exercise Price, at the request of the Holder delivered before the ninetieth (90<sup>th</sup>) day after such record date, the Company will deliver to such Holder, within five (5) Trading Days after such request (or, if later, on the effective date of such distribution), the Distributed Property that the Holder would have been entitled to receive in respect of the Warrant Shares for which this Warrant could have been exercised immediately prior to such record date. If such Distributed Property is not delivered to the Holder pursuant to the preceding sentence, then upon expiration of or any exercise of the Warrant that occurs after such record date, the Holder shall remain entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), such Distributed Property.

(c) **Fundamental Transactions.** If, at any time while this Warrant is outstanding, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of the assets of the Company and such sale is not approved by the Holder, (iii) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (other than as a result of a subdivision or combination of shares of Common Stock covered by Section 9(a) above), or (v) there is a Change of Control (in any such case, a “**Fundamental Transaction**”), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the “**Alternate Consideration**”). The aggregate Exercise Price for this Warrant will not be affected by any such Fundamental Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall notify the Holder, in writing, of such Fundamental Transaction at least thirty (30) days prior to the closing of such Fundamental Transaction (the “**Fundamental Transaction Notice**”), which written notice shall describe in detail the terms of the Fundamental Transaction (including the Alternate Consideration issuable upon exercise of this Warrant). In the event of, and as a condition to the consummation of, a Fundamental Transaction, the Company or the successor or purchasing Person, as the case may be, shall execute with the Holder a written agreement providing that:

(x) this Warrant shall thereafter entitle the Holder to purchase the Alternate Consideration in accordance with this Section 9(c),

(y) in the case of any such successor or purchasing Person, upon such consolidation, merger, statutory exchange, combination, sale or conveyance such successor or purchasing Person shall be jointly and severally liable with the Company for the performance of all of the Company's obligations under this Warrant, and

(z) if registration or qualification is required under the Exchange Act or applicable state law for the public resale by the Holder of shares of stock and other securities so issuable upon exercise of this Warrant, such registration or qualification shall be completed prior to such reclassification, change, consolidation, merger, statutory exchange, combination or sale.

If, in the case of any Fundamental Transaction, the Alternate Consideration includes shares of stock, other securities, other property or assets of a Person other than the Company or any such successor or purchasing Person, as the case may be, in such Fundamental Transaction, then such written agreement shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holder as the Holder shall reasonably consider necessary by reason of the foregoing. At the Holder's request, prior to or at the closing of the Fundamental Transaction, any successor to the Company or surviving entity in such Fundamental Transaction shall issue to the Holder a New Warrant consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (c) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

Notwithstanding the foregoing paragraph or anything contained herein to the contrary, in the event of a Fundamental Transaction, at the request of the Holder delivered on or before the later to occur of: (y) the end of the ninetieth (90<sup>th</sup>) day following Holder's receipt of the Fundamental Transaction Notice; and (z) the ninetieth (90<sup>th</sup>) day after such Fundamental Transaction, the Company (or any such successor or surviving entity) will purchase this Warrant from the Holder for a purchase price, payable in cash within five (5) Trading Days after such request (or, if later, on the effective date of the Fundamental Transaction), equal to the sum of (1) the greater of (A) the Original Issuance Value (as such term is defined in Exhibit A) in respect of the remaining unexercised portion of this Warrant and (B) the Black Scholes value of the remaining unexercised portion of this Warrant on the date of the consummation of the Fundamental Transaction, without regard to any limitations on the exercise hereof (including the inability of the Holder to exercise the Warrant following a Fundamental Transaction) and as determined in accordance with Exhibit A attached hereto and (2) any Distributed Property in accordance with the last sentence of Section 9(b) above. The time period specified in clause (y) of the foregoing sentence shall be extended day for day to account for any delays in the closing of a Fundamental Transaction caused by regulatory or legal review of the proposed Fundamental Transaction.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraphs (a) or (b) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for a Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least twenty (20) calendar days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps necessary in order to ensure that the Holder has sufficient opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.



10. Payment of Exercise Price. The Holder shall pay the Exercise Price in immediately available funds; provided, however, that if at the time of exercise there is not an effective registration statement covering the immediate resale of any Warrant Shares that are Registrable Securities that are issuable upon such exercise, then the Holder may satisfy its obligation to pay the Exercise Price through a “cashless exercise,” in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the Current Market Price (as of the date of such calculation) of one share of Common Stock.

B = the Exercise Price (as adjusted to the date of such calculation).

For purposes of this Warrant, the “**Current Market Price**” of one share of the Company’s Common Stock as of a particular date shall be determined as follows: (a) if traded on a national securities exchange (including the Nasdaq Stock Market), the Current Market Price shall be deemed to be the arithmetic average of the VWAPs for the five (5) consecutive Trading Days immediately preceding the applicable date; (b) if traded over-the-counter but not on the Nasdaq Stock Market, the Current Market Price shall be deemed to be the average of the closing bid and asked prices as of five (5) Business Days immediately prior to the date of exercise indicated in the Notice of Exercise; and (c) if there is no active public market, the Current Market Price shall be the fair market value of the Common Stock as of the date of exercise, as determined by an independent appraiser selected in good faith by the Holder.

For purposes of Rule 144, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Issuance Date.

11. [Intentionally Omitted]

12. Certain Restricted Issuances. For as long as the Warrant is outstanding, the Company shall not, without the written consent of the holders of a majority of the outstanding Warrants issued pursuant to the Note Purchase Agreement, issue (A) any shares of Common Stock at a per share purchase price less than the Exercise Price or issue any Common Stock Equivalents (as defined in the Note Purchase Agreement) with a conversion price or exercise price less than the Exercise Price, (B) any shares of Common Stock or Common Stock Equivalents to the extent the effective purchase or conversion price or the number of underlying shares floats or resets or otherwise varies or is subject to adjustment (directly or indirectly) based on market prices of the Common Stock or (C) any warrants or other rights to purchase Common Stock that, when valued on a black scholes basis, decreases the purchase price for such warrants or other rights below the Exercise Price.

13. Fractional Shares. The Company shall not be required to issue or cause to be issued fractional Warrant Shares on the exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section, be issuable upon exercise of this Warrant, the number of Warrant Shares to be issued will be rounded up to the nearest whole share or right to purchase the nearest whole share, as the case may be.

14. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section 14 prior to 6:30 p.m. (New York City time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by a nationally recognized overnight courier service specifying next Business Day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Note Purchase Agreement, unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 14.

15. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or stockholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

16. Extension of Expiration Date. At the option of the Holder, the Expiration Date may be extended for the number of Trading Days during any period occurring after the Required Effectiveness Date in which (i) trading in the Common Stock is suspended by any Trading Market, (ii) the Registration Statement is not effective, or (iii) the Prospectus included in the Registration Statement may not be used by the Holder for the resale of Registrable Securities thereunder.

17. Furnishing of Information. The Company covenants to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act. Upon the request of the Holder, the Company shall deliver to the Holder a written certification of a duly authorized officer as to whether it has complied with the preceding sentence. If the Company is not required to file reports pursuant to such laws, it will prepare and furnish to the Holder and make publicly available in accordance with paragraph (c) of Rule 144 such information as is required for the Holder to sell the Warrant under Rule 144. The Company further covenants that it will take such further action as the Holder may reasonably request to satisfy the provisions of Rule 144 applicable to the issuer of securities relating to transactions for the sale of securities pursuant to Rule 144.

18. Miscellaneous.

(a) Subject to the restrictions on transfer set forth on the first page hereof and in Section 3, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction or with the prior written consent of the Holder. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant constitutes the entire agreement of the parties with respect to the subject matter hereof. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) The Company will not, by amendment of its governing documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any Warrant Shares above the amount payable therefor on such exercise, (ii) will take all such action as may be reasonably necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares on the exercise of this Warrant, and (iii) will not close its stockholder books or records in any manner which interferes with the timely exercise of this Warrant.

(c) GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR MATTERS GOVERNED BY CORPORATE LAW IN THE STATE OF DELAWARE). EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS WARRANT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO (i) LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY OR (ii) LIMIT ANY PROVISION OF SECTION 18(E).

(d) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(e) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(f)

(i) In the case of a dispute relating to the Exercise Price, the Closing Price, the Current Market Price, the Black Scholes value or fair market value or the arithmetic calculation of the Warrant Shares (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via facsimile (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute, or (B) if by the Holder, at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Exercise Price, Closing Price, Current Market Price, Black Scholes value or fair market value or arithmetic calculation of the Warrant Shares (as the case may be), at any time after the second (2<sup>nd</sup>) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute, it being acknowledged that the Black Scholes value shall be calculated by such investment bank in a manner consistent with Exhibit A.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with this Section 18(f) and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5<sup>th</sup>) Business Day immediately following the date on which the Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,  
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

CLEARONE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and Agreed to by:

Edward D. Bagley

\_\_\_\_\_

FORM OF EXERCISE NOTICE

(To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant)

To: CLEARONE, inc.

The undersigned is the Holder of Warrant No. 1 (the "**Warrant**") issued by ClearOne, Inc., a Delaware corporation (the "**Company**"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

1. The Warrant is currently exercisable to purchase a total of \_\_\_\_\_ Warrant Shares.
2. The undersigned Holder hereby exercises its right to purchase \_\_\_\_\_ Warrant Shares pursuant to the Warrant.
3. The Holder intends that payment of the Exercise Price shall be made as (check one):  
 "Cash Exercise" under Section 10  
 "Cashless Exercise" under Section 10
4. If the Holder has elected a Cash Exercise, the Holder shall pay the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.
5. Pursuant to this exercise, the Company shall deliver to the Holder \_\_\_\_\_ Warrant Shares in accordance with the terms of the Warrant.
6. Following this exercise, the Warrant shall be exercisable to purchase a total of \_\_\_\_\_ Warrant Shares.

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SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned has caused this Exercise Notice to be duly executed as of the date indicated below.

Dated: \_\_\_\_\_, \_\_\_\_\_

Name of Holder:

(Print) \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title:

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

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FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the within Warrant to purchase \_\_\_\_\_ shares of Common Stock of ClearOne, Inc. to which the within Warrant relates and appoints \_\_\_\_\_ attorney to transfer said right on the books of ClearOne, Inc. with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Address of Transferee

In the presence of:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**