IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC., Plaintiff, v. ELON R. MUSK, X HOLDINGS I, INC., and X HOLDINGS II, INC., Defendants.	C.A. No. _____

VERIFIED COMPLAINT

Plaintiff Twitter, Inc. ("Twitter"), by and through its undersigned counsel, as and for its complaint against defendants Elon R. Musk, X Holdings I, Inc. ("Parent"), and X Holdings II, Inc. ("Acquisition Sub"), alleges as follows:

NATURE OF THE ACTION

1. In April 2022, Elon Musk entered into a binding merger agreement with Twitter, promising to use his best efforts to get the deal done. Now, less than three months later, Musk refuses to honor his obligations to Twitter and its stockholders because the deal he signed no longer serves his personal interests. Having mounted a public spectacle to put Twitter in play, and having proposed and then signed a seller-friendly merger agreement, Musk apparently believes that he — unlike every other party subject to Delaware contract law — is free to change his mind, trash the company, disrupt its operations, destroy stockholder value, and

walk away. This repudiation follows a long list of material contractual breaches by Musk that have cast a pall over Twitter and its business. Twitter brings this action to enjoin Musk from further breaches, to compel Musk to fulfill his legal obligations, and to compel consummation of the merger upon satisfaction of the few outstanding conditions.

2. Musk, the Chief Executive Officer of Tesla, Inc. and leader of SpaceX and other entities, opened a Twitter account in 2009. His presence on the Twitter platform is ubiquitous. With over 100 million followers, Musk's account is one of the most followed on Twitter, and he has Tweeted more than 18,000 times. He has also suggested he would consider starting his own company to compete with Twitter.

3. On April 25, 2022, Musk, acting through and with his solely-owned entities, Parent and Acquisition Sub, agreed to buy Twitter for $54.20 per share in cash, for a total of about $44 billion.

4. That price, presented by Musk on a take-it-or-leave-it basis in an unsolicited public offer, represented a 38% premium over Twitter's unaffected share price. The other terms Musk offered and agreed to were, as he touted, "seller friendly." There is no financing contingency and no diligence condition. The deal is backed by airtight debt and equity commitments. Musk has personally committed $33.5 billion.

5. After the merger agreement was signed, the market fell. As the *Wall Street Journal* reported recently, the value of Musk's stake in Tesla, the anchor of his personal wealth, has declined by more than $100 billion from its November 2021 peak.

6. So Musk wants out. Rather than bear the cost of the market downturn, as the merger agreement requires, Musk wants to shift it to Twitter's stockholders. This is in keeping with the tactics Musk has deployed against Twitter and its stockholders since earlier this year, when he started amassing an undisclosed stake in the company and continued to grow his position without required notification. It tracks the disdain he has shown for the company that one would have expected Musk, as its would-be steward, to protect. Since signing the merger agreement, Musk has repeatedly disparaged Twitter and the deal, creating business risk for Twitter and downward pressure on its share price.

7. Musk's exit strategy is a model of hypocrisy. One of the chief reasons Musk cited on March 31, 2022 for wanting to buy Twitter was to rid it of the "[c]rypto spam" he viewed as a "major blight on the user experience." Musk said he needed to take the company private because, according to him, purging spam would otherwise be commercially impractical. In his press release announcing the deal on April 25, 2022, Musk raised a clarion call to "defeat[] the spam bots." But when the market declined and the fixed-price deal became less attractive,

Musk shifted his narrative, suddenly demanding "verification" that spam was *not* a serious problem on Twitter's platform, and claiming a burning need to conduct "diligence" he had expressly forsworn.

8. Musk's strategy is also a model of bad faith. While pretending to exercise the narrow right he has under the merger agreement to information for "consummation of the transaction," Musk has been working furiously — albeit fruitlessly — to try to show that the company he promised to buy and not disparage has made material misrepresentations about its business to regulators and investors. He has also asserted, falsely, that consummation of the merger depends on the results of his fishing expedition and his ability to secure debt financing.

9. On July 8, 2022, a little over a month after first using bad-faith pursuit of spam-related evidence to assert a baseless claim of breach, Musk gave Twitter notice purporting to terminate the merger agreement. The notice alleges three grounds for termination: (i) purported breach of information-sharing and cooperation covenants; (ii) supposed "materially inaccurate representations" in the merger agreement that allegedly are "reasonably likely to result in" a Company Material Adverse Effect; and (iii) purported failure to comply with the ordinary course covenant by terminating certain employees, slowing hiring, and failing to retain key personnel.

10. These claims are pretexts and lack any merit. Twitter has abided by

its covenants, and no Company Material Adverse Effect has occurred or is reasonably likely to occur. Musk, by contrast, has been acting against this deal since the market started turning, and has breached the merger agreement repeatedly in the process. He has purported to put the deal on "hold" pending satisfaction of imaginary conditions, breached his financing efforts obligations in the process, violated his obligations to treat requests for consent reasonably and to provide information about financing status, violated his non-disparagement obligation, misused confidential information, and otherwise failed to employ required efforts to consummate the acquisition.

11. Twitter is entitled to specific performance of defendants' obligations under the merger agreement and to secure for Twitter stockholders the benefit of Musk's bargain. Musk and his entities should be enjoined from further breaches, ordered to comply with their obligations to work toward satisfying the few closing conditions, and ordered to close upon satisfaction of those conditions.

THE PARTIES

12. Plaintiff Twitter, Inc. is a Delaware corporation headquartered in San Francisco, California that owns and operates a global platform for real-time self-expression and conversation.

13. Defendant Elon R. Musk is a sophisticated entrepreneur who owns approximately 9.6% of Twitter's stock. He is the CEO of Tesla and leads SpaceX,

among other entities he founded or co-founded. Musk is referred to in the merger agreement as Equity Investor, and is the President, Secretary, Treasurer, and sole shareholder of both Parent and Acquisition Sub. Musk signed the merger agreement on behalf of both Parent and Acquisition Sub, and agreed to be a party to the agreement in his individual capacity as Equity Investor with respect to several "Specified Provisions." Ex. 1, Preamble.

14. Defendant X Holdings I, Inc., or Parent, is a Delaware corporation formed on April 19, 2022 solely for the purpose of engaging in, and arranging financing for, the transactions contemplated by the merger agreement.

15. Defendant X Holdings II, Inc., or Acquisition Sub, is a Delaware corporation and a wholly owned subsidiary of Parent. Acquisition Sub was formed on April 19, 2022 solely for the purpose of engaging in, and arranging financing for, the transactions contemplated by the merger agreement.

JURISDICTION

16. This Court has subject matter jurisdiction under 10 *Del. C.* § 341, 8 *Del. C.* § 111(a), and 6 *Del. C*. § 2708.

17. Personal jurisdiction over Parent and Acquisition Sub is proper because both are incorporated under the laws of Delaware and consented to jurisdiction by agreeing to "expressly and irrevocably submit[] to the exclusive personal jurisdiction of the Delaware Court of Chancery . . . in the event any

dispute arises out of [the merger agreement] or the transactions contemplated by [the merger agreement]." Ex. 1 § 9.10(a).

18. Personal jurisdiction over Musk is proper pursuant to 10 *Del. C.* § 3104(c)(1) because, among other things, (a) Musk formed Parent and Acquisition Sub, both Delaware corporations wholly owned by Musk, for the sole purpose of acquiring Twitter, a Delaware corporation; and (b) Musk agreed to undertake "reasonable best efforts" to consummate the contemplated transaction, including by causing Parent and Acquisition Sub to deliver a Certificate of Merger to the Delaware Secretary of State. *Id.* §§ 2.3(a), 6.3(a).

FACTUAL ALLEGATIONS

I. Musk sets his sights on Twitter

19. Musk is active on Twitter's platform and has expressed a keen interest in the use and inherent potential of the platform. Starting in January 2022, Musk began purchasing Twitter stock. By March 14, 2022, he had secretly accumulated a substantial position — about 5% of the company's outstanding shares. SEC regulations required that he disclose that position no later than March 24, 2022. Musk failed to disclose, and instead kept amassing Twitter stock with the market none the wiser. By April 1, 2022, Musk had accumulated about 9.1% of the company's outstanding shares, still in secret. Not until April 4, 2022 did Musk finally disclose his holdings, which made him Twitter's largest stockholder.

Twitter's stock price jumped 27% upon the disclosure. Between March 24 and April 4, over 112 million Twitter shares traded in ignorance of Musk's mounting ownership.

20. Meanwhile, on March 26, 2022, Musk spoke with two Twitter directors, Jack Dorsey and Egon Durban, about the future of social media and the prospect of Musk's joining the Twitter board. Soon after, Musk told Twitter CEO Parag Agrawal and Twitter board chair Bret Taylor that he had in mind three options relative to Twitter: join its board, take the company private, or start a competitor.

21. Musk would repeat this statement over the coming days. His contemplation of building a rival platform to Twitter was not a secret. On March 26, 2022, he had Tweeted that he was giving "serious thought" to the idea.

22. In early April, after further discussion among Musk, Agrawal, Taylor, and Twitter director Martha Lane Fox, chair of Twitter's nominating and corporate governance committee, the Twitter board evaluated Musk's candidacy as a director. Having considered, among other things, Musk's interest in the platform, his technical expertise, and the perspectives he could bring, the board offered Musk the position on April 3. Musk accepted, the parties signed a letter agreement, and the agreement was announced on April 5.

23. Not a week later, Musk abruptly changed tack. On April 9, the day

his appointment to the board was to become effective, Musk told Twitter he would not join the board. Instead, he would offer to buy the company.

II. Musk offers to buy Twitter

24. On April 13 — four days after reversing course on the board seat — Musk texted Taylor that he planned to make an offer to acquire all of Twitter. His unsolicited offer, conveyed by letter later that day, was accompanied by a threat:

> I am offering to buy 100% of Twitter for $54.20 per share in cash, a 54% premium over the day before I began investing in Twitter and a 38% premium over the day before my investment was publicly announced. My offer is my best and final offer and if it is not accepted, I would need to reconsider my position as a shareholder.

25. The following day, on April 14, Musk announced his offer publicly and noted that it was conditioned on customary business due diligence and financing. At a public event the same day, Musk — whose enormous personal wealth exceeds the capital of most public companies — boasted that he could "technically afford" to purchase Twitter outright.

26. Also on April 14, the Twitter board met to discuss Musk's proposal. It established a transactions committee composed of independent directors Taylor, Lane Fox, and Patrick Pichette to evaluate the proposal, oversee negotiations, and explore strategic alternatives. The board was assisted in its review by Goldman Sachs and J.P. Morgan as financial advisors, and Simpson Thacher as independent counsel.

27. Faced with Musk's rapid accumulation of Twitter stock and take-it-or-leave-it offer, and concerned that he might launch a hostile tender offer without notice, the board adopted a customary shareholder rights plan to protect its stockholders from "coercive or otherwise unfair takeover tactics." The board took this action to reduce the likelihood of a takeover without payment of an appropriate control premium and to ensure that the board had sufficient time to make an informed judgment on Musk's or any other offer. Under the rights plan's terms, a single investor or group's acquisition of more than 15% of the company's outstanding common stock without board approval gives other stockholders the opportunity to acquire additional stock at a considerable discount. The plan was adopted and announced on April 15, 2022.

28. The board's concerns proved well-grounded. Musk began making all-too-obvious public references to a hostile tender offer:

29. At the same time, Musk worked to strengthen the offer he had made and might make by tender. By April 20, he had personally committed $21 billion in equity financing and lined up $25.5 billion of committed debt financing, with

$12.5 billion of that secured by his Tesla stock.

30. Having obtained these commitments, Musk announced in an April 21, 2022 securities filing that his offer was no longer conditioned on financing or subject to due diligence:

> At the time of delivery, the Proposal was also subject to the completion of financing and business due diligence, but it is no longer subject to financing as a result of the Reporting Person's receipt of the financing commitments . . . and is no longer subject to business due diligence.

Musk proclaimed himself prepared to begin negotiations "immediately," and confirmed he was "exploring whether to commence a tender offer."

31. On Saturday, April 23, 2022, Musk asked to speak with Twitter representatives about his offer. At the direction of the transactions committee, Taylor engaged with Musk, who reiterated that his offer was "best and final" and threatened once again to take it to Twitter's stockholders directly if the board did not engage immediately.

32. The following day, on Sunday, April 24, 2022, Musk tried again to force Twitter's hand. He delivered a letter to the board repeating that his $54.20 per share offer was "best and final," threatening once more to sell all of his shares if his bid were rejected, and saying he would propose a "seller friendly" merger agreement to be signed before the market opened the next day. Musk's counsel sent over a draft agreement, reiterated that Musk's offer was not contingent on any

due diligence, and underscored that the form of the proposed agreement was "intended to make this easy on all to get to a deal asap."

33. The agreement was negotiated through the night and, in the process, became even more seller-friendly. Among the provisions not contained in Musk's proposal but included at Twitter's insistence were an undertaking by defendants, including Musk, to "take or cause to be taken . . . all actions and to do, or cause to be done, all things necessary, proper or advisable" to obtain the financing (already committed) to consummate the transaction, Ex. 1 § 6.10(a); a clear disclaimer of any financing condition to closing, *id.* § 6.10(f); and a right on Twitter's part to request and promptly receive updates from Musk about his progress in obtaining financing, *id.* § 6.10(d). These provisions ensured that financing would be no obstacle to closing and that the company would have the right to stay informed of Musk's progress in arranging his financing.

34. Twitter also negotiated for itself a right to hire and fire employees at all levels, including executives, without having to seek Musk's consent. Musk's initial draft of the merger agreement would have deemed the hiring and firing of an employee at the level of vice president or above a presumptive violation of the ordinary course covenant absent Musk's consent. Twitter successfully struck that provision before signing.

35. Twitter further negotiated to narrow the circumstances under which

defendants could escape the deal by claiming a "Company Material Adverse Effect." In addition to excluding, for example, market-wide and industry-wide effects and circumstances and declines in stock price and financial performance, the final definition excluded matters relating to or resulting from Musk's identity or communications, "performance" of the agreement, and any matter disclosed by Twitter in its SEC filings other than the "Risk Factors" and "Forward-Looking Statements" sections of those disclosures. *Id.* Art. I.

36. Finally, and critically, Twitter negotiated for itself a robust right to demand specific performance of the agreement's terms that encompassed the right to compel defendants to close the deal, and ensured that Musk personally was bound by that provision (among others). *Id.* § 9.9(a)-(b), Preamble.

37. At a board meeting on April 25, 2022, Goldman Sachs and J.P. Morgan each presented their fairness opinions, and the board discussed the agreement. The board ultimately approved the merger agreement and decided to recommend stockholder approval, both because the price was fair to stockholders and because the merger agreement promised a high level of closing certainty. Twitter had taken Musk's claimed "seller friendly" draft agreement and secured other key concessions to make it even more so. Not only were there no financing or diligence conditions, but Musk had already secured debt commitments that together with his personal equity commitment would suffice to fund the purchase.

38. Twitter had been buffeted by Musk's reversals before. For the benefit of stockholders and employees, the board needed assurance that this agreement would stick. It received that assurance in the terms it was able to negotiate.

III. The final, agreed-upon deal terms

39. The terms of the transaction are governed by the merger agreement executed on April 25, 2022.

40. Under the agreement, at closing, Acquisition Sub will merge into Twitter, and Twitter will continue as a private corporation owned by Musk through his wholly owned shell companies. Twitter stockholders will receive $54.20 per share in cash, and the company's common stock will be delisted from the New York Stock Exchange.

A. Closing Conditions

41. The conditions to closing are few. The transaction is subject to a majority vote of Twitter's stockholders and to specified regulatory approvals. *Id.* § 7.1. The deal is also conditioned on the non-occurrence of a Company Material Adverse Effect that is continuing at the time of closing. *Id.* § 7.2(c). The agreement contains various representations by Twitter, including that its SEC filings since January 1, 2022, at the time filed or at the time amended or supplemented, are complete and accurate in all material respects, fairly depict the financial condition of the company in all material respects, and were prepared in

accordance with GAAP. *Id.* § 4.6. Any inaccuracy in these representations does not excuse closing unless it rises to the level of a Company Material Adverse Effect. *Id.* § 7.2(b).

42. Company Material Adverse Effect is defined as:

> any change, event, effect or circumstance which, individually or in the aggregate, has resulted in or would reasonably be expected to result in a material adverse effect on the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole . . . .

Id. Art. I. As one would expect with a "seller friendly" merger agreement, the contract identifies numerous changes, events, and circumstances expressly excluded from the determination of whether a Company Material Adverse Effect has occurred:

> [C]hanges, events, effects or circumstances which, directly or indirectly, to the extent they relate to or result from the following shall be excluded from, and not taken into account in, the determination of Company Material Adverse Effect:
>
> (i) any condition, change, effect or circumstance generally affecting any of the industries or markets in which the Company or its Subsidiaries operate;
>
> . . .
>
> (iii) general economic, regulatory or political conditions (or changes therein) or conditions (or changes therein) in the financial, credit or securities markets (including changes in interest or currency exchange rates) in the United States or any other country or region in the world;

. . .

(iv) the negotiation, execution, announcement, performance, consummation or existence of this Agreement or the transactions contemplated by this Agreement, including (A) by reason of the identity of Elon Musk, Parent or any of their Affiliates or their respective financing sources, or any communication by Parent or any of its Affiliates or their respective financing sources, including regarding their plans or intentions with respect to the conduct of the business of the Company or any of its Subsidiaries and (B) any litigation, claim or legal proceeding threatened or initiated against Parent, Acquisition Sub, the Company or any of their respective Affiliates, officers or directors, in each case, arising out of or relating to the this Agreement or the transactions contemplated by this Agreement, and including the impact of any of the foregoing on any relationships with customers, suppliers, vendors, collaboration partners, employees, unions or regulators;

. . .

(viii) any changes in the market price or trading volume of the Company Common Stock, any failure by the Company or its Subsidiaries to meet internal, analysts' or other earnings estimates or financial projections or forecasts for any period, any changes in credit ratings and any changes in analysts' recommendations or ratings with respect to the Company or any of its Subsidiaries (provided that the facts or occurrences giving rise to or contributing to such changes or failure that are not otherwise excluded from the definition of "Company Material Adverse Effect" may be taken into account in determining whether there has been a Company Material Adverse Effect); and

(ix) any matter disclosed in the Company SEC Documents filed by the Company prior to the date of this Agreement (other than any disclosures set forth under the

> headings "Risk Factors" or "Forward-Looking Statements").

Id.

43. The parties thus agreed that any circumstance affecting the market generally or other social media companies would not excuse defendants from closing. Nor would any circumstance arising from the existence or performance of the agreement, or from any communication by Musk, "including the impact of any of the foregoing" on any of Twitter's relationships with, among others, customers. Likewise, matters that Twitter disclosed in sections of its SEC filings other than the "Risk Factors" and "Forward-Looking Statements" sections cannot constitute a Company Material Adverse Effect. And Twitter's failure to meet financial projections will not excuse closing unless that failure results from an occurrence independently qualifying as a Company Material Adverse Effect (taking into account all of the express exclusions).

44. The agreement also makes clear that financing is not a condition to closing:

> Notwithstanding anything contained in this Agreement to the contrary, the Equity Investor, Parent and Acquisition Sub each acknowledge and affirm that it is not a condition to the Closing or to any of its obligations under this Agreement that the Equity Investor, Parent, Acquisition Sub and/or any of their respective Affiliates obtain any financing (including the Debt Financing) for any of the transactions contemplated by this Agreement.

Id. § 5.4; *see also id.* § 6.10(f).

45. Nor is there any diligence condition. Indeed, each of Parent and Acquisition Sub represents that it "conducted, to its satisfaction, its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company and its Subsidiaries," and that, in determining to proceed with the merger, each "relied solely on the results of its own independent review and analysis and the covenants, representations and warranties of the Company" in the merger agreement. *Id.* § 5.11. Parent and Acquisition Sub further acknowledge that "neither the Company nor any of its Subsidiaries, nor any other Person, makes or has made or is making any express or implied representation or warranty with respect to the Company or any of its Subsidiaries or their respective business or operations, in each case, other than those expressly given solely by the Company in Article IV," and they represent that in agreeing to the merger they were not relying on "any express or implied representation or warranty, or the accuracy or the completeness of the representations and warranties" in the merger agreement about Twitter and its business and its operations "other than those expressly given solely by the Company in Article IV." *Id.*

B. Efforts Covenants

46. The agreement requires all parties, including Musk, to use their "reasonable best efforts" to consummate the merger and cause all of the closing conditions to be satisfied. *Id.* § 6.3(a).

47. Defendants, including Musk, have a "hell-or-high-water" obligation to close on their financing commitments for the transaction. They must:

> take, or cause to be taken, all actions and . . . do, or cause to be done, all things necessary, proper or advisable to arrange, obtain and consummate the Financing at or prior to the Closing on the terms and subject to the conditions set forth in the Financing Commitments (including any "flex" provisions). . . .

Id. § 6.10(a). More specifically, Musk and Parent have an unconditional obligation to "take (or cause to be taken) all actions, and do (or cause to be done) all things necessary, proper or advisable to obtain the Equity Financing," which includes, among other things, Musk's funding of his personal equity commitment at or before closing. *Id.* § 6.10(e).

C. Information Sharing

48. The merger agreement requires the parties to share certain information with one another in the run-up to closing.

49. Defendants, including Musk, are required to keep Twitter "reasonably informed on a current basis of the status of [their] efforts to arrange and finalize the Financing" and to "promptly provide and respond to any updates reasonably

requested by the Company with respect to the status" of those efforts. *Id.* § 6.10(d)(iv)-(v). For its part, Twitter is required to use its "commercially reasonable best efforts" to assist defendants with arranging financing, but that obligation is qualified: Twitter need not "prepare or provide any financial statements or other financial information" other than the financial information provided to the SEC, nor provide any "other information that is not available to the Company without undue effort or expense." *Id.* § 6.11(a). Moreover, Twitter's obligations under Section 6.11 are its "sole obligation . . . with respect to cooperation in connection with the arrangement of any financing," and Twitter may be considered to have breached the provision only if a failure by Parent to obtain the committed debt financing is "due solely to a deliberate action or omission taken or omitted to be taken by the Company in material breach of its obligations." *Id.*

50. Subject to certain conditions, including entry into a confidentiality agreement, Twitter must provide Parent and its advisors with "reasonable access" to information about its "business, properties and personnel" as defendants "reasonably" request. *Id.* § 6.4. The information requested must be for a "reasonable business purpose ***related to the consummation of the transactions contemplated by this Agreement***." *Id.* (emphasis added). In addition, Twitter can decline a request if in its "reasonable judgment" it determines that compliance

would "cause significant competitive harm to the Company or its Subsidiaries if the transactions contemplated by this Agreement are not consummated" or would "violate applicable Law," including privacy laws. *Id.* Parent cannot use the information obtained "for any competitive or other purpose unrelated to the consummation of the transactions contemplated by th[e] Agreement." *Id.* And Parent must use its "reasonable best efforts to minimize any disruption to" Twitter "that may result from requests for access." *Id.*

D. Ordinary Course Covenant

51. The agreement contains a seller-friendly ordinary course covenant, requiring Twitter to use no more than "its commercially reasonable efforts" to "conduct the business of the Company and its Subsidiaries in the ordinary course of business" unless, among other things, an action outside the ordinary course is "agreed to in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned)." *Id.* § 6.1. There is no requirement of compliance with "past practice." And, as noted, before the agreement was signed, Twitter succeeded in striking from the covenant a requirement to obtain Parent's consent for the hiring and firing of employees.

E. Public Statements and Non-Disparagement

52. Section 6.8 of the agreement contains standard language requiring each side to consult with the other before issuing certain public statements, as well

as negotiated language concerning Musk's ability to Tweet about the merger. Under the provision, Musk may so Tweet only "so long as such Tweets do not disparage the Company or any of its Representatives." *Id.* § 6.8.

F. Termination

53. Defendants' ability to terminate the agreement before the presumptive drop-dead date of October 24, 2022 is extremely limited and carefully circumscribed. While there are closing conditions related to the accuracy of Twitter's representations and warranties and to Twitter's compliance with its covenants, there is no right for defendants to terminate unless there is a breach sufficiently significant to cause failure of a closing condition, which, after due notice, is either incapable of being cured or is not cured within 30 days after such notice. *Id.* § 8.1(d). Defendants have no right to terminate, moreover, if any of them are in material breach of their own obligations under the agreement. *Id.*

G. Specific Performance

54. Twitter may seek specific performance, an injunction, or other equitable relief to enforce any of defendants' obligations under the merger agreement. *Id.* § 9.9(a). It has the specific power to compel Musk to fund the equity financing and close the merger, provided the closing conditions are met (or are capable of being met at the time of closing), the debt financing (which is already committed) has been or will be funded at the closing, and the company is

itself prepared to close. *Id.* § 9.9(b).

IV. The financing structure

55. At the time of signing, the financing for the transaction had three components: loans to the post-closing Twitter, a personal loan on margin to Musk (against his Tesla stock), and an equity commitment from Musk himself.

56. The loans to Twitter, of up to $13 billion in the aggregate, are promised by Morgan Stanley Senior Funding, Inc. and other lenders in a debt commitment letter dated April 25, 2022. The committed financing comprises a $6.5 billion term loan, a $500 million revolving credit facility, and $6 billion of bridge financing. Although the debt commitment letter requires Musk to assist the lenders in marketing the debt, his failure to do so does not release the lenders from their obligation to fund and the financing is not conditioned on the lenders' ability to market the debt. The lenders' obligation is subject only to the closing of the merger itself and certain other conditions the satisfaction of which lies in defendants' control.

57. The margin loan of $12.5 billion to Musk personally was promised by Morgan Stanley Senior Funding, Inc. and other lenders in a margin loan commitment letter also dated April 25, 2022. The loan was to be secured by $62.5 billion worth of Musk's Tesla stock — about 62 million shares at the time of signing.

58. Under an equity commitment letter dated April 20, 2022, Musk also personally agreed to contribute to or otherwise provide to Parent $21 billion of equity capital to be used to fund the purchase price. Because much of his net worth is tied up in Tesla shares, Musk would need to sell — indeed, has already sold — millions of those shares to fund his equity commitment.

59. The structure of Musk's financing meant that the merger could become significantly more expensive for him if Tesla's stock price were to decline (and significantly less expensive if Tesla's stock price were to rise). For the equity component, the lower Tesla's stock price was, the more shares of Tesla Musk would need to sell to provide the cash he committed. For the margin loans, a substantial decline in Tesla's stock price would require Musk to pledge more shares or cash as collateral to the financing sources.

V. The market turns

60. The risk of market decline, which was Musk's alone to bear under the merger agreement, materialized. Soon after signing, the U.S. capital markets took a turn for the worse. Within a week after April 25, 2022, the date the merger agreement was executed, Musk elected to sell 9.8 million Tesla shares to finance the merger at prices as low as $822.68 per share, substantially below their pre-Twitter-signing price of $1,005 per share. He then promptly Tweeted, "No further TSLA sales planned after today." But the Tesla stock price kept dropping, putting

Musk at risk of needing to pledge yet more Tesla shares to consummate his proposed margin loan and to sell still more to fund his equity commitment.

61. On May 4, 2022, Parent and Musk, faced with needing to pledge more Tesla shares to satisfy the condition that the margin loan not exceed 20% of the value of the pledged stock, decreased the amount of that loan. On May 24, without notifying Twitter, they dispensed with the loan entirely and agreed in a new equity commitment letter to increase Musk's equity commitment to $33.5 billion. That letter, which remains operative, gives Twitter third-party beneficiary rights to enforce directly against Musk his equity commitment in accordance with its terms and the terms of the merger agreement.

62. Musk remains personally responsible for $33.5 billion of the approximately $44 billion required to complete the transaction.

VI. Musk grasps for an out

63. Musk wanted an escape. But the merger agreement left him little room. With no financing contingency or diligence condition, the agreement gave Musk no out absent a Company Material Adverse Effect or a material covenant breach by Twitter. Musk had to try to conjure one of those.

A. False or spam accounts

64. What Musk alighted upon first was a representation in Twitter's quarterly SEC filings over many consecutive years that based on its internal

processes the company estimated "the average of false or spam accounts" on its platform "represented fewer than 5% of our mDAU during the quarter." "Monetizable Daily Active Usage or Users," or mDAU, is a non-GAAP metric Twitter employs to measure the number of people or organizations that use the Twitter platform. In its filings, Twitter defines mDAU as "people, organizations or other accounts who logged in or were otherwise authenticated and accessed Twitter on any given day through twitter.com, Twitter applications that are able to show ads, or paid Twitter products, including subscriptions."

65. In addition to deploying automated and manual processes that suspend on average more than a million suspicious accounts each day, the company undertakes a rigorous, daily process using human reviewers to estimate spam or false accounts remaining on its platform after automated filtering and manual review.

66. Twitter's SEC disclosures regarding that process and its findings are heavily qualified. As described in the "Note Regarding Key Metrics" section of its filings, Twitter's "calculation of mDAU is not based on any standardized industry methodology," "may differ from estimates published by third parties or from similarly-titled metrics of our competitors," and "may not accurately reflect the actual number of people or organizations using our platform." As for the estimate of spam or false accounts as a percentage of mDAU, Twitter explains that it is

based on "an internal review of a sample of accounts," involves "significant judgment," "may not accurately represent the actual number of [false or spam] accounts," and could be too low. Twitter has published the same qualified estimate — that fewer than 5% of mDAU are spam or false — for the last three years, and published similar estimates for five years preceding that.

67. Musk was well aware when he signed the merger agreement that spam accounted for some portion of Twitter's mDAU, and well aware of Twitter's qualified disclosures. Spam was one of the main reasons Musk cited, publicly and privately, for wanting to buy the company. On April 9, 2022, the day Musk said he wanted to buy Twitter rather than join its board, he texted Taylor that "purging fake users" from the platform had to be done in the context of a private company because he believed it would "make the numbers look terrible." At a public event on April 14, Musk said eliminating spam bots would be a "top priority" for him in running Twitter. On April 21, days before the deal was inked, he declared:

Musk echoed that same sentiment in the press release announcing the merger on April 25, stating that upon acquiring Twitter he would prioritize "defeating the spam bots, and authenticating all humans."

68. Yet Musk made his offer without seeking any representation from Twitter regarding its estimates of spam or false accounts. He even sweetened his offer to the Twitter board by expressly withdrawing his prior diligence condition.

69. On May 5, 2022, Musk announced that he had raised an additional $7.1 billion of equity commitments for the deal from 19 investors — including $1 billion from Oracle chairman Larry Ellison, $800 million from Sequoia Capital, $400 million from Andreessen Horowitz, and $375 million from a subsidiary of the Qatari sovereign wealth fund. Musk's investors, all sophisticated market participants, made these commitments in the face of Musk's public statements regarding spam accounts, and knowing he had forsworn diligence. Musk made his plans to address spam a key part of his pitch: As Andreessen Horowitz's co-CEO stated in publicly announcing the investment, the firm thought Musk was "perhaps the only person in the world" who could "fix" Twitter's alleged "difficult issue[]" with "bots."

70. Then, however, as the market (and Tesla's stock price) declined, Musk's advisors began to demand detailed information about Twitter's methods of calculating mDAU and estimating the prevalence of false or spam accounts.

71. Twitter had entered into a confidentiality agreement with Musk to share non-public information in preparation for post-closing transition, and convened an in-person meeting with Musk and his team on May 6, 2022. Among the topics of discussion were mDAU and spam-related subjects. In advance of the meeting, Musk's bankers circulated an agenda with items related to users on the Twitter platform, including: "How do you estimate that fewer than 5% of mDAU are false or spam accounts?" Twitter's representatives addressed that question at the meeting, summarizing the company's process.

72. Following up on or about May 9, Musk's bankers at Morgan Stanley added entries to their diligence tracker requesting user-related information, including a request for "User database containing key metrics including, but not limited to, number of users, number of verified users, number of monthly active users, number of handles, etc." Neither Musk nor his advisors said what had prompted these requests or identified new information regarding spam or false accounts that had come to light warranting the inquiries. Nothing had changed about Twitter's estimates concerning the prevalence of spam on the platform in the days since signing. Nonetheless, in the spirit of cooperation, Twitter responded on May 12 with data sets and written descriptions of its audience metrics and its process for sampling the prevalence of false or spam accounts.

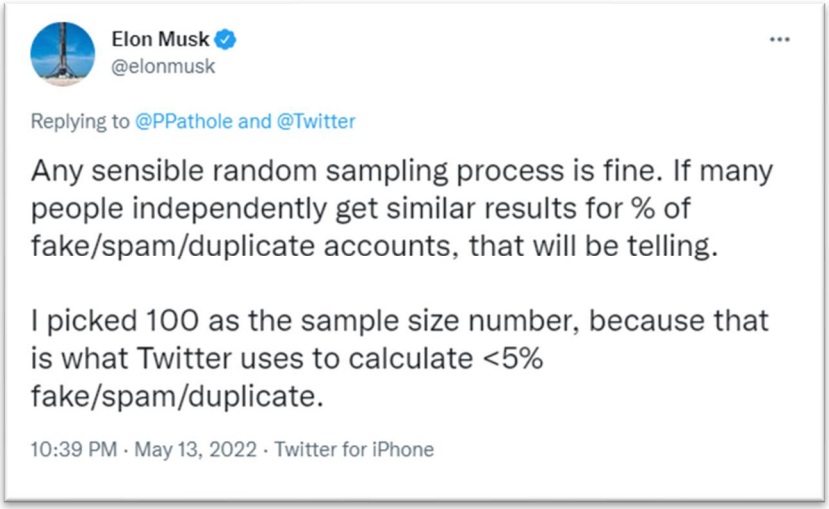
73. Early on May 13, 2022, in advance of a diligence meeting that had

been scheduled to discuss the data Twitter had provided, Musk Tweeted without any advance notice to the company that the "Twitter deal [is] temporarily on hold" until the company showed him proof for its estimate that less than 5% of Twitter accounts are spam or false:

The Reuters story Musk linked to in his Tweet was a report on Twitter's 10-Q filing made on May 2, 2022, and contained the same heavily qualified 5% estimate Twitter had been disclosing in its SEC filings for the past three years. Musk had no basis for asserting that the deal was "on hold" based on this longstanding disclosure. Twitter's deal counsel called Musk's deal counsel. Two hours after the "on hold" Tweet was published, Musk belatedly Tweeted that he was still "committed" to the deal.

74. Cognizant of its own obligations under the merger agreement, Twitter proceeded with the May 13 diligence meeting, which lasted for about two hours. During this session, Twitter explained, among other things, that its spam estimation process entails daily sampling for a total set of approximately 9,000 accounts per quarter that are manually reviewed.

75. Later that day, Musk Tweeted publicly a misrepresentation that Twitter's sample size for spam estimates was just 100.



76. The next day, he boasted publicly that he had violated his non-disclosure obligations:

77. Musk's Tweets on May 13 and 14 violated his obligations under the merger agreement, including the provisions prohibiting public comments not consented to by Twitter, disparagement, misuse of information provided under Section 6.4, requiring best efforts to consummate the merger.

78. On May 16, Agrawal Tweeted that Twitter's 5% estimate is based on "multiple human reviews (in replicate) for thousands of accounts, that are sampled at random, consistently over time, from *accounts we count as mDAUs*." He explained that the company's human review process "uses both public and private data (eg, IP address, phone number, geolocation, client/browser signatures, what the account does when it's active…) to make a determination on each account" — something Twitter also explains in its SEC filings. Agrawal stood by Twitter's estimate, and noted that the company is constantly updating its systems

and rules to remove as much spam as possible:

79. Musk responded with another disparaging Tweet:

80. As the market continued to fall, Musk persisted in his public and misleading attacks on Twitter's handling and disclosure of spam or false accounts. In another Tweet on May 15, 2022 and a statement at a technology conference on May 16, Musk made the baseless claim that fake users might account for as much as 90% of Twitter's users. Asked whether the "Twitter deal [is] going to get closed," Musk responded that "it really depends on a lot of factors" and posited that Twitter's estimate that spam or false accounts comprised fewer than 5% of mDAU might be "a material adverse misstatement" if "in fact it is four or five times that number, or perhaps ten times that number."

81. On May 17, 2022, Musk Tweeted, without basis or explanation, that "20% fake/spam accounts, while 4 times what Twitter claims, could be *much* higher," adding that "[t]his deal cannot move forward" pending further analysis of Twitter's spam estimates. In yet another breach of his non-disparagement obligation and efforts covenants, Musk encouraged the SEC to investigate the accuracy of Twitter's disclosures:

B. Defendants' lawyer letters

82. Even as Musk was violating his own contractual obligations, Twitter continued to respond cooperatively to his representatives' increasingly unreasonable inquiries. Between May 16 and May 20, the company provided detailed written responses to several information requests.

83. On May 20, 2022, Musk's team sent a request for Twitter's "firehose" data — which is essentially a live-feed of data concerning activity (Tweeting, Retweeting, and "liking" Tweets, for example) associated with the public accounts on Twitter's platform. Again, no explanation was offered for how this request furthered a "reasonable business purpose related to the consummation of the transactions contemplated by" the merger agreement, as required by Section 6.4. Nor can the firehose data even be used to accurately estimate the prevalence of

spam or false accounts. As Agrawal had explained in his May 16 Tweets, that estimate depends in part on private data not available in the firehose. Conversely, the firehose includes Tweets that Twitter's systems and processes catch and do not count within mDAU for that day.

84. On May 21, 2022, Twitter hosted a third diligence session with Musk's team and yet again discussed Twitter's processes for calculating mDAU and estimates of spam or false accounts. Twitter also provided a detailed summary document describing the process the company uses to estimate spam as a percentage of mDAU.

85. Defendants responded with increasingly invasive and unreasonable requests. And rather than use "reasonable best efforts to minimize any disruption to the respective business of the Company and its Subsidiaries that may result from requests for access," Ex. 1 § 6.4, defendants repeatedly demanded immediate responses to their access requests. The scope of the requests and the deadlines defendants imposed on their satisfaction were unreasonable, disruptive to the business, and far outside the bounds of Section 6.4.

86. Twitter nonetheless continued to work with Musk to try to respond to the requests. It extended an ongoing offer to engage with Musk and his representatives regarding its calculation of mDAU, and held several more diligence sessions through the end of May. It also provided detailed written responses,

including custom reporting, to his escalating requests for information.

87. On May 25, 2022, defendants' counsel sent the first of a series of aggressive letters copying their litigation counsel at Quinn Emmanuel. This one falsely asserted that Twitter had "failed to respond to any" of defendants' information requests and insisted that defendants be granted access to the firehose data so Musk could "make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform." Though the letter called Twitter's own spam detection methodologies "lax," it identified no basis for that charge.

88. Nor, again, did defendants explain how fulfillment of the firehose data demand would further consummation of the merger or what basis they had to demand the right to "make an independent assessment" of the prevalence of false or spam accounts on the platform. Even assuming that was a proper purpose, reviewing the full firehose data would not result in an accurate assessment or mimic the rigorous process that Twitter employs by sampling accounts and using public and private data to manually determine whether an account constitutes spam — as Twitter's representatives had already repeatedly explained to Musk's team.

89. On May 27, 2022, Twitter responded by noting its weeks-long active engagement with Musk's team and explaining that some of defendants' requests sought disclosure of highly sensitive information and data that would be difficult to furnish and would expose Twitter to competitive harm if shared. After all, Musk

had said he would do one of three things with Twitter: sit on its board, buy it, or build a competitor. He had already accepted and then rejected the first option, and was plotting a pretextual escape from the second. Musk's third option — building a competitor to Twitter — remained. Still, Twitter again responded constructively and reiterated its commitment to work with Musk's team to provide reasonable access to requested information.

90. On May 31, 2022, defendants lobbed another missive, again falsely asserting that Twitter had "refused" to provide requested data and that the company's spam or false account detection methods were "inadequate." The letter claimed Musk was willing to implement protocols to protect against "damage or competitive harm to the company."

91. On June 1, 2022, Twitter responded by refuting that it had "refused" provision of data, demonstrating that, to the contrary, it had been working with Musk's team to honor their requests within the bounds of the contract. To help set the protocols Musk had said he was willing to honor, Twitter asked a series of questions directed at how the data would be used and by whom, and how it would be protected.

92. Defendants' response on June 6, 2022 made no effort to answer those questions or identify data-protection protocols; instead, it accused Twitter of breach and advanced a false narrative that Twitter had been stonewalling Musk's

requests. Musk publicly filed the letter, which repeated his baseless and damaging charge that Twitter had "lax" detection methods. He included none of Twitter's correspondence in that filing and omitted all details about the information Twitter *had* provided. He thus continued to present the public with a misleadingly incomplete narrative about his communications with Twitter, with equally misleading implications about the likelihood that the merger would be completed and about Twitter's operations.

93. Steadfast in its commitment to consummate the merger, Twitter continued to try to get Musk's team what it demanded while safeguarding its customers' data and harboring very real concerns about how Musk might use the data if he succeeded in escaping the deal. On or about June 9, 2022, Musk's counsel indicated that granting access to 30 days' worth of historical firehose data would satisfy Musk's request for the firehose data. So, on June 15, the company gave Musk's team secure access to that raw data — about 49 tebibytes' worth. It did so even though the merger agreement did not require the sharing of this information.

94. Musk's next lawyer letter, dated June 17, 2022, skimmed over this massive data production. Like the earlier correspondence, the June 17 letter described an alternative reality in which Twitter had failed to cooperate in supplying Musk with information, entirely contrary to the facts, apparently in the

belief that repeating a falsehood enough can make it true. The letter also continued to move the goal posts by adding a new request for "the sample set" and "calculations" Twitter used to estimate that fewer than 5% of its mDAUs are false or spam accounts over the past eight quarters. Thus, with no basis, defendants sought to audit information Twitter consistently had caveated as an "estimate" requiring "significant judgment" to prepare.

95. The June 17 letter further contained a litigation-style discovery demand for information Musk asserted was needed to investigate "the truthfulness of Twitter's representations to date regarding its active user base, and the veracity of its methodologies for determining that user base." It broadly demanded board materials relating to mDAU and spam, as well as emails, text messages, and other communications about those topics — highly unusual requests in the context of good faith efforts toward completion of any merger transaction, and absurd in the context of this one, which has no diligence condition. Musk propounded these unreasonable requests and touted his contrived narrative about Twitter's methodologies, all without ever identifying a basis for questioning the veracity of Twitter's methodologies or the accuracy of its SEC disclosures.

96. On June 20, 2022, Twitter set the record straight in a detailed response letter. It noted that the two sides had been working collaboratively to clear regulatory hurdles and "address voluminous data requests" from defendants, that

Twitter had "dedicated significant resources" to providing defendants with the data requested, and that Twitter had already provided a wealth of data sweeping far beyond the bounds of what might conceivably be deemed reasonably necessary to consummate the transaction. Twitter noted that Musk, while continuing to accuse Twitter of misrepresenting its spam or false account estimate, had offered not a single fact to support the accusation. And Twitter observed that defendants' "increasingly irrelevant, unsupportable, and voluminous information requests" appeared directed not at consummating the merger but rather the opposite: trying to avoid the merger.

97. Nonetheless, in a continuing effort at cooperation, Twitter agreed to provide Musk everything he now demanded regarding the firehose, including access to "100% of Tweets and favoriting activity." Twitter cautioned, as it had so many times before, that this data would not allow Musk to accurately assess the number of spam or false accounts. But on June 21, 2022, it gave defendants' counsel the demanded access.

98. Meanwhile, Agrawal and Twitter CFO Ned Segal had been trying to set up a meeting with Musk to discuss the company's process in estimating the prevalence of spam or false accounts. On June 17, 2022, Segal proposed a discussion with Musk and his team to "cover spam as a % of DAU." Musk responded that he had a conflict at the proposed time. When Agrawal sought to

reengage on the matter, Musk agreed to a time on June 21, but then bowed out and asked Agrawal and Segal to speak with his team not about the spam estimation process but "the pro forma financials for the debt."

99. On June 29, 2022, Musk complained through counsel that Twitter purportedly had "placed an artificial cap on the number of searches" Musk's experts could run on the firehose data, and had failed to respond to certain of the new requests made on June 17. (False again, as explained below.) The June 29 letter notably did not take issue with Twitter's refusal to provide responses to the discovery-like requests for emails, text messages, and other communications in the June 17 letter. But it contained a slew of new demands — several asking Twitter to create more custom reporting.

100. On July 1, 2022, Twitter pointed out just how far beyond the scope of Section 6.4 defendants' requests had strayed. Nonetheless, Twitter noted that it was providing yet more information in response to recent requests and would continue to devote the "time and considerable resources" necessary to respond to outstanding requests. Twitter also explained that it had placed "no artificial throttling of rate limits." In follow-up correspondence, it became clear that the "limit" Musk had bumped up against was not the result of throttling but a default 100,000-per-month limit on the number of *queries* that could be conducted. With his undisclosed team of data reviewers working behind the scenes, Musk had hit

that limit within about two weeks. Twitter immediately agreed to, and did, raise the monthly search query limit one hundred-fold, to 10 million — more than 100 times what most paying Twitter customers would get.

101. From the outset of this extraordinary post-signing information exchange process, Musk accused Twitter of "lax" methodologies for calculating spam or false accounts. Knowing that his actions risked harm to Twitter and its stockholders, wreaked havoc on the trading price of Twitter's stock, and could have serious consequences for the deal, Musk leveled serious charges, both publicly and through lawyer letters, that Twitter had misled its investors and customers. But Musk exhibited little interest in understanding Twitter's process for estimating spam accounts that went into the company's disclosures. Indeed, in a June 30 conversation with Segal, Musk acknowledged he had not read the detailed summary of Twitter's sampling process provided back in May. Once again, Segal offered to spend time with Musk and review the detailed summary of Twitter's sampling process as the Twitter team had done with Musk's advisors. That meeting never occurred despite multiple attempts by Twitter.

102. From the outset, defendants' information requests were designed to try to tank the deal. Musk's increasingly outlandish requests reflect not a genuine examination of Twitter's processes but a litigation-driven campaign to try to create a record of non-cooperation on Twitter's part. When Twitter nonetheless bent over

backwards to address the increasingly burdensome requests, Musk resorted to false assertions that it had not.

C. Financial information

103. In seeking to manufacture a record of covenant breach, Musk seized not just on Section 6.4 but also on Section 6.11, which obligates Twitter to reasonably cooperate with Parent to facilitate arrangement of debt financing.

104. Throughout the post-signing period, Twitter's advisors had been working with Musk's representatives to furnish them relevant financial information about the company. These discussions had been productive under the supervision on Musk's side of Bob Swan, a respected Silicon Valley financial professional and former CEO of Intel Corporation. Swan had been in regular contact with Segal, and had been leading defendants' purported effort to consummate the debt financing.

105. Then, in his June 17 lawyer letter, Musk demanded a collection of financial information he claimed was necessary to "better understand the state of Twitter's business and outlook, which is related to his acquisition plans and his financing for the transaction." He demanded a "working, bottoms-up financial model for 2022," budget plans with underlying modeling, and a "working copy" of Goldman Sachs's "valuation model underlying its fairness opinion." This demand is extremely unusual in merger transactions, and neither in conveying the demand

nor at any time since have defendants pointed to a request from any lender that would justify it. Notably, Musk's debt financing commitments are not conditioned on receipt of any financial information about Twitter other than that contained in its quarterly SEC filings. Ex. 2 § 1, E-2 (Ex. E) § 6.

106. Around the same time as the request, on June 21, 2022, Musk falsely represented in a Bloomberg interview that an item requiring resolution "before the transaction can complete" is "will the debt portion of the round come together?" As Musk well knew, financing expressly is *not* a condition to closing under the agreement.

107. Still, intent on facilitating the merger's consummation, Twitter provided Musk with significant supporting detail for its proxy case projections, shared some of its financial plans, and gave him a copy of its bankers' final presentation to Twitter's board.

VII. Defendants materially breach their obligations to work toward closing and refrain from unreasonable withholding of consent to operational changes

108. Consummating a merger agreement involves substantial effort and requires a serious deployment of resources by the seller. Defendants thus are subject to contractual obligations requiring them to take actions necessary to close and to allow Twitter to operate as efficiently as possible in the interim. Defendants

violated two important obligations of this kind: the duty to work toward finalizing the financing for the closing and the obligation to consider consents reasonably.

A. Defendants abandon financing-related efforts and breach Section 6.10(d)

109. Musk's distortive public statements about the deal, and his increasingly aggressive information demands through counsel, raised Twitter's suspicion that he was secretly abandoning efforts to finalize the committed debt financing in time for a prompt closing. Section 6.10 requires defendants to take all steps necessary to secure the already-committed financing for the closing.

110. Twitter's concern deepened when, on June 23, 2022, Musk texted Twitter management to say that he had asked Swan "to depart the deal proceedings, as we are not on the same wavelength." At the same time, Musk said he was "trying to prepare the cash flow projections necessary to secure the debt," and asked for Twitter's "cash flow projections over the next three years" and a comparison of historical projections to actuals — to assist "debt issuers" who "are much more conservative than equity investors." Customarily, projections are needed well in advance of closing and before approaching ratings agencies, which is a key first step in consummating debt financing. They are the buyer's, not the seller's, responsibility. *See* Ex. 1 § 6.11.

111. Over the ensuing days, Twitter's repeated requests for a contact in lieu of Swan generated no response. Outreach by Goldman Sachs and J.P. Morgan to

Morgan Stanley likewise was met with silence.

112. Faced with this uncertainty and with Musk's insinuations about his lenders, on June 28 and again on July 6, Twitter exercised its rights under Section 6.10(d) of the merger agreement to formally seek information about the status of Musk's financing.

113. Defendants still have provided no substantive response. Instead, the day after the first of these requests, Musk warned Agrawal and Segal to back off:

114. On June 30, 2022, Musk informed Segal that replacement team member (and long-time Musk confidant) Antonio Gracias would be taking over the financing effort that Swan had helmed. But Gracias never appeared.

B. Musk delays and stymies key operational decisions

115. Since signing, Twitter has complied in all respects with its obligation under Section 6.1 of the merger agreement to operate the business in the ordinary course. In an excess of caution, the company has sought Musk's consent even for matters falling well within the zone of commercial reasonableness. Though Musk has approved some of Twitter's requests, he has been slow to respond to ones that

required urgency and has unreasonably withheld his consent to others, in breach of his own obligations under Section 6.1.

116. Most notably, Musk has unreasonably withheld consent to two employee retention programs designed to keep selected top talent during a period of intense uncertainty generated in large part by Musk's erratic conduct and public disparagement of the company and its personnel.

117. During negotiation of the merger agreement, Twitter had sought Musk's consent to a broad retention plan. Musk's team deferred decision on the matter; the plan Twitter proposed was detailed, and time for negotiation was short. But Musk indicated he was open to further discussion.

118. During a May 6, 2022 post-signing diligence session, Twitter management again broached the subject of retention, and Musk was non-committal. He suggested the matter be tabled pending further clarity on the expected interval before closing the deal.

119. Over the weeks that followed, Swan discussed with Twitter management a narrower retention plan than the one that had been discussed during the merger agreement negotiations. Consistent with those discussions, on June 20, 2022, Twitter sent defendants a formal request for consent to two tailored employee retention programs that had been vetted by the board and its compensation committee with the assistance of an outside compensation

consultant.

120. Musk initially failed to respond at all to the June 20 consent request. (It would soon become clear that he had fired Swan.) After a follow-up request for consent, Musk's counsel stated tersely that "Elon is not supportive of this program and has declined to grant consent for it." Twitter offered to arrange a meeting between Musk and Lane Fox to explain the importance and utility of the proposed programs. Musk's counsel repeated that Musk "doesn't believe a retention program is warranted in the current environment," and said Musk was unwilling to consider the advice of compensation consultants, but left open the possibility of speaking with Lane Fox.

121. On June 28, 2022, following further stonewalling from Musk's counsel, Twitter urged that a discussion would be fruitful. After initially suggesting Musk might be "amenable to a call next week," Musk's counsel replied, "Elon already gave his response but I'll remind him of Martha's request for a call." The call never happened — Musk has continued to duck it — and neither retention program has been implemented due to defendants' unexplained and unreasonable withholding of consent. Employee attrition, meanwhile, has been on the upswing since the signing of the merger agreement.

122. Defendants have unreasonably withheld consent in other domains as well. On June 14, 2022, Twitter sought consent to terminate Twitter's existing

revolving credit facility, noting that no amounts were presently drawn under the facility and that the facility would have to be terminated in connection with the merger's consummation. Maintaining the facility requires Twitter to incur ongoing monthly costs. After initially saying he would consent to the termination, Musk withdrew it the next day without explanation.

VIII. Defendants purport to terminate the merger agreement

123. On July 8, 2022, defendants' counsel sent a letter to Twitter purporting to terminate the merger agreement.

124. The notice alleges three grounds for termination: (i) purported breach of the information-sharing and cooperation covenants contained in Sections 6.4 and 6.11; (ii) supposed "materially inaccurate representations" incorporated by reference in the merger agreement that allegedly are "reasonably likely to result in" a Company Material Adverse Effect; and (iii) purported failure to comply with the ordinary course covenant by terminating certain employees, slowing hiring, and failing to retain key personnel. Ex. 3.

125. These accusations are pretextual and have no merit.

A. Twitter has not breached its information-sharing or cooperation covenants

126. Twitter has provided defendants far more information than they are entitled to under the merger agreement. Section 6.4 serves the narrow purpose of giving Parent reasonable access to information necessary to close the merger. It

does not give defendants a broad right to conduct post-signing due diligence of a kind they specifically forswore pre-signing. Much less does it give Musk the right to hunt for evidence supporting a bogus misrepresentation theory developed to try to torpedo the deal.

127. In any event, Twitter has bent over backwards to provide Musk the information he has requested, including, most notably, the full "firehose" data set that he has been mining for weeks — and has been continuing to mine since purporting to terminate — with the assistance of undisclosed data reviewers. Twitter has also spent weeks and dedicated considerable resources to compiling information responsive to Musk's numerous other requests for custom reporting of user data. Musk and his representatives have received extensive data underlying Twitter's process for estimating false or spam accounts as a percentage of mDAU, including the granular monthly reporting identifying each of the sampled accounts by "user id" and the determination as to whether the account was false or spam, along with the calculations supporting Twitter's estimates, going back to January 1, 2021.

128. In their termination notice, defendants list categories of information they claim Twitter has withheld. Most of this information does not exist, has already been provided, or is the subject of requests only made recently, in response to which Twitter had been yet again compiling responsive information when it

received the termination notice. All of this information sweeps far beyond what is reasonably necessary to close the merger. Defendants also complain about rate and query limits initially accompanying the firehose data. But those limits were part of the customary commercial terms defendants initially requested, and, as defendants acknowledge, Twitter increased the limits immediately upon request before the purported termination.

129. As to Twitter's cooperation obligation under Section 6.11, the company has again gone well beyond what is required. The point of this provision is to assist Parent in furnishing the lenders and underwriters with information to facilitate syndication of the already-committed financing. Twitter is not obligated to provide financial information not already in existence, or to provide copies of its bankers' valuation models, which are outside the company's control. Parent, not Twitter, is responsible for providing the "prospects, projections and plans for the business and operations of" the company. Ex. 1 § 6.11.

130. Even so, in response to the request defendants lodged for the first time on June 17, Twitter made the extraordinary ask of its bankers to give Musk the final board deck they presented in connection with the merger. It furnished Musk with other financial information he requested. It did so even though Musk has cited no demand from any lender — and no reason related to any obligation under any relevant contract — that would support these requests. There has been no

breach, and there would be none even if the state of Twitter's cooperation remained the same at the end of the cure period.

B. Twitter's representations in its SEC filings supply no basis for termination

131. Nor can defendants show that Twitter has made any representation or collection of representations the inaccuracy of which is "reasonably likely to result in" a Company Material Adverse Effect. They do not even try. Notwithstanding that defendants have received mountains of information regarding Twitter's processes, far beyond what they are entitled to under the merger agreement, their termination notice asserts only that "[p]reliminary analysis by Mr. Musk's advisors" of the vast data set Twitter provided to Musk after signing "causes Mr. Musk to strongly believe" Twitter's reported estimates have been inaccurate. Ex. 3 at 6. Musk's claimed "belie[f]" is of course no proof of misrepresentation, much less of a Company Material Adverse Effect — which can be established only by clearing an extraordinarily high bar that is nowhere in sight here.

C. Twitter did not breach the ordinary course covenant

132. Having unreasonably withheld consent to programs designed to retain key personnel, Musk now claims that Twitter breached Section 6.1 by terminating some employees and failing to retain others who wished to leave. Like the others, this claim is meritless and contrived.

133. While erring on the side of seeking consent, Twitter has continued to operate in the ordinary course respecting routine management decisions, including decisions concerning termination and hiring of individual employees. In early May, Twitter let go of two executives and announced it would be "pausing most hiring and backfills" as positions became vacant. Musk's counsel was notified of those decisions at the time and raised no objection.

134. Consistent with its hiring slowdown, Twitter announced on July 7, 2022 that it was reducing its recruiting staff — a small segment of Twitter's total employee base — by about 30%.

135. These decisions aligned with Musk's own stated priorities. Days after signing, on April 28, 2022, Musk texted Twitter's board chair to say his "biggest concern is headcount and expense growth." In a meeting with Twitter management on May 6, 2022, Musk again asserted that the company's headcount was high and encouraged management to consider ways to cut costs. Musk repeated these themes in conversations with Agrawal and Segal throughout May and June. On June 16, Musk held a virtual meeting with Twitter employees. Asked what he was "thinking about layoffs at Twitter," Musk responded that "costs exceed the revenue," "so there would have to be some rationalization of headcount and expenses." In his final conversation with Segal before purporting to terminate, Musk expressed his concern about Twitter's expenses and asked why

Twitter was not considering more aggressive cost cutting. And, as noted, Musk has refused to approve — or even discuss — Twitter's proposed retention programs for key employees.

136. Twitter specifically negotiated for the right to terminate employees, including executives, without first having to obtain Musk's consent. Musk had notice back in early May of many of the actions about which he now complains for the first time. He did not object then or at any point prior to his purported termination notice on July 8, because there was no violation.

D. Having materially breached the merger agreement, defendants are contractually barred from terminating

137. The merger agreement provides that if defendants are in material breach of their own obligations under the merger agreement, they cannot exercise any termination right they might otherwise have. Ex. 1 § 8.1(d)(i).

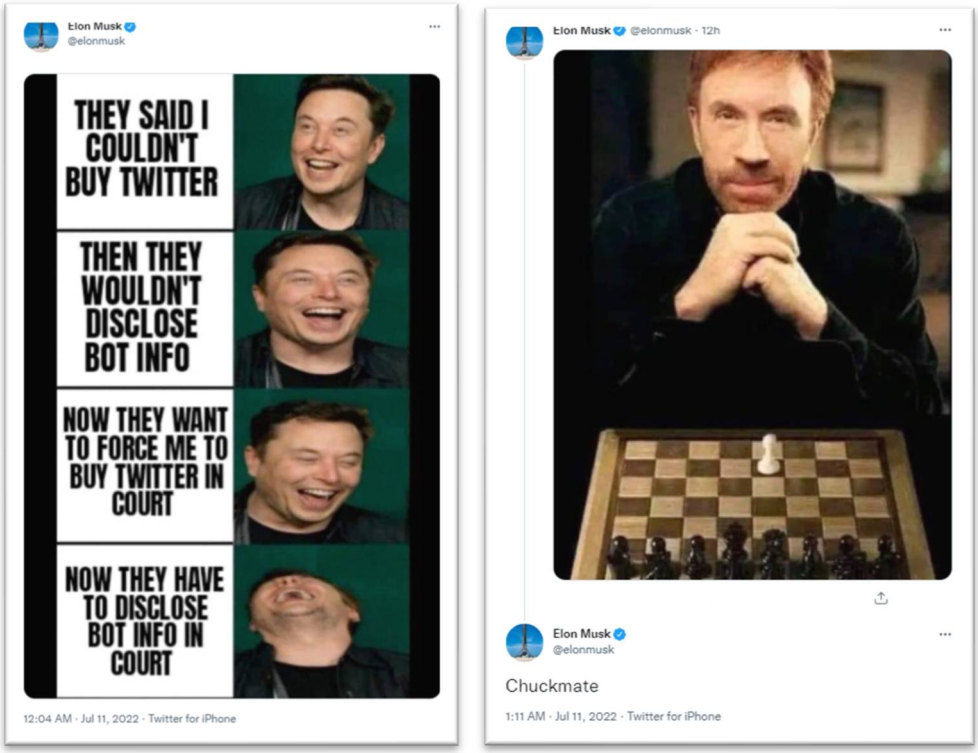
138. As set forth above, defendants materially breached their obligation to use their reasonable best efforts to complete the merger, *id.* § 6.3(a), materially breached the hell-or-high-water covenant requiring them to do all things necessary to consummate and finalize financing, *id.* § 6.10(a), materially breached their obligation to provide Twitter with information regarding the status of debt financing, *id.* § 6.10(d), materially breached their obligation to refrain from unreasonably withholding consent to operational decisions, *id.* § 6.1, materially breached their obligations to seek Twitter consent to public comments about the

deal and refrain from disparaging the company or its representatives in Tweets about the merger, *id.* § 6.8, and materially breached their obligation not to misuse confidential information, *id.* § 6.4. They therefore cannot terminate the agreement even assuming they otherwise had such a right.

IX. After purporting to terminate, Musk keeps violating and confirms his earlier violations

139. After purporting to terminate the deal, Musk continued to make public statements disparaging Twitter and confirming the pretextual nature of his post-signing conduct.

140. In the early morning of July 11 (Eastern time), Musk posted Tweets implying that his data requests were never intended to make progress toward consummating the merger, but rather were part of a plan to force litigation in which Twitter's information would be publicly disclosed:



141. For Musk, it would seem, Twitter, the interests of its stockholders, the transaction Musk agreed to, and the court process to enforce it all constitute an elaborate joke.

142. Musk also, once again, publicly called for the SEC to investigate Twitter's disclosures regarding false and spam accounts:

143. Musk's conduct simply confirms that he wants to escape the binding contract he freely signed, and to damage Twitter in the process.

X. Twitter faces irreparable harm absent relief

144. Because of defendants' breaches and the uncertainty they have generated, Twitter faces irreparable harm. Defendants stipulated in the merger agreement that "irreparable damage for which monetary damages, even if available, would not be an adequate remedy would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions." Ex. 1 § 9.9(a).

145. The expected closing date for the merger is fast approaching. The lone remaining application for regulatory approval is under consideration and the

parties have received no indication of any obstacle on that front. Twitter is prepared to schedule a stockholder vote immediately upon clearance by the SEC of its proxy statement, as early as mid-August. Defendants must close "no later than" two business days after satisfaction of the closing conditions. *Id.* § 2.2.

146. Defendants' actions in derogation of the deal's consummation, and Musk's repeated disparagement of Twitter and its personnel, create uncertainty and delay that harm Twitter and its stockholders and deprive them of their bargained-for rights. They also expose Twitter to adverse effects on its business operations, employees, and stock price.

147. Swift remedial action in the form of specific performance and injunctive relief is warranted.

CAUSE OF ACTION
(Breach of Contract — Specific Performance & Injunction)

148. Twitter repeats and incorporates by reference the allegations above.

149. The merger agreement is a valid and enforceable contract.

150. Twitter has fully performed all of its obligations under the merger agreement to date, and is ready, willing, and able to continue so performing.

151. Defendants have breached the merger agreement by, among other things, violating Sections 6.1, 6.3, 6.4, 6.8, and 6.10.

152. In Section 9.9(a), each of the parties agreed that, without posting bond or other undertaking, the other parties "shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity."

153. In Section 9.9(b), the parties expressly "acknowledged and agreed that the Company shall be entitled to specific performance or other equitable remedy to enforce Parent and Acquisition Sub's obligations to cause the Equity Investor to fund the Equity Financing, or to enforce the Equity Investor's obligation to fund the Equity Financing directly, and to consummate the Closing" if three conditions are met: (i) all of the conditions set forth in Section 7.1 and Section 7.2 have or will be satisfied at the closing; (ii) the debt financing has been funded or will be funded at the closing if the equity financing is funded; and (iii) the company has

confirmed that the closing will occur.

154. All of the conditions set forth in Sections 7.1 and 7.2 have been satisfied or waived, or are expected to be satisfied or waived at the closing, and the closing will occur if the debt and equity financing are funded, which funding is solely within the control of defendants.

155. Twitter has suffered and will continue to suffer irreparable harm as a result of defendants' breaches.

PRAYER FOR RELIEF

WHEREFORE, Twitter respectfully requests that the Court enter judgment and relief against defendants, as follows:

A. Granting all relief requested in this complaint to the extent permitted under the merger agreement;

B. Ordering defendants to specifically perform their obligations under the merger agreement and consummate the closing in accordance with the terms of the merger agreement; and

C. Granting such injunctive relief as is necessary to enforce the decree of specific performance.

POTTER ANDERSON & CORROON LLP

By: */s/ Peter J. Walsh, Jr.*
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Wilmington, DE 19801
(302) 304-7600

Dated: July 12, 2022

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC., Plaintiff, v. ELON R. MUSK, X HOLDINGS I, INC., and X HOLDINGS II, INC., Defendants.	C.A. No. _____

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I, Ned Segal, being duly sworn, depose and say as follows:

1. I have reviewed the foregoing Verified Complaint (the "Complaint").

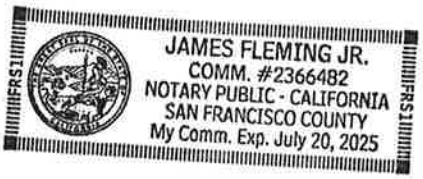
2. I am the Chief Financial Officer of Twitter, Inc., the plaintiff in the above-captioned action, and am authorized to make this verification on its behalf.

3. The factual statements in the Complaint insofar as they relate to plaintiff's acts and deeds are true and correct to the best of my knowledge, information, and belief, and insofar as they relate to the acts and deeds of any other person are believed by me to be true and correct.

Ned Segal

Ned Segal

SWORN AND SUBSCRIBED before me
this 12th day of July, 2022.



Notary Public

My Commission Expires: 7.20.2025

EXHIBIT 1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

X HOLDINGS I, INC.,

X HOLDINGS II, INC.

and

TWITTER, INC.

Dated as of April 25, 2022

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of April 25, 2022 (this "**Agreement**"), is made by and among Twitter, Inc., a Delaware corporation (the "**Company**"), X Holdings I, Inc., a Delaware corporation ("**Parent**"), X Holdings II, Inc., a Delaware corporation and a direct wholly owned Subsidiary of Parent ("**Acquisition Sub**"), and, solely for purposes of Sections 5.4, 6.2(d), 6.3, 6.8, 6.10, 6.11, 6.12 and 9.9 (the "**Specified Provisions**"), Elon R. Musk (the "**Equity Investor**").

W I T N E S S E T H:

WHEREAS, the parties desire for Parent to acquire the Company by way of a merger (the "**Merger**") of Acquisition Sub with and into the Company pursuant to the General Corporation Law of the State of Delaware (the "**DGCL**") upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the board of directors of Acquisition Sub (the "**Acquisition Sub Board**") has determined that it is advisable to, fair to and in the best interests of Acquisition Sub and its stockholders to effect the Merger of Acquisition Sub with and into the Company pursuant to the DGCL upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Company's board of directors (the "**Company Board**") has, by resolutions duly adopted by the unanimous vote of the directors at a duly held meeting (i) determined that the terms and conditions of this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable and in the best interests of the Company and the Company's stockholders, (ii) authorized the execution and delivery of this Agreement and declared advisable and approved the consummation of the transactions contemplated by this Agreement, including the Merger, (iii) directed that this Agreement be submitted for consideration at a meeting of the Company's stockholders and (iv) subject to the terms of this Agreement, recommended that the Company's stockholders adopt this Agreement and approve the transactions contemplated by this Agreement, including the Merger (the "**Company Board Recommendation**");

WHEREAS, the Acquisition Sub Board has, by resolutions duly adopted, (i) determined that the terms and conditions of this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable and in the best interests of the Acquisition Sub and Parent, as the sole stockholder of Acquisition Sub; (ii) authorized the execution and delivery of this Agreement and declared advisable and approved the consummation of the transactions contemplated by this Agreement, including the Merger, (iii) directed that this Agreement be submitted for consideration by Parent, as the sole stockholder of Acquisition Sub and (iv) recommended that Parent, as the sole stockholder of Acquisition Sub approve the Merger, and Parent, as the sole stockholder of Acquisition Sub, has approved this Agreement and the consummation of the transactions contemplated by this Agreement, including the Merger;

WHEREAS, the board of directors of Parent (the "**Parent Board**") has, by resolutions duly adopted by the unanimous vote of the directors, (i) adopted this Agreement and approved the consummation of the transactions contemplated by this Agreement, including the Merger and

(ii) determined that this Agreement and the transactions contemplated by this Agreement are advisable and in the best interests of Parent and Elon Musk, as the sole stockholder of Parent;

WHEREAS, as a material inducement to, and as a condition to, the Company entering into this Agreement, concurrently with the execution of this Agreement, Elon Musk (the "**Guarantor**") has entered into a limited guarantee, dated as of the date hereof, guaranteeing certain of Parent's and Acquisition Sub's obligations under this Agreement (the "**Parent Guarantee**"); and

WHEREAS, each of Parent, Acquisition Sub and the Company desires to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and covenants and subject to the conditions herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings set forth or referenced below:

"**Acquisition Sub**" shall have the meaning set forth in the Preamble.

"**Acquisition Sub Board**" shall have the meaning set forth in the Recitals.

"**Adverse Board Recommendation Change**" shall have the meaning set forth in Section 6.5(d).

"**Affiliate**" has the meaning set forth in Rule 12b-2 of the Exchange Act.

"**Aggregate Merger Consideration**" shall mean the product of (x) the number of shares of Company Common Stock issued and outstanding (other than those shares canceled or retired pursuant to Section 3.1(b)) immediately prior to the Effective Time *multiplied by* (y) the Merger Consideration.

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Alternative Financing**" shall have the meaning set forth in Section 6.10(c).

"**Alternative Financing Debt Commitment Letter**" shall have the meaning set forth in Section 6.10(c).

"**Antitrust Laws**" shall have the meaning set forth in Section 4.4(b).

"**Bank Debt Commitment Letter**" shall have the meaning set forth in Section 5.4.

"**Bank Debt Financing**" shall have the meaning set forth in Section 5.4.

"**Blue Sky Laws**" shall mean state securities or "blue sky" laws.

"**Book-Entry Shares**" shall have the meaning set forth in Section 3.1(c).

"**Business Day**" shall mean any day other than a Saturday, Sunday or a day on which all banking institutions in San Francisco, California or New York, New York are authorized or obligated by Law or executive order to close.

"**CCC**" means the California Corporations Code.

"**Certificate of Merger**" shall have the meaning set forth in Section 2.3(a).

"**Certificates**" shall have the meaning set forth in Section 3.1(c).

"**Closing**" shall have the meaning set forth in Section 2.2.

"**Closing Date**" shall have the meaning set forth in Section 2.2.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Company**" shall have the meaning set forth in the Preamble.

"**Company ASR Confirmations**" means (i) the Master Confirmation re Accelerated Stock Repurchases, dated February 10, 2022, between the Company and Morgan Stanley & Co. LLC and (ii) the Master Confirmation re Accelerated Stock Repurchases, dated February 10, 2022, between the Company and Wells Fargo Bank, National Association, in each case, as amended through the date hereof.

"**Company Benefit Plan**" shall mean (i) "employee benefit plan" (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA), and (ii) each other employment agreement, bonus, stock option, stock purchase or other equity-based, benefit, incentive compensation, profit sharing, savings, retirement (including early retirement and supplemental retirement), disability, insurance, vacation, incentive, deferred compensation, supplemental retirement (including termination indemnities and seniority payments), severance, termination, retention, change of control and other similar fringe, welfare or other employee benefit plans, benefit programs, benefit agreements, benefit contracts, benefit policies or benefit arrangements (whether or not in writing), in each case, (x) which is sponsored, maintained or contributed to for the benefit of or relating to any current or former director, officer or employee of the Company or its Subsidiaries and (y) with respect to which the Company or any of its Subsidiaries has or may have any liability.

"**Company Board**" shall have the meaning set forth in the Recitals.

"**Company Bond Hedge Documentation**" means (a)(i) the call option transaction confirmation, dated June 6, 2018, between the Company and Barclays Bank PLC, (ii) the call option transaction confirmation, dated June 6, 2018, between the Company and JPMorgan Chase

Bank, N.A., London Branch, (iii) the call option transaction confirmation, dated June 6, 2018, between the Company and Wells Fargo Bank, National Association, (iv) the additional call option transaction confirmation, dated June 7, 2018, between the Company and Barclays Bank PLC, (v) the additional call option transaction confirmation, dated June 7, 2018, between the Company and JPMorgan Chase Bank, N.A., London Branch, (vi) the additional call option transaction confirmation, dated June 7, 2018, between the Company and Wells Fargo Bank, National Association, and (b)(i) the call option transaction confirmation, dated March 1, 2021, between the Company and Bank of America, N.A., (ii) the call option transaction confirmation, dated March 1, 2021, between the Company and Barclays Bank PLC, (iii) the call option transaction confirmation, dated March 1, 2021, between the Company and Goldman Sachs & Co. LLC, (iv) the call option transaction confirmation, dated March 1, 2021, between the Company and Wells Fargo Bank, National Association, (v) the additional call option transaction confirmation, dated March 12, 2021, between the Company and Bank of America, N.A., (vi) the additional call option transaction confirmation, dated March 12, 2021, between the Company and Barclays Bank PLC, (vii) the additional call option transaction confirmation, dated March 12, 2021, between the Company and Goldman Sachs & Co. LLC, (viii) the additional call option transaction confirmation, dated March 12, 2021, between the Company and Wells Fargo Bank, National Association, (ix) the letter agreement, dated March 1, 2021, between the Company and Bank of America, N.A., (x) the letter agreement, dated March 1, 2021, between the Company and Barclays Bank PLC, (xi) the letter agreement, dated March 1, 2021, between the Company and Goldman Sachs & Co. LLC, (xii) the letter agreement, dated March 1, 2021, between the Company and Wells Fargo Bank, National Association, (xiii) the additional letter agreement, dated March 12, 2021, between the Company and Bank of America, N.A., (xiv) the additional letter agreement, dated March 12, 2021, between the Company and Barclays Bank PLC, (xv) the additional letter agreement, dated March 12, 2021, between the Company and Goldman Sachs & Co. LLC, and (xvi) the additional letter agreement, dated March 12, 2021, between the Company and Wells Fargo Bank, National Association.

"**Company Bond Hedge Transactions**" means each of the call option transactions evidenced by the Company Bond Hedge Documentation.

"**Company Bylaws**" shall have the meaning set forth in Section 4.1.

"**Company Certificate of Incorporation**" shall have the meaning set forth in Section 4.1.

"**Company Common Stock**" shall have the meaning set forth in Section 3.1(a).

"**Company Disclosure Letter**" shall mean the disclosure letter delivered by the Company to Parent simultaneously with the execution of this Agreement.

"**Company Equity Awards**" shall mean, collectively, (i) Company Options, (ii) Company PSUs, (iii) Company RSAs, and (iv) Company RSUs.

"**Company ESPP**" shall mean the Company 2013 Employee Stock Purchase Plan.

"**Company Intellectual Property**" shall have the meaning set forth in Section 4.14(a).

"**Company Material Adverse Effect**" means any change, event, effect or circumstance which, individually or in the aggregate, has resulted in or would reasonably be expected to result in a material adverse effect on the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that changes, events, effects or circumstances which, directly or indirectly, to the extent they relate to or result from the following shall be excluded from, and not taken into account in, the determination of Company Material Adverse Effect: (i) any condition, change, effect or circumstance generally affecting any of the industries or markets in which the Company or its Subsidiaries operate; (ii) any change in any Law or GAAP (or changes in interpretations of any Law or GAAP); (iii) general economic, regulatory or political conditions (or changes therein) or conditions (or changes therein) in the financial, credit or securities markets (including changes in interest or currency exchange rates) in the United States or any other country or region in the world; (iv) any acts of God, force majeure events, natural disasters, terrorism, cyberattack, data breach, armed hostilities, sabotage, war or any escalation or worsening of any of the foregoing; (v) any epidemics, pandemics or contagious disease outbreaks (including COVID-19) and any political or social conditions, including civil unrest, protests and public demonstrations or any other COVID-19 Measures that relate to, or arise out of, an epidemic, pandemic or disease outbreak (including COVID-19) or any change in such COVID-19 Measures, directive, pronouncement or guideline or interpretation thereof, or any continuation or of any of the foregoing, in the United States or any other country or region in the world; (vi) the negotiation, execution, announcement, performance, consummation or existence of this Agreement or the transactions contemplated by this Agreement, including (A) by reason of the identity of Elon Musk, Parent or any of their Affiliates or their respective financing sources, or any communication by Parent or any of its Affiliates or their respective financing sources, including regarding their plans or intentions with respect to the conduct of the business of the Company or any of its Subsidiaries and (B) any litigation, claim or legal proceeding threatened or initiated against Parent, Acquisition Sub, the Company or any of their respective Affiliates, officers or directors, in each case, arising out of or relating to the this Agreement or the transactions contemplated by this Agreement, and including the impact of any of the foregoing on any relationships with customers, suppliers, vendors, collaboration partners, employees, unions or regulators; (vii) any action taken pursuant to the terms of this Agreement or with the consent or at the direction of Parent or Acquisition Sub (or any action not taken as a result of the failure of Parent to consent to any action requiring Parent's consent pursuant to Section 6.1); (viii) any changes in the market price or trading volume of the Company Common Stock, any failure by the Company or its Subsidiaries to meet internal, analysts' or other earnings estimates or financial projections or forecasts for any period, any changes in credit ratings and any changes in any analysts' recommendations or ratings with respect to the Company or any of its Subsidiaries (provided that the facts or occurrences giving rise to or contributing to such changes or failure that are not otherwise excluded from the definition of "Company Material Adverse Effect" may be taken into account in determining whether there has been a Company Material Adverse Effect); and (ix) any matter disclosed in the Company SEC Documents filed by the Company prior to the date of this Agreement (other than any disclosures set forth under the headings "Risk Factors" or "Forward-Looking Statements").

"**Company Material Contract**" shall have the meaning set forth in Section 4.16(a).

"**Company Option**" shall mean each outstanding option to purchase shares of Company Common Stock granted to any employee or director of, or other Company Service Provider.

"**Company Permits**" shall have the meaning set forth in Section 4.5(a).

"**Company PSU**" shall mean each performance-based restricted stock unit that vests on the basis of time and the achievement of performance metrics and was granted to any Company Service Provider.

"**Company Related Parties**" shall have the meaning set forth in Section 8.3(d).

"**Company RSA**" shall mean each share of Company Common Stock granted to any Company Service Provider that remains subject to vesting, lapse or forfeiture provisions.

"**Company RSU**" shall mean each time-based restricted stock unit that vests on the basis of time and was granted to any Company Service Provider.

"**Company SEC Documents**" shall have the meaning set forth in Section 4.6(a).

"**Company Service Provider**" shall mean each current or former director, employee, consultant or independent contractor of the Company or any of its Subsidiaries

"**Company Stockholder Advisory Vote**" shall have the meaning set forth in Section 4.3(a).

"**Company Stockholder Approval**" shall have the meaning set forth in Section 4.20.

"**Company Stockholders' Meeting**" shall have the meaning set forth in Section 6.2(c).

"**Company Warrant Confirmations**" means (a)(i) the warrant confirmation, dated June 6, 2018, between the Company and Barclays Bank PLC, (ii) the warrant confirmation, dated June 6, 2018, between the Company and JPMorgan Chase Bank, N.A., London Branch, (iii) the warrant confirmation, dated June 6, 2018, between the Company and Wells Fargo Bank, National Association, (iv) the additional warrant confirmation, dated June 7, 2018, between the Company and Barclays Bank PLC, (v) the additional warrant confirmation, dated June 7, 2018, between the Company and JPMorgan Chase Bank, N.A., London Branch, (vi) the additional warrant confirmation, dated June 7, 2018, between the Company and Wells Fargo Bank, National Association, and (b)(i) the warrant confirmation, dated March 1, 2021, between the Company and Bank of America, N.A., (ii) the warrant confirmation, dated March 1, 2021, between the Company and Barclays Bank PLC, (iii) the warrant confirmation, dated March 1, 2021, between the Company and Goldman Sachs & Co. LLC, (iv) the warrant confirmation, dated March 1, 2021, between the Company and Wells Fargo Bank, National Association, (v) the additional warrant confirmation, dated March 12, 2021, between the Company and Bank of America, N.A., (vi) the additional warrant confirmation, dated March 12, 2021, between the Company and Barclays Bank PLC, (vii) the additional warrant confirmation, dated March 12, 2021, between the Company and Goldman Sachs & Co. LLC, and (viii) the additional warrant confirmation, dated March 12, 2021, between the Company and Wells Fargo Bank, National Association.

"**Competing Proposal**" shall have the meaning set forth in Section 6.5(g)(i).

"**Consent**" shall have the meaning set forth in Section 4.4(b).

"**Continuation Period**" shall have the meaning set forth in Section 6.9(a).

"**Continuing Employees**" shall have the meaning set forth in Section 6.9(a).

"**Contract**" means any written contract, subcontract, lease, sublease, conditional sales contract, purchase order, sales order, task order, delivery order, license, indenture, note, bond, loan, instrument, understanding, permit, concession, franchise, commitment or other agreement.

"**COVID-19**" means SARS-Co V-2 or COVID-19 or any evolutions, variants or mutations thereof.

"**COVID-19 Measures**" means quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester, safety or similar laws, directives, restrictions, guidelines, responses or recommendations of or promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, or other reasonable actions taken in response to the foregoing or otherwise, in each case, in connection with or in response to COVID-19 and any evolutions, variants or mutations thereof or related or associated epidemics, pandemics or disease outbreaks.

"**D&O Indemnified Parties**" shall have the meaning set forth in Section 6.6(a).

"**Debt Commitment Letters**" shall have the meaning set forth in Section 5.4.

"**Debt Financing**" shall have the meaning set forth in Section 5.4.

"**Debt Financing Source**" shall mean (i) the commitment parties party, as of the date hereof, to the Debt Commitment Letters that have been delivered to the Company in accordance with Section 5.4, and (ii) the Persons, in their respective capacities as such, that have committed to arrange or provide or have otherwise entered into agreements (including the Debt Commitment Letters or any Financing Agreements), in each case, in connection with all or any portion of the Debt Financing or Alternative Financing in connection with the transactions contemplated hereby, and any joinder agreements, indentures or credit agreements entered into pursuant thereto, together with their Affiliates, and any of their or their Affiliates' respective, direct or indirect, former, current or future stockholders, managers, members, directors, officers, employees, agents, advisors, other representatives or any successors or assignees of any of the foregoing (it being understood that Parent, Acquisition Sub and any of their respective Affiliates shall not constitute "Debt Financing Sources" for any purposes hereunder).

"**Debt Financing Source Related Party**" means any Debt Financing Source, together with their respective Affiliates and their and their respective Affiliates' former, current and future officers, directors, employees, agents and representatives and their respective successors and assigns.

"**DGCL**" shall have the meaning set forth in the Recitals.

"**Dissenting Shares**" shall have the meaning set forth in Section 3.5.

"**DTC**" shall have the meaning set forth in Section 3.2(b)(ii).

"**Effective Time**" shall have the meaning set forth in Section 2.3(a).

"**Enforceability Exceptions**" shall have the meaning set forth in Section 4.3(a).

"**Equity Commitment Letter**" shall have the meaning set forth in Section 5.4.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" shall mean, for any Person, each trade or business, whether or not incorporated, that, together with such Person, would be deemed a "single employer" within the meaning set forth in Section 414 of the Code.

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Exchange Fund**" shall have the meaning set forth in Section 3.2(a).

"**Existing Credit Agreement**" shall mean that certain Revolving Credit Agreement, dated as of August 17, 2018, among the Company, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A. as administrative agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Existing D&O Insurance Policies**" shall have the meaning set forth in Section 6.6(c).

"**Existing 2027 Senior Notes**" shall mean the 3.875% Senior Notes due 2027 issued pursuant to that certain Indenture, dated December 9, 2019, among the Company, as issuer, and U.S. Bank National Association, as trustee, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Existing 2030 Senior Notes**" shall mean the 5.000% Senior Notes due 2030 issued pursuant to that certain Indenture, dated February 25, 2022, among the Company, as issuer, and U.S. Bank National Association, as trustee, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Existing Convertible Notes**" shall mean the (i) 0.25% Convertible Senior Notes due 2024 issued pursuant to that certain Indenture, dated June 11, 2018, among the Company, as issuer, and U.S. Bank National Association, as trustee, (ii) 0.375% Convertible Senior Notes due 2025 issued pursuant to that certain Indenture, dated March 12, 2020, among the Company, as issuer, and U.S. Bank National Association, as trustee, and (iii) 0% Convertible Senior Notes due 2026 issued pursuant to that certain Indenture, dated March 4, 2021, among the Company, as issuer, and U.S. Bank National Association, as trustee, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Existing Senior Notes**" shall mean the (i) the Existing 2027 Senior Notes and (ii) the Existing 2030 Senior Notes.

"**Expenses**" shall mean all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its Affiliates) incurred by a party or on its behalf in connection with or related to the authorization,

preparation, negotiation, execution and performance of this Agreement, the preparation, printing, filing and mailing of the Proxy Statement and all SEC and other regulatory filing fees incurred in connection with the Proxy Statement, the solicitation of stockholder approvals, any filing with, and obtaining of any necessary action or non-action, Consent or approval from any Governmental Authority pursuant to any Antitrust Laws or Foreign Investment Laws, engaging the services of the Paying Agent, any other filings with the SEC, and all other matters related to the Closing and the other transactions contemplated by this Agreement.

"**Final Offering Period**" shall have the meaning set forth in Section 3.7.

"**Financing**" shall have the meaning set forth in Section 5.4.

"**Financing Agreements**" shall have the meaning set forth in Section 6.10(a).

"**Financing Commitments**" shall have the meaning set forth in Section 5.4.

"**Financing Sources**" means the Debt Financing Sources and Elon Musk.

"**Foreign Investment Laws**" shall mean any Laws designed or intended to prohibit, restrict or regulate actions (i) by foreigners to acquire interests in or control over domestic equities, securities, entities, assets, land or interests, or (ii) to acquire interests in or control over equities, securities, entities, assets, land or interests that might harm domestic national security or public interest, other than Antitrust Laws.

"**Foreign Plan**" shall mean each Company Benefit Plan that primarily covers current or former employees, directors or individual service providers of the Company or any of its subsidiaries based outside of the U.S. and/or that is subject to any Law other than U.S., federal, state or local law (other than any plan or program that is required by statute or maintained by a Governmental Authority to which the Company or any of its subsidiaries contributes pursuant to applicable Law).

"**Funding Obligations**" shall have the meaning set forth in Section 5.4.

"**GAAP**" shall mean the U.S. generally accepted accounting principles.

"**Goldman Sachs**" shall have the meaning set forth in Section 4.21.

"**Governmental Authority**" shall mean any U.S. (federal, state or local) or foreign government, or any governmental, regulatory, judicial or administrative authority, agency or commission.

"**Hazardous Materials**" means all substances (i) defined as hazardous substances, oils, pollutants or contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or (ii) defined as hazardous substances, hazardous materials, pollutants, contaminants, toxic substances (or words of similar import) by or regulated as such under any Environmental Law.

"**HSR Act**" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"**Intellectual Property Rights**" shall have the meaning set forth in Section 4.14(a).

"**IRS**" shall mean the Internal Revenue Service.

"**Knowledge**" means the actual knowledge of the directors and officers of the relevant party, following due inquiry of their direct reports and others who would be reasonably expected to have knowledge of the subject matter in question.

"**Law**" shall mean any and all domestic (federal, state or local) or foreign laws (including common law), rules, regulations, orders, judgments or decrees promulgated by any Governmental Authority.

"**Lien**" shall mean liens, claims, mortgages, encumbrances, pledges, security interests or charges of any kind.

"**Margin Loan Borrower**" shall have the meaning set forth in Section 5.4.

"**Margin Loan Commitment Letter**" shall have the meaning set forth in Section 5.4.

"**Margin Loan Financing**" shall have the meaning set forth in Section 5.4.

"**Merger**" shall have the meaning set forth in the Recitals.

"**Merger Consideration**" shall have the meaning set forth in Section 3.1(c).

"**Notice of Adverse Board Recommendation Change**" shall have the meaning set forth in Section 6.5(d).

"**Notice of Superior Proposal**" shall have the meaning set forth in Section 6.5(d).

"**Order**" shall mean any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding by or with any Governmental Authority.

"**Parent**" shall have the meaning set forth in the Preamble.

"**Parent Board**" shall have the meaning set forth in the Recitals.

"**Parent Disclosure Letter**" shall mean the disclosure letter delivered by Parent to the Company simultaneously with the execution of this Agreement.

"**Parent Material Adverse Effect**" shall mean any change, effect or circumstance which, individually or in the aggregate, has prevented or materially delayed or materially impaired, or would reasonably be expected to prevent or materially delay or materially impair, the ability of Parent or Acquisition Sub to consummate the Merger and the other transactions contemplated by this Agreement.

"**Parent Related Parties**" shall have the meaning set forth in Section 8.3(c).

"**Parent Termination Fee**" shall mean an amount equal to $1,000,000,000.

"**Paying Agent**" shall have the meaning set forth in Section 3.2(a).

"**Paying Agent Agreement**" shall have the meaning set forth in Section 3.2(a).

"**Permitted Lien**" shall mean (i) any Lien for Taxes not yet delinquent or that are being contested in good faith by any appropriate proceedings and for which adequate accruals or reserves have been established in accordance with GAAP, (ii) Liens securing indebtedness or liabilities that are reflected in the Company SEC Documents or incurred in the ordinary course of business since the end of the most recent fiscal year for which an Annual Report on Form 10-K has been filed by the Company with the SEC and Liens securing indebtedness or liabilities that have otherwise been disclosed to Parent in writing, (iii) such Liens or other imperfections of title, if any, that do not have a Company Material Adverse Effect, including (A) easements or claims of easements whether or not shown by the public records, boundary line disputes, overlaps, encroachments and any matters not of record which would be disclosed by an accurate survey or a personal inspection of the property, (B) rights of parties in possession, (C) any supplemental Taxes or assessments not shown by the public records and (D) title to any portion of the premises lying within the right of way or boundary of any public road or private road, (iv) Liens imposed or promulgated by Laws with respect to real property and improvements, including zoning regulations, (v) Liens disclosed on existing title reports or existing surveys, (vi) mechanics', carriers', workmen's, repairmen's and similar Liens incurred in the ordinary course of business, (vii) Liens securing acquisition financing with respect to the applicable asset, including refinancings thereof and (viii) licenses of Intellectual Property Rights.

"**Person**" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a Governmental Authority.

"**Post-Closing Plans**" shall have the meaning set forth in Section 6.9(b).

"**Post-Closing Welfare Plans**" shall have the meaning set forth in Section 6.9(c).

"**Proxy Statement**" shall have the meaning set forth in Section 4.7.

"**Representatives**" shall have the meaning set forth in Section 6.4.

"**SEC**" shall mean the Securities and Exchange Commission.

"**Secretary of State**" shall have the meaning set forth in Section 2.3(a).

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Silver Lake Investment Agreement**" means the Investment Agreement, dated as of March 9, 2020, among Twitter, Inc. and Silver Lake Partners V DE (AIV), L.P., as amended, restated, supplemented or otherwise modified from time to time.

"**Solvent**" shall have the meaning set forth in Section 5.12.

"**Specified Provisions**" shall have the meaning set forth in the Preamble.

"**Stockholder Rights**" means the rights distributed to the Stockholders pursuant to Company Stockholder Rights Agreement.

"**Stockholder Rights Plan**" means the Company Stockholder Rights and the Company Stockholder Rights Agreement.

"**Stockholder Rights Agreement**" means the Preferred Stock Rights Agreement, dated as of April 15, 2022, between the Company and Computershare Trust Company, N.A., as rights agent, as amended, restated, supplemented or otherwise modified from time to time

"**Subsidiary**" of any Person shall mean any corporation, partnership, joint venture or other legal entity of which such Person (either above or through or together with any other subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

"**Superior Proposal**" shall have the meaning set forth in Section 6.5(g)(iii).

"**Surviving Corporation**" shall have the meaning set forth in Section 2.1.

"**Tax**" or "**Taxes**" shall mean all federal, state, local and foreign income, profits, franchise, gross receipts, customs duty, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, property, withholding, excise, license, production, value added, occupancy and other taxes of any kind whatsoever, together with all interest, penalties and additions imposed with respect thereto.

"**Tax Returns**" shall mean all returns and reports (including elections, declarations, disclosures, schedules, estimates and information returns) filed or required to be filed with a Tax authority.

"**Termination Date**" shall have the meaning set forth in Section 8.1(b)(i).

"**Termination Fee**" shall mean an amount equal to $1,000,000,000.

"**Tesla Shares**" means shares of common stock of Tesla, Inc., $0.001 par value.

"**Third Party**" shall mean any Person or group other than Parent, Acquisition Sub and their respective Affiliates.

"**U.S.**" means the United States of America and its territories, commonwealths and possessions.

ARTICLE II

THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement, and in accordance with the DGCL, at the Effective Time, Acquisition Sub shall be merged with and into the Company, whereupon the separate existence of Acquisition Sub shall cease, and the Company shall continue under the name "Twitter, Inc." as the surviving corporation (the "**Surviving Corporation**") and shall continue to be governed by the laws of the State of Delaware.

Section 2.2 The Closing. Subject to the provisions of Article VII, the closing of the Merger (the "**Closing**") shall take place at 9:00 a.m. (Pacific Time) on a date to be specified by the parties hereto, but no later than the second (2nd) Business Day after the satisfaction or waiver of all of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing). The Closing shall take place virtually by the electronic exchange of documents, unless another time, date or place is agreed to in writing by the parties hereto (such date, the "**Closing Date**").

Section 2.3 Effective Time.

(a) Concurrently with the Closing, the Company, Parent and Acquisition Sub shall cause a certificate of merger with respect to the Merger (the "**Certificate of Merger**") to be executed and filed with the Secretary of State of the State of Delaware (the "**Secretary of State**") in accordance with the relevant provisions of the DGCL and any other applicable Law of the State of Delaware. The Merger shall become effective on the date and time at which the Certificate of Merger has been duly filed with the Secretary of State or such other date and time as may be agreed to by Parent and the Company and as set forth in the Certificate of Merger in accordance with the DGCL (such date and time hereinafter referred to as the "**Effective Time**").

(b) The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, from and after the Effective Time, (i) the Company shall be the surviving corporation in the Merger, (ii) all the property, rights, privileges, immunities, powers, franchises and liabilities of the Company and Acquisition Sub are vested in the Surviving Corporation, (iii) the separate existence of Acquisition Sub shall cease and (iv) the Company shall continue to be governed by the laws of the State of Delaware.

Section 2.4 Certificate of Incorporation and Bylaws. The parties will take all necessary actions so that at the Effective Time, the certificate of incorporation and the bylaws of Acquisition Sub, each as in effect immediately prior to the Effective Time, will be the certificate of incorporation and the bylaws, respectively, of the Surviving Corporation (except that the titles thereof shall read "Certificate of Incorporation of Twitter, Inc." and "Bylaws of Twitter, Inc.", respectively) until, subject to Section 6.6, thereafter amended in accordance with the applicable provisions of the DGCL and the certificate of incorporation and bylaws of the Surviving Corporation.

Section 2.5 Board of Directors. The board of directors of the Surviving Corporation effective as of, and immediately following, the Effective Time shall consist of the members of the Acquisition Sub Board immediately prior to the Effective Time, each to serve in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected and qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

Section 2.6 Officers. From and after the Effective Time, the officers of the Company at the Effective Time shall be the officers of the Surviving Corporation, until their respective successors are duly elected or appointed and qualified in accordance with applicable Law.

ARTICLE III

EFFECT OF THE MERGER ON CAPITAL STOCK

Section 3.1 Effect on Securities. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Acquisition Sub or the holders of any securities of the Company or Acquisition Sub:

(a) Conversion of Acquisition Sub Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock, $0.01 par value per share, of Acquisition Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) fully paid share of common stock, $0.01 par value per share, of the Surviving Corporation and constitute the only issued or outstanding shares of capital stock of the Surviving Corporation.

(b) Cancellation of Certain Company Securities. Each share of common stock, par value $0.000005 per share, of the Company (the "**Company Common Stock**") held by the Company or any of its Subsidiaries or held, directly or indirectly, by the Equity Investor, Parent or Acquisition Sub immediately prior to the Effective Time (collectively, the "**Canceled Shares**") shall automatically be canceled and retired and shall cease to exist as issued or outstanding shares, and no consideration or payment shall be delivered in exchange therefor or in respect thereof.

(c) Conversion of Company Securities. Except as otherwise provided in this Agreement, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Canceled Shares or Dissenting Shares) shall be converted into the right to receive $54.20 per share of Company Common Stock in cash, without interest (the "**Merger Consideration**"). Each share of Company Common Stock to be converted into the right to receive the Merger Consideration as provided in this Section 3.1(c) shall no longer be issued or outstanding and shall be automatically canceled and shall cease to exist, and the holders of certificates (the "**Certificates**") or book-entry shares ("**Book-Entry Shares**") which immediately prior to the Effective Time represented such shares of Company Common Stock shall cease to have any rights with respect to such Company Common Stock other than the right to receive, upon surrender of such Certificates or Book-Entry Shares in accordance with Section 3.2(b), the Merger Consideration, without interest thereon.

(d) Adjustments. Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the number of outstanding shares of Company Common Stock shall occur as a result of a reclassification, recapitalization, stock split (including a reverse stock split) or similar event, or combination or exchange of shares, or any stock dividend or stock distribution with a record date during such period (in each case, other than with respect to the initial distribution of Stockholder Rights under the Stockholder Rights Plan or such Stockholder Rights becoming exercisable as a result of Parent or any of its Affiliates or Representatives becoming an "Acquiring Person" (as defined in the Stockholder Rights Agreement)), the Merger Consideration shall be equitably adjusted to provide the same economic effect as contemplated by this Agreement prior to such event. Nothing in this Section 3.1(d) shall be construed to permit any party to take any action that is otherwise prohibited or restricted by any other provision of this Agreement.

Section 3.2 Payment for Securities; Exchange of Certificates.

(a) Designation of Paying Agent; Deposit of Exchange Fund. Prior to the Closing, Parent shall designate a reputable bank or trust company (the "**Paying Agent**") that is organized and doing business under the laws of the U.S., the identity and the terms of appointment of which to be reasonably acceptable to the Company, to act as Paying Agent for the payment of the Merger Consideration as provided in Section 3.1(b), and shall enter into an agreement (the "**Paying Agent Agreement**") relating to the Paying Agent's responsibilities with respect thereto, in form and substance reasonably acceptable to the Company. At or prior to the Effective Time, Parent shall deposit, or cause to be deposited with the Paying Agent, cash constituting an amount equal to the Aggregate Merger Consideration (such Aggregate Merger Consideration as deposited with the Paying Agent, the "**Exchange Fund**"). In the event the Exchange Fund shall be insufficient to make the payments contemplated by Section 3.1(b), Parent shall promptly deposit, or cause to be deposited, additional funds with the Paying Agent in an amount which is equal to the deficiency in the amount required to make such payments in full. Parent shall cause the Exchange Fund to be (A) held for the benefit of the holders of Company Common Stock and (B) applied promptly to make payments pursuant to Section 3.1(b). The Exchange Fund shall not be used for any purpose other than to fund payments pursuant to Section 3.1, except as expressly provided for in this Agreement.

(b) Procedures for Exchange. As promptly as reasonably practicable following the Effective Time and in any event not later than two (2) Business Days thereafter, the Surviving Corporation shall cause the Paying Agent to mail to each holder of record a Certificate that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (A) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates (or affidavits of loss in lieu thereof) to the Paying Agent and which shall be in the form and have such other provisions as Parent and the Company may reasonably specify and (B) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration into which the number of shares of Company Common Stock previously represented by such Certificate shall have been converted pursuant to this Agreement (which instructions shall be in the form and have such other provisions as Parent and the Company may reasonably specify). Any holder of Book-Entry Shares shall not be required to deliver a Certificate or an executed letter of transmittal to receive the Merger Consideration with respect to such Book-Entry Shares.

(c) Timing of Exchange. Upon surrender of a Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share for cancellation to the Paying Agent, together with, in the case of Certificates, a letter of transmittal duly completed and validly executed in accordance with the instructions thereto, or, in the case of Book-Entry Shares, receipt of an "agent's message" by the Paying Agent (it being understood that holders of Book-Entry Shares will be deemed to have surrendered such Book-Entry Shares upon receipt of an "agent's message" with respect to such Book-Entry Shares), and such other customary evidence of surrender as the Paying Agent may reasonably require, the holder of such Certificate or Book-Entry Share shall be entitled to receive in exchange therefor (and Parent shall cause the Paying Agent to promptly deliver in exchange therefor) the Merger Consideration for each share of Company Common Stock formerly represented by such Certificate or Book-Entry Share upon the later to occur of (i) the Effective Time or (ii) the Paying Agent's receipt of such Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share, in accordance with Section 3.2(b), as applicable, and the Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share so surrendered shall be forthwith canceled. The Paying Agent Agreement shall provide that the Paying Agent shall accept such Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange thereof in accordance with customary exchange practices. No interest shall be paid or accrued for the benefit of holders of the Certificates or Book-Entry Shares on the Merger Consideration payable upon the surrender of the Certificates or Book-Entry Shares.

(d) Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Certificates or Book-Entry Shares for one (1) year after the Effective Time shall be delivered to the Surviving Corporation, upon written demand, and any such holders prior to the Merger who have not theretofore complied with this Article III shall thereafter look only to the Surviving Corporation as a general creditor thereof for payment of their claims for the Merger Consideration in respect thereof.

(e) No Liability. None of Parent, Acquisition Sub, the Company, the Surviving Corporation or the Paying Agent shall be liable to any Person in respect of any cash held in the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificates or Book-Entry Shares shall not have been surrendered immediately prior to the date on which any cash in respect of such Certificate or Book-Entry Share would otherwise escheat to or become the property of any Governmental Authority, any such cash in respect of such Certificate or Book-Entry Share shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(f) Investment of Exchange Fund. The Paying Agent Agreement shall provide that the Paying Agent shall invest any cash included in the Exchange Fund as directed by Parent or, after the Effective Time, the Surviving Corporation; provided that (i) no such investment shall relieve Parent or the Paying Agent from making the payments required by this Article III, and following any losses Parent shall promptly provide additional funds to the Paying Agent for the benefit of the holders of Company Common Stock in the amount of such losses, (ii) no such investment shall have maturities that could prevent or delay payments to be made pursuant to this Agreement and (iii) all such investments shall be in short-term obligations of the U.S. with maturities of no more than thirty (30) days or guaranteed by the U.S. and backed by the full faith

and credit of the U.S. Any interest or income produced by such investments will be payable to the Surviving Corporation or Parent, as directed by Parent.

(g) Withholding. Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the Merger Consideration and any amounts otherwise payable pursuant to this Agreement to any Person such amounts as are required to be deducted and withheld with respect to the making of such payment under any applicable Law. To the extent that amounts are so deducted and withheld, such amounts (i) shall be promptly remitted by Parent, the Surviving Corporation or the Paying Agent, as applicable, to the applicable Governmental Authority, and (ii) shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 3.3 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, then upon the making of an affidavit, in form and substance reasonably acceptable to Parent, of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, the Paying Agent shall issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to which the holder thereof is entitled pursuant to this Article III.

Section 3.4 Transfers; No Further Ownership Rights. After the Effective Time, there shall be no registration of transfers on the stock transfer books of the Company of shares of Company Common Stock that were outstanding immediately prior to the Effective Time. If Certificates or Book-Entry Shares are presented to the Surviving Corporation, Parent or Paying Agent for transfer following the Effective Time, they shall be canceled against delivery of the applicable Merger Consideration, as provided for in Section 3.1(b), for each share of Company Common Stock formerly represented by such Certificates or Book-Entry Shares. Payment of the Merger Consideration in accordance with the terms of this Article III, and, if applicable, any unclaimed dividends upon the surrender of Certificates, shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock formerly represented by such Certificates or Book-Entry Shares.

Section 3.5 Dissenting Shares. Notwithstanding any other provision of this Agreement to the contrary, to the extent that holders thereof are entitled to appraisal rights under Section 262 of the DGCL or similar appraisal or dissenters' rights under any other applicable Law, shares of Company Common Stock issued and outstanding immediately prior to the Effective Time and held by a holder who has properly exercised and perfected his or her demand for appraisal or dissenters' rights under Section 262 of the DGCL or such other applicable Law (the "**Dissenting Shares**"), shall not be converted into the right to receive the Merger Consideration. At the Effective Time, the Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of Dissenting Shares shall cease to have any rights with respect thereto, but the holders of such Dissenting Shares shall be entitled to receive such consideration as shall be determined pursuant to Section 262 of the DGCL or such other applicable Law; provided, however, that if any such holder shall have failed to perfect or shall have effectively withdrawn or lost his or her right to appraisal or dissenters' rights and payment under the DGCL or such other applicable Law, as applicable (whether occurring before, at or after the Effective Time), such holder's shares of Company Common Stock shall thereupon be deemed to have been converted as of the Effective Time into the right to receive the Merger Consideration, without any interest thereon, and such shares shall not be deemed to be Dissenting Shares. Any payments

required to be made with respect to the Dissenting Shares shall be made by Parent (and not the Company or Acquisition Sub), and the Aggregate Merger Consideration shall be reduced, on a dollar-for-dollar basis, as if the holder of such Dissenting Shares had not been a stockholder on the Closing Date. The Company shall give prompt written notice to Parent of any demands for appraisal of or dissenters' rights respecting any shares of Company Common Stock, withdrawals of such demands and any other instruments served pursuant to the DGCL or such other applicable Law received by the Company relating to appraisal or dissenters' demands, and Parent shall have the right to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed), voluntarily make any payment with respect to, or settle or offer to settle, any such demands, or agree to do or commit to do any of the foregoing.

Section 3.6 Company Equity Awards.

(a) Company Options.

(i) As of the Effective Time, each Company Option that is vested in accordance with its terms and outstanding as of immediately prior to the Effective Time (each, a "**Vested Company Option**") shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Vested Company Option and (ii) the excess, if any, of the Merger Consideration, over the exercise price per share of Company Common Stock underlying such Vested Company Option (the "**Vested Option Consideration**"); provided, that if the exercise price per share of Company Common Stock underlying such Vested Company Option is equal to or greater than the Merger Consideration, such Vested Company Option shall be canceled without any cash payment or other consideration being made in respect thereof.

(ii) As of the Effective Time, each Company Option that is outstanding and is not a Vested Company Option (each, an "**Unvested Company Option**") shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Unvested Company Option and (ii) the excess, if any, of the Merger Consideration, over the exercise price per share of Company Common Stock underlying such Unvested Company Option (the "**Unvested Option Consideration**"); provided that, if the exercise price per share of Company Common Stock underlying such Unvested Company Option is equal to or greater than the Merger Consideration, such Unvested Company Option shall be canceled without any cash payment or other consideration being made in respect thereof. Subject to the holder's continued service with Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, such Unvested Option Consideration will vest and become payable at the same time as the Unvested Company Option from which such Unvested Option Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions as were applicable to the underlying Unvested Company Option immediately prior to the Effective Time.

(b) Company PSUs.

(i) As of the Effective Time, each Company PSU that is vested in accordance with its terms and outstanding as of immediately prior to the Effective Time (each, a "**Vested Company PSU**") shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Vested Company PSU based on the achievement of the applicable performance metrics at the level of performance for which such Vested Company PSU vested in accordance with its terms and (ii) the Merger Consideration (the "**Vested PSU Consideration**").

(ii) As of the Effective Time, each Company PSU that is outstanding immediately prior thereto and that is not a Vested Company PSU (each, an "**Unvested Company PSU**") shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Unvested Company PSU based on the achievement of the applicable performance metrics at the target level of performance and (ii) the Merger Consideration (the "**Unvested PSU Consideration**"). Subject to the holder's continued service with Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, such Unvested PSU Consideration will vest and become payable at the same time as the Unvested Company PSU from which such Unvested PSU Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions as were applicable to the underlying Unvested Company PSU immediately prior to the Effective Time (except that performance-based vesting metrics and criteria shall not apply from and after the Effective Time).

(c) Company RSAs. At the Effective Time, each Company RSA that is outstanding immediately prior to the Effective Time shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Company RSA and (ii) the Merger Consideration (the "**Unvested RSA Consideration**"). Subject to the holder's continued service with Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, such Unvested RSA Consideration will vest and become payable at the same time as the Company RSA from which such Unvested RSA Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions as were applicable to the underlying Company RSA immediately prior to the Effective Time; provided that the Company shall be permitted to accelerate the vesting of any unvested Company RSA if the holder thereof would be subject to Taxes in connection with the Closing as a result of the treatment contemplated by this Section 3.3(c).

(d) Company RSUs.

(i) As of the Effective Time, each Company RSU that is vested in accordance with its terms as of immediately prior to the Effective Time and each Company RSU held by a non-employee member of the Company Board, in either case, that is outstanding immediately prior to the Effective Time, (each, a "**Vested Company RSU**")

shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Vested Company RSU and (ii) the Merger Consideration (the "**Vested RSU Consideration**").

(ii) As of the Effective Time, each Company RSU that is outstanding immediately prior thereto and that is not a Vested Company RSU (each, an "**Unvested Company RSU**") shall be canceled and converted into the right to receive an amount in cash, without interest, equal to the product of (i) the total number of shares of Company Common Stock subject to such Unvested Company RSU and (ii) the Merger Consideration (the "**Unvested RSU Consideration**"). Subject to the holder's continued service with Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, such Unvested RSU Consideration will vest and become payable at the same time as the Unvested Company RSU from which such Unvested RSU Consideration was converted would have vested and been payable pursuant to its terms and shall otherwise remain subject to the same terms and conditions as were applicable to the underlying Unvested Company RSU immediately prior to the Effective Time.

(e) Delivery of Company Equity Award Payments. Parent shall cause the Surviving Corporation to pay through the payroll system of the Surviving Corporation (to the extent applicable) the Vested Option Consideration, the Vested PSU Consideration, and the Vested RSU Consideration to each holder of a Vested Company Option, Vested Company PSU and Vested Company RSU, as applicable, less any required withholding Taxes and without interest, within five (5) Business Days following the Effective Time.

Section 3.7 Company ESPP. As soon as practicable following the date of this Agreement, the Company Board or a committee thereof shall adopt resolutions or take other actions as may be required to provide that (A) the Offering Period (as defined in the Company ESPP) in effect as of the date hereof shall be the final Offering Period (such period, the "**Final Offering Period**") and no further Offering Period shall commence pursuant to the Company ESPP after the date hereof, and (B) each individual participating in the Final Offering Period on the date of this Agreement shall not be permitted to (x) increase his or her payroll contribution rate pursuant to the Company ESPP from the rate in effect when the Final Offering Period commenced or (y) make separate non-payroll contributions to the Company ESPP on or following the date of this Agreement, except as may be required by applicable Law. Prior to the Effective Time, the Company shall take all action that may be necessary to, effective upon the consummation of the Merger, (A) cause the Final Offering Period, to the extent that it would otherwise be outstanding at the Effective Time, to be terminated no later than ten (10) Business Days prior to the date on which the Effective Time occurs; (B) make any pro rata adjustments that may be necessary to reflect the Final Offering Period, but otherwise treat the Final Offering Period as a fully effective and completed Offering Period for all purposes pursuant to the Company ESPP; and (C) cause the exercise (as of no later than ten (10) Business Days prior to the date on which the Effective Time occurs) of each outstanding purchase right pursuant to the Company ESPP. On such exercise date, the Company shall apply the funds credited as of such date pursuant to the Company ESPP within each participant's payroll withholding account to the purchase of whole shares of Company Common Stock in accordance with the terms of the Company ESPP, and such

Common Shares shall be entitled to the Merger Consideration in accordance with Section 3.1(b). Immediately prior to and effective as of the Effective Time (but subject to the consummation of the Merger), the Company shall terminate the Company ESPP.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company Disclosure Letter or in the Company SEC Documents filed by the Company prior to the date of this Agreement (other than any disclosures set forth under the headings "Risk Factors" or "Forward-Looking Statements" and any other disclosures included therein to the extent they are forward-looking in nature), the Company hereby represents and warrants to Parent and Acquisition Sub as follows:

Section 4.1 Organization and Qualification; Subsidiaries. Each of the Company and its Subsidiaries is a corporation, partnership or other entity duly organized, validly existing and (to the extent applicable) in good standing under the laws of the jurisdiction of its incorporation or organization and has the requisite entity power and authority to conduct its business as it is now being conducted, except where the failure to be duly organized, validly existing or in good standing or to have such power and authority would not have a Company Material Adverse Effect. Each of the Company and its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Company Material Adverse Effect. The Company's Amended and Restated Certificate of Incorporation (as may be further amended from time to time, the "**Company Certificate of Incorporation**") and the Company's Amended and Restated Bylaws (as may be further amended from time to time, the "**Company Bylaws**"), in each case, as currently in effect, are included in the Company SEC Documents.

Section 4.2 Capitalization.

(a) As of March 31, 2022, the authorized capital stock of the Company consists of (i) 5,000,000,000 shares of Company Common Stock, 763,577,530 of which were issued and outstanding (including 1,386,850 Company RSAs), and none of which were held in treasury, and (ii) 200,000,000 shares of preferred stock, par value $0.000005 per share, of the Company, none of which were issued and outstanding. As of March 31, 2022, there were (i) 953,365 Company Options outstanding, (ii) 2,900,689 Company PSUs outstanding (assuming attainment of the applicable performance metrics at the target level of performance), (iii) 67,575,223 Company RSUs outstanding, and (iv) shares of Company Common Stock subject to outstanding purchase rights under the Company ESPP. Except as described above and other than the Stockholder Rights, the Existing Convertible Notes, the Company Warrant Confirmations and any issuances or grants (or promises or offers to issue or grant) Company Equity Awards since March 31, 2022 in connection with employee hiring, retention or promotions in the ordinary course of business in an amount less than 5,000,000 Company Equity Awards (assuming attainment of the applicable performance metrics at the target level of performance) in the aggregate, as of the date of this Agreement, there are no additional existing and outstanding (i) options, warrants, calls, subscriptions or other rights, convertible securities, agreements or commitments of any character

to which the Company or any of its Subsidiaries is a party obligating the Company or any of its Subsidiaries to issue, transfer or sell any shares of capital stock or other equity interests in the Company or any of its Subsidiaries or securities convertible into or exchangeable for such shares or equity interests, (ii) contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock of the Company or any of its Subsidiaries, except pursuant to the other than the Company ASR Confirmations and the Company Bond Hedging Transactions or (iii) voting trusts or similar agreements to which the Company is a party with respect to the voting of the capital stock of the Company, other than the Silver Lake Investment Agreement.

(b) Except as would not be material to the Company and its Subsidiaries, taken as a whole, all of the outstanding shares of capital stock or equivalent equity interests of each of the Company's Subsidiaries are owned of record and beneficially, directly or indirectly, by the Company or the relevant wholly owned Subsidiary (except for de minimis equity interests held by a Third Party for local regulatory reasons) and free and clear of all Liens except for restrictions imposed by applicable securities laws and Permitted Liens.

(c) Prior to the Closing, the Company will provide Parent with a correct and complete list, as of such date, of all outstanding Company Equity Awards, including the holder (by employee identification number), type of Company Equity Award, date of grant, number of shares of Company Common Stock underlying such award (and, if applicable, assuming achievement of the applicable performance metrics at the target level of performance), whether such Company Equity Award is intended to qualify as an "incentive stock option" under Section 422 of the Code, the equity plan pursuant to which the Company Equity Award was granted, and, where applicable, the exercise price per share and expiration date.

Section 4.3 Authority Relative to Agreement.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and, assuming the accuracy of the representations and warranties set forth in the second sentence of Section 5.8 and subject to obtaining the Company Stockholder Approval and the occurrence of the stockholder advisory vote contemplated by Rule 14a-21(c) under the Exchange Act, regardless of the outcome of such advisory vote (the "**Company Stockholder Advisory Vote**"), to consummate the transactions contemplated by this Agreement, including the Merger. The execution, delivery and performance of this Agreement by the Company, and the consummation by the Company of the transactions contemplated by this Agreement, including the Merger, have been duly and validly authorized by all necessary corporate action by the Company, and assuming the accuracy of the representations and warranties set forth in the second sentence of Section 5.8 and except for the Company Stockholder Approval, the occurrence of the Company Stockholder Advisory Vote, no other corporate action or proceeding on the part of the Company is necessary to authorize the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement, including the Merger. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability may be subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights and remedies generally (the "**Enforceability Exceptions**").

(b) The Company Board has, by resolutions duly adopted by the unanimous vote of the directors at a duly held meeting (i) determined that the terms and conditions of this Agreement, the Merger and the other transactions contemplated by this Agreement are advisable and in the best interests of the Company and the Company's stockholders, (ii) authorized the execution and delivery of this Agreement and declared advisable and approved the consummation of the transactions contemplated by this Agreement, including the Merger, (iii) directed that this Agreement be submitted for consideration at a meeting of the Company's stockholders and (iv) subject to the terms of this Agreement, resolved to recommend that the Company's stockholders adopt this Agreement and approve the transactions contemplated hereby, including the Merger.

Section 4.4 No Conflict; Required Filings and Consents.

(a) Neither the execution and delivery of this Agreement by the Company nor the consummation by the Company of the transactions contemplated by this Agreement will (i) violate any provision of the Company Certificate of Incorporation or the Company Bylaws or (ii) assuming the accuracy of the representations and warranties set forth in the second sentence of Section 5.8 and that the Consents, registrations, declarations, filings and notices referred to in Section 4.4(b) have been obtained or made, any applicable waiting periods referred to therein have expired and any condition precedent to any such Consent has been satisfied, conflict with or violate any Law applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected or (iii) except with respect to the Existing Credit Agreement and the Existing Notes, result in any breach of, or constitute a default

(with or without notice or lapse of time, or both) under, or give rise to any right of termination, acceleration or cancellation of, any Company Material Contract (other than any Company Benefit Plan) , other than, in the case of clauses (ii) and (iii) any such conflict, violation, breach, default, termination, acceleration or cancellation that would not have a Company Material Adverse Effect.

(b) No consent, approval, clearance, license, permit, order or authorization (each of the foregoing, a "**Consent**") of, or registration, declaration or filing with, or notice to, any Governmental Authority is required to be obtained or made by or with respect to the Company or any of its Subsidiaries under applicable Law in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated by this Agreement, other than (i) the applicable reporting or other requirements of and filings with the SEC under the Exchange Act (including the filing of the Proxy Statement), (ii) the filing of the Certificate of Merger with the Secretary of State in accordance with the DGCL and appropriate documents with the relevant authorities of the other jurisdictions in which the Company or any of its Subsidiaries is qualified to do business, (iii) the applicable requirements under corporation or Blue Sky Laws of various states, (iv) such filings as may be required in connection with the Taxes described in Section 8.6, (v) filings with the New York Stock Exchange, (vi) such other items required solely by reason of the participation of Parent or Acquisition Sub or any of their Affiliates in the transactions contemplated by this Agreement, (vii) compliance with and filings or notifications under the HSR Act and any other applicable U.S. or foreign competition, antitrust or merger control Laws (together with the HSR Act, "**Antitrust Laws**"), (viii) compliance with and filings or notifications under any applicable Foreign Investment Laws, and (ix) such other Consents, registrations, declarations, filings or notices the failure of which to be obtained or made would not have a Company Material Adverse Effect.

Section 4.5 Permits; Compliance With Laws.

(a) As of the date of this Agreement, the Company and its Subsidiaries are in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders necessary for the Company and its Subsidiaries to carry on their respective business as it is now being conducted (the "**Company Permits**") and all Company Permits are in full force and effect and no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where the failure to be in possession of or be in full force and effect, or the suspension or cancellation of, any of the Company Permits would not have a Company Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries is in default or violation of any Law applicable to the Company, any of its Subsidiaries or by which any of their respective properties or assets are bound, except for any such defaults or violations that would not have a Company Material Adverse Effect. Notwithstanding the foregoing, no representation or warranty in Section 4.5(a) or this Section 4.5(b) is made with respect to Company SEC Documents or financial statements, "disclosure controls and procedures" or "internal control over financial reporting," employee benefits matters, Intellectual Property Rights matters, Tax matters, which are addressed exclusively in Section 4.6 (Company SEC Documents; Financial Statements), Section 4.8 (Disclosure Controls and Procedures), Section 4.12 (Employee Benefit Plans), Section 4.14 (Intellectual Property Rights), Section 4.15 (Taxes), respectively.

Section 4.6 Company SEC Documents; Financial Statements.

(a) Since January 1, 2022, the Company has filed or furnished with the SEC all material forms, documents and reports required to be filed or furnished prior to the date of this Agreement by it with the SEC (such forms, documents and reports filed with the SEC, including any amendments or supplements thereto and any exhibits or other documents attached to or incorporated by reference therein, the "**Company SEC Documents**"). As of their respective dates, or, if amended or supplemented, as of the date of the last such amendment or supplement, the Company SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder, and none of the Company SEC Documents at the time it was filed (or, if amended or supplemented, as of the date of the last amendment or supplement) contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, or are to be made, not misleading.

(b) The consolidated financial statements (including all related notes) of the Company included in the Company SEC Documents fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the respective dates thereof and its consolidated statements of operations and consolidated statements of cash flows for the respective periods then ended (subject, in the case of unaudited interim statements, to normal year-end audit adjustments, none of which would have a Company Material Adverse Effect, to the absence of notes and to any other adjustments described therein, including in any notes thereto) in conformity with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q, Form 8-K or any successor form or other rules under the Exchange Act).

Section 4.7 Information Supplied. None of the information supplied or to be supplied by or on behalf of the Company or any of its Subsidiaries expressly for inclusion or incorporation by reference in the proxy statement relating to the matters to be submitted to the Company's stockholders at the Company Stockholders' Meeting (such proxy statement and any amendments or supplements thereto, the "**Proxy Statement**") shall, at the time the Proxy Statement is first mailed to the Company's stockholders and at the time of the Company Stockholders' Meeting to be held in connection with the Merger, contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading at such applicable time, except that no representation or warranty is made by the Company with respect to statements made therein based on information supplied, or required to be supplied, by Parent or its Representatives in writing expressly for inclusion therein. The Proxy Statement will comply as to form in all material respects with the provisions of the Securities Act and the Exchange Act, and the rules and regulations promulgated thereunder.

Section 4.8 Disclosure Controls and Procedures. The Company has established and maintains "disclosure controls and procedures" and "internal control over financial reporting" (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 promulgated under the Exchange Act) as required by Rule 13a-15 promulgated under the Exchange Act. The Company has disclosed, based on its most recent evaluation of the Company's internal control over financial reporting prior to the date of this Agreement, to the Company's auditors and the

audit committee of the Company Board (i) any significant deficiencies and material weaknesses in the design or operation of its internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud to the Knowledge of the Company, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Section 4.9 Absence of Certain Changes or Events. Since January 1, 2022 and until the date of this Agreement, (a) the businesses of the Company and its Subsidiaries have been conducted in the ordinary course of business (other than as a result of COVID-19 and COVID-19 Measures or with respect to the Existing 2030 Notes or the transactions contemplated hereby) and (b) there has not been any adverse change, event, development or state of circumstances that has had a Company Material Adverse Effect.

Section 4.10 No Undisclosed Liabilities. Except (a) as reflected, disclosed or reserved against in the Company's financial statements (as amended or restated, as applicable) or the notes thereto included in the Company SEC Documents, (b) for liabilities or obligations incurred in the ordinary course of business since December 31, 2021, (c) the Existing 2030 Notes, (d) for liabilities or obligations incurred in connection with the transactions contemplated by this Agreement, including the Merger, or (e) for liabilities or obligations that would not have a Company Material Adverse Effect, as of the date of this Agreement, the Company and its Subsidiaries do not have any liabilities of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet (or in the notes thereto) of the Company.

Section 4.11 Litigation. As of the date of this Agreement, there is no suit, action or proceeding pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries, that would have a Company Material Adverse Effect, nor is there any judgment of any Governmental Authority outstanding against, or, to the Knowledge of the Company, investigation by any Governmental Authority involving the Company or any of its Subsidiaries that would have a Company Material Adverse Effect. As of the date of this Agreement, there is no suit, action or proceeding pending or, to the Knowledge of the Company, threatened in writing seeking to prevent, hinder, modify, delay or challenge the Merger or any of the other transactions contemplated by this Agreement.

Section 4.12 Employee Benefit Plans.

(a) Prior to the Closing, the Company will provide a true and complete list, as of the date of this Agreement, of each material Company Benefit Plan (which list may reference a form of such Company Benefit Plan). Prior to the Closing, the Company will make available to Parent a true and complete copy of each material Company Benefit Plan and all amendments thereto and a true and complete copy of the following items (in each case, only if applicable): (i) each trust or other funding arrangement; (ii) each current summary plan description and current summary of material modifications; (iii) the most recently filed annual report on IRS Form 5500; and (iv) the most recently received IRS determination letter or IRS opinion letter.

(b) Except as would not have a Company Material Adverse Effect:

(i) each of the Company Benefit Plans has been maintained, operated, administered and funded in accordance with its terms and in compliance with applicable Laws;

(ii) there are no claims pending, or, to the Knowledge of the Company, threatened actions, suits, disputes or claims (other than routine claims for benefits) against or affecting any Company Benefit Plan, by any employee or beneficiary covered under such Company Benefit Plan, as applicable, or otherwise involving such Company Benefit Plan;

(iii) neither the Company nor its Subsidiaries has any material obligations for post-termination health or life insurance benefits under any Company Benefit Plan (other than for continuation coverage required to be provided pursuant to Section 4980B of the Code); and

(iv) each Foreign Plan (A) if required to be registered or approved by a non-U.S. Governmental Authority, has been registered or approved and has been maintained in good standing with applicable regulatory authorities, and, to the Knowledge of the Company, no event has occurred since the date of the most recent approval or application therefor relating to any such Foreign Plan that would reasonably be expected to adversely affect any such approval or good standing, (B) that is intended to qualify for special Tax treatment meets all requirements for such treatment, and (C) if required to be fully funded or fully insured, is fully funded or fully insured on an ongoing and termination or solvency basis (determined using reasonable actuarial assumptions) in compliance with applicable Laws.

(e) If, and to the extent, the execution or delivery of this Agreement or the consummation of the Merger (either alone or in combination with another event) will: (i) entitle any Company Service Provider to any material payment; (ii) materially increase the amount or value of any benefit or compensation or other obligation payable or required to be provided to any Company Service Provider; (iii) accelerate the time of payment or vesting of amounts due to any Company Service Provider or accelerate the time of any funding (whether to a trust or otherwise) of compensation or benefits in respect of any of the Company Benefit Plans; (iv) give rise to the payment of any amount by the Company or any of its Subsidiaries that would be non-deductible by reason of Section 280G of the Code, then, prior to the Closing, the Company will provide a true and complete list of each Company Benefit Plan that would trigger any of (i) through (iv) above. There is no contract, agreement, plan or arrangement to which the Company or any of its Subsidiaries is a party by which it is required by its terms to compensate, gross-up, indemnify, or otherwise reimburse any Person for excise Taxes imposed pursuant to Section 4999 or Section 409A of the Code.

(f) Except as would not have a Company Material Adverse Effect, there are no claims pending, or, to the Knowledge of the Company, threatened actions, suits, disputes or claims (other than routine claims for benefits) against or affecting any Company Benefit Plan, by any employee or beneficiary covered under such Company Benefit Plan, as applicable, or otherwise involving such Company Benefit Plan.

(g) Except as would not have a Company Material Adverse Effect, neither the Company nor its Subsidiaries has any material obligations for post-termination health or life insurance benefits under any Company Benefit Plan (other than for continuation coverage required to be provided pursuant to Section 4980B of the Code).

(h) Except as would not have a Company Material Adverse Effect, each Foreign Plan (i) has been maintained, operated and administered in compliance with its terms and in compliance with applicable Laws; (ii) if required to be registered or approved by a non-U.S. Governmental Authority, has been registered or approved and has been maintained in good standing with applicable regulatory authorities, and, to the Knowledge of the Company, no event has occurred since the date of the most recent approval or application therefor relating to any such Foreign Plan that would reasonably be expected to adversely affect any such approval or good standing; (iii) that is intended to qualify for special Tax treatment meets all requirements for such treatment; (iv) if required to be fully funded or fully insured, is fully funded or fully insured on an ongoing and termination or solvency basis (determined using reasonable actuarial assumptions) in compliance with applicable Laws; and (v) is not subject to any pending or, to the Knowledge of the Company, threatened claims by or on behalf of any participant in any Foreign Plan, or otherwise involving any such Foreign Plan or the assets of any Foreign Plan, other than routine claims for benefits.

Section 4.13 Labor Matters. If, and to the extent that, the Company or any of its Subsidiaries is a party to or bound by any works council or collective bargaining agreement and no employees of the Company or any of its Subsidiaries are represented by a labor organization with respect to their employment with the Company or any of its Subsidiaries, then, prior to the Closing, the Company will provide a true and complete list of each such works council or collective bargaining agreement, or labor organization, as applicable. There are no labor related strikes, walkouts or work stoppages pending or, to the Knowledge of the Company, threatened in writing.

Section 4.14 Intellectual Property.

(a) Except as would not have a Company Material Adverse Effect, the Company and its Subsidiaries solely and exclusively own all patents, trademarks, trade names, copyrights, Internet domain names, service marks, trade secrets and other intellectual property rights (the "**Intellectual Property Rights**") purported to be owned by the Company and its Subsidiaries (the "**Company Intellectual Property**"), free and clear of all Liens, except Permitted Liens.

(b) To the Knowledge of the Company, the conduct of the business of the Company and its Subsidiaries as currently conducted does not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any other Person, except for any such infringement, misappropriation or other violation that would not have a Company Material Adverse Effect. To the Knowledge of the Company, no other Person is infringing, misappropriating or otherwise violating any Company Intellectual Property, except for any such infringement, misappropriation or other violation as would not have a Company Material Adverse Effect.

The Company and its Subsidiaries are in compliance with all applicable Laws, Contracts to which the Company or its Subsidiaries are bound, and internal- and external-facing policies of the Company or its Subsidiaries, in each case, relating to privacy, data protection, and the collection and use of information that constitutes "personal information" under applicable Laws ("**Personal Information**") collected, used or held for use by the Company or its Subsidiaries, except where the failure to be in compliance would not have a Company Material Adverse Effect.

(e) Neither the Company nor any of its Subsidiaries has experienced any unauthorized access to the information technology systems owned or used by the Company or its Subsidiaries or Personal Information collected, used, held for use or otherwise processed by the Company or its Subsidiaries, except as would not have a Company Material Adverse Effect.

Section 4.15 Taxes.

(a) Except as would not have a Company Material Adverse Effect, (i) the Company and its Subsidiaries have timely filed all Tax Returns (taking into account any extensions) required to be filed, and such Tax Returns (taking into account all amendments thereto) are complete and accurate, and (ii) all Taxes required to be paid by the Company and its Subsidiaries have been paid.

(b) Except as would not have a Company Material Adverse Effect, (i) neither the Company nor any of its Subsidiaries has received written notice of any audit, examination, investigation or other proceeding from any Governmental Authority in respect of liabilities for Taxes of the Company or any of its Subsidiaries, which have not been fully paid or settled; (ii) there are no Liens for Taxes on any of the assets of the Company or any of its Subsidiaries other than Permitted Liens; (iii) with respect to any tax years open for audit as of the date of this Agreement, neither the Company nor any of its Subsidiaries has granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any Tax; and (iv) neither the Company nor any of its Subsidiaries has any liability for the Taxes of any Person (other than the Company and its Subsidiaries) pursuant to Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law) as a transferee or successor, by contract (other than contracts entered into in the ordinary course of business the primary purpose of which does not relate to Tax) or otherwise by operation of law.

(c) Neither the Company nor any of its Subsidiaries has engaged in any "listed transaction" as defined in Treasury Regulation Section 1.6011-4(b)(2) in any tax year for which the statute of limitations has not expired.

(d) The Company is not nor has been during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

(e) Except with respect to Section 4.12, the representations in this Section 4.15 are the sole and exclusive representations and warranties concerning Tax matters.

Section 4.16 Material Contracts.

(a) For purposes of this Agreement, "**Company Material Contract**" means any Contract (other than any Company Benefit Plan) to which the Company or any of its Subsidiaries is a party or by which their respective properties or assets are bound, except for this Agreement, that constitutes a "material contract" (as such term is defined in item 601(b)(10) of Regulation S-K of the Securities Act).

(b) Neither the Company nor any of its Subsidiaries is in breach of or default under the terms of any Company Material Contract where such breach or default would have a Company Material Adverse Effect. To the Knowledge of the Company, no other party to any Company Material Contract is in breach of or default under the terms of any Company Material Contract where such breach or default would have a Company Material Adverse Effect. Each Company Material Contract is a valid and binding obligation of the Company or its Subsidiary and, to the Knowledge of the Company, the other parties thereto, except such as would not have a Company Material Adverse Effect; provided that (i) such enforcement may be subject to the Enforceability Exceptions and (ii) the remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Section 4.17 RESERVED.

Section 4.18 RESERVED.

Section 4.19 Takeover Statutes. Assuming the accuracy of the representation contained in Section 5.8, the Company Board has taken such actions and votes as are necessary to render the provisions of any "fair price," "moratorium," "control share acquisition" or any other takeover or anti-takeover statute or similar federal or state Law inapplicable to this Agreement, the Merger or any other transactions contemplated by this Agreement.

Section 4.20 Vote Required. Assuming the accuracy of the representation contained in Section 5.8, the adoption of this Agreement by the affirmative vote of a majority of the outstanding shares of Company Common Stock entitled to vote to adopt this Agreement (the "**Company Stockholder Approval**") are the only votes of holders of securities of the Company that are required to consummate the Merger.

Section 4.21 Brokers. Except for Goldman Sachs & Co. LLC ("**Goldman Sachs**"), J.P. Morgan Securities LLC ("**J.P. Morgan**") and Allen & Company LLC, each of whose fees and expenses shall be borne solely by the Company, no broker, finder, investment banker, consultant or intermediary is entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

Section 4.22 Opinions of Financial Advisors. The Company Board has received the oral opinion of Goldman Sachs (to be followed by delivery of a written opinion as of the date hereof), to the effect that, as of such date, and based upon and subject to the limitations, qualifications and

assumptions set forth in the written opinion of Goldman Sachs, the Merger Consideration to be paid to the holders of Company Common Stock (other than the Equity Investor, Parent and their respective Affiliates) pursuant to this Agreement is fair from a financial point of view to such holders. On or prior to the date of this Agreement, the Company Board has received the opinion of J.P. Morgan to the effect that, as of the date of such opinion and subject to the assumptions, limitations, qualifications and other factors set forth therein, the Merger Consideration to be paid to holders of Company Common Stock pursuant to this Agreement is fair, from a financial point of view, to such holders.

Section 4.23 Rights Agreement. The Company has taken all action necessary to render the Stockholder Rights Plan, inapplicable to the Merger and this Agreement and the transactions contemplated hereby.

Section 4.24 RESERVED.

Section 4.25 No Other Representations or Warranties. Except for the representations and warranties expressly set forth in this Article IV, neither the Company nor any other Person makes or has made any representation or warranty of any kind whatsoever, express or implied, at Law or in equity, with respect to the Company or any of its Subsidiaries or their respective business, operations, assets, liabilities, conditions (financial or otherwise), notwithstanding the delivery or disclosure to Parent and the Acquisition Sub or any of their Affiliates or Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing. Without limiting the generality of the foregoing, neither the Company nor any other Person makes or has made any express or implied representation or warranty to Parent, Acquisition Sub or any of their respective Representatives with respect to (a) any financial projection, forecast, estimate or budget relating to the Company, any of its Subsidiaries or their respective businesses or, (b) except for the representations and warranties made by the Company in this Article IV, any oral or written information presented to Parent, Acquisition Sub or any of their respective Representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or the course of the Merger, or the accuracy or completeness thereof.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUISITION SUB

Except as disclosed in the Parent Disclosure Letter, Parent and Acquisition Sub hereby jointly and severally represent and warrant to the Company as follows:

Section 5.1 Organization and Qualification.

(a) Each of Parent and Acquisition Sub is a corporation duly organized, validly existing and (to the extent applicable) in good standing under the laws of the jurisdiction of its incorporation and has the requisite corporate entity power and authority to conduct its business as it is now being conducted, except where the failure to be duly organized, validly existing or in good standing or to have such power and authority would not have a Parent Material Adverse Effect. Each of Parent and Acquisition Sub is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such

qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Parent Material Adverse Effect.

(b) As of the date of this Agreement, the authorized share capital of Acquisition Sub consists of 1,000 shares, $0.01 par value per share, all of which are validly issued and outstanding. All of the issued and outstanding share capital of Acquisition Sub is, and at the Effective Time will be, owned by Parent. Acquisition Sub was formed solely for the purpose of acquiring the Company, and it has not conducted any business prior to the date of this Agreement and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and other transactions contemplated by this Agreement.

(c) As of the date of this Agreement, all of the issued and outstanding share capital of Parent is owned by the Equity Investor.

Section 5.2 Authority Relative to Agreement.

(a) Parent and Acquisition Sub have all necessary corporate power and authority to (a) execute and deliver this Agreement, (b) perform its covenants and obligations hereunder and (c) consummate the transactions contemplated by this Agreement, including the Merger. The execution, delivery and performance of this Agreement by Parent and Acquisition Sub, and the consummation by Parent and Acquisition Sub of the transactions contemplated by this Agreement, including the Merger, have been duly and validly authorized by all necessary corporate action by Parent and Acquisition Sub, and no other corporate action or proceeding on the part of Parent and Acquisition Sub is necessary to authorize the execution, delivery and performance of this Agreement by Parent and Acquisition Sub and the consummation by Parent and Acquisition Sub of the transactions contemplated by this Agreement, including the Merger. This Agreement has been duly executed and delivered by Parent and Acquisition Sub and, assuming the due authorization, execution and delivery of this Agreement by the other party hereto, constitutes a legal, valid and binding obligation of Parent and Acquisition Sub, enforceable against Parent and Acquisition Sub in accordance with its terms, except that such enforceability may be subject to the Enforceability Exceptions.

(b) The Parent Board has, by resolutions duly adopted by the unanimous vote of the directors, (i) adopted this Agreement and approved the consummation of the transactions contemplated by this Agreement, including the Merger, and (ii) determined that this Agreement and the transactions contemplated by this Agreement are advisable and in the best interests of Parent and its stockholders, as applicable. No vote of, or consent by, the holders of any class or series of capital stock of Parent is necessary to authorize the execution, delivery and performance by Parent of this Agreement and the consummation of the transactions contemplated by this Agreement or otherwise required by the certificate of incorporation or bylaws of Parent, applicable Law (including any stockholder approval provisions under the rules of any applicable securities exchange) or any Governmental Authority.

(c) The Acquisition Sub Board has, by resolutions duly adopted by the unanimous vote of the directors, (i) authorized the execution and delivery of this Agreement and declared advisable and approved the consummation of the transactions contemplated by this

Agreement, including the Merger, (ii) directed that this Agreement be submitted for consideration by Acquisition Sub's sole stockholder and (iii) recommended that the sole stockholder of Acquisition Sub approve the Merger. Parent, acting in its capacity as the sole stockholder of Acquisition Sub, has approved this Agreement and the consummation of the transactions contemplated by this Agreement, including the Merger, and no further vote is required.

Section 5.3 No Conflict; Required Filings and Consents.

(a) Neither the execution and delivery of this Agreement by Parent and Acquisition Sub nor the consummation by Parent and Acquisition Sub of the transactions contemplated by this Agreement will (i) violate any provision of Parent's or its Subsidiaries' certificates of incorporation or bylaws, (ii) assuming that the Consents, registrations, declarations, filings and notices referred to in Section 5.3(b) have been obtained or made, any applicable waiting periods referred to therein have expired and any condition precedent to any such Consent has been satisfied, conflict with or violate any Law applicable to Parent or any of its Subsidiaries or by which any property or asset of Parent or any of its Subsidiaries is bound or affected or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise to any right of termination, acceleration or cancellation of any Contract to which Parent or any of its Subsidiaries is a party, or by which any of their respective properties or assets is bound, other than, in the case of clauses (ii) and (iii), any such conflict, violation, breach, default, termination, acceleration or cancellation that would not have a Parent Material Adverse Effect.

(b) No Consent of, or registration, declaration or filing with, or notice to, any Governmental Authority is required to be obtained or made by or with respect to Parent or any of its Subsidiaries under applicable Law in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated by this Agreement, other than (i) the applicable reporting or other requirements of and filings with the SEC under the Exchange Act (including the filing of the Proxy Statement), (ii) the filing of the Certificate of Merger with the Secretary of State in accordance with the DGCL and appropriate documents with the relevant authorities of the other jurisdictions in which Parent or any of its Subsidiaries is qualified to do business, (iii) such filings as may be required in connection with the Taxes described in Section 8.6, (iv) such other items required solely by reason of the participation of the Company in the transactions contemplated by this Agreement, (v) compliance with and filings or notifications under the HSR Act, other Antitrust Laws (vi) compliance with and filings or notifications under any Foreign Investment Laws, and (vii) such other Consents, registrations, declarations, filings or notices the failure of which to be obtained or made would not have a Parent Material Adverse Effect.

Section 5.4 Financing. Parent has delivered to the Company true, correct and complete copies of the duly executed (i) debt commitment letter, dated as of April 25, 2022, among Morgan Stanley Senior Funding, Inc., the other financial institutions party thereto, Parent and Acquisition Sub, together with true, correct and complete copies of the executed fee letter related thereto (collectively, including all exhibits, schedules and annexes thereto, the "**Bank Debt Commitment Letter**"), pursuant to which, and subject to the terms and conditions therein, the Debt Financing Sources party thereto have committed to lend the amounts set forth therein to Acquisition Sub for the purpose of funding a portion of the amounts required to fund the transactions contemplated by this Agreement (the "**Bank Debt Financing**"), (ii) debt commitment letter, dated as of April 25,

2022, among Morgan Stanley Senior Funding, Inc., the other financial institutions party thereto and X Holdings III, LLC, a Delaware limited liability company (the "**Margin Loan Borrower**"**)**, together with true, correct and complete copies of the executed fee letter related thereto (collectively, including all exhibits, schedules and annexes thereto, the "**Margin Loan Commitment Letter**" and, together with the Bank Debt Commitment Letter, the "**Debt Commitment Letters**"), pursuant to which, and subject to the terms and conditions therein, the Debt Financing Sources party thereto have committed to lend the amounts set forth therein to the Margin Loan Borrower for the purpose of funding a portion of the amounts required to fund the transactions contemplated by this Agreement (the "**Margin Loan Financing**" and, together with the Bank Debt Financing, the "**Debt Financing**") and (iii) an equity commitment letter from the Equity Investor, dated as of the date hereof (including all exhibits, schedules, annexes and amendments thereto as of the date of this Agreement, the "**Equity Commitment Letter**" and, together with the Debt Commitment Letters, the "**Financing Commitments**") pursuant to which the Equity Investor has committed to invest the amounts set forth therein (the "**Equity Financing**" and, together with the Debt Financing, the "**Financing**"); provided that the fee and other economic provisions (including "flex" provisions) of fee letters may be redacted in a customary manner so long as none of the redacted terms would (i) reduce the amount of the Debt Financing below the amount that is required to pay the Funded Obligations, (ii) impose any new condition or otherwise adversely amend, modify or expand any conditions precedent to the Debt Financing or (iii) affect the enforceability or impair the validity of, or prevent, impede or delay the consummation of, the Debt Financing at the Closing. As of the date hereof, each of Parent and Acquisition Sub has accepted and is a party to the Bank Debt Commitment Letter, the Margin Loan Borrower has accepted and is a party to the Margin Loan Commitment Letter, and the Financing Commitments are in full force and effect and, are legal, valid and binding obligations of the Equity Investor, Parent and Acquisition Sub or the Margin Loan Borrower, as applicable, and, to the knowledge of the Equity Investor, Parent, Acquisition Sub and the Margin Loan Borrower, each of the other parties thereto, enforceable in accordance with their respective terms against the Equity Investor, Parent, Acquisition Sub or the Margin Loan Borrower, as applicable, and, to the knowledge of Parent and Acquisition Sub, against each of the other parties thereto. As of the date hereof, the Financing Commitments, and the respective commitments or obligations thereunder, have not been withdrawn, terminated, reduced, repudiated, rescinded, amended, supplemented or modified, in any respect, and no such withdrawal, termination, reduction, repudiation, rescission, amendment, supplement or modification is contemplated by the Equity Investor, Parent, Acquisition Sub or the Margin Loan Borrower or, to the knowledge of Parent and Acquisition Sub, any other party thereto. None of the Equity Investor, Parent, Acquisition Sub, the Margin Loan Borrower nor any of their respective Affiliates has, nor has, to the knowledge of the Equity Investor, Parent, Acquisition Sub or the Margin Loan Borrower, any other party to the Financing Commitments, committed any breach or threatened breach of the performance, observance or fulfillment of any covenants, conditions or other obligations set forth in, or is in default under, any of the Financing Commitments. No event has occurred which, with or without notice, lapse of time or both, would or would reasonably be expected to (i) constitute or result in a breach or default on the part of Parent, Acquisition Sub, Margin Loan Borrower or any of the other parties thereto (including the Financing Sources) under the Financing Commitments, (ii) constitute or result in a failure to satisfy a condition or other contingency set forth in the Financing Commitments, or (iii) otherwise result in any portion of the Debt Financing or the Equity Financing not being available on the Closing Date. None of the Equity Investor, Parent, Acquisition Sub or the Margin Loan Borrower, nor any

of their respective Affiliates has any reason to believe (both before and after giving effect to any "flex" provisions contained in the Debt Commitment Letters) that it will be unable to satisfy, on a timely basis (and in any event, not later than the Closing), any condition to be satisfied by it (or otherwise within the Equity Investor's, Parent's, Acquisition Sub's or the Margin Loan Borrower's any of their respective Representatives' or Affiliates' control) contained in the applicable Financing Commitments or that the full amounts committed pursuant to the applicable Financing Commitments will not be available as of the Closing. There are no conditions precedent or other contingencies or conditions related to the Financing other than those conditions expressly set forth in the unredacted provisions of the Financing Commitments, and there are no side letters, understandings or other agreements, Contracts or arrangements of any kind relating to the Financing Commitments or the Financing that could adversely affect the availability, conditionality, enforceability or amount of the Financing contemplated by the Financing Commitments. As of the date of this Agreement, Parent, Acquisition Sub, the Margin Loan Borrower and/or their respective Affiliates have fully paid any and all commitment fees or other fees or deposits required by the applicable Financing Commitments to be paid on or before the date of this Agreement. The aggregate proceeds from the Financing are sufficient in amount to provide Parent and Acquisition Sub with the funds necessary to consummate the transactions contemplated hereby and to satisfy their obligations under this Agreement, including for Parent to pay (or cause to be paid) the aggregate amounts payable pursuant to Article II and the payment of all fees, costs and expenses to be paid by Parent related to the transactions contemplated by this Agreement, including such fees, costs and expenses relating to the Financing, and payment of all amounts in connection with the refinancing or repayment of any outstanding indebtedness of the Company required by this Agreement or the Financing Commitments (collectively, the "**Funding Obligations**"). Notwithstanding anything contained in this Agreement to the contrary, the Equity Investor, Parent and Acquisition Sub each acknowledge and affirm that it is not a condition to the Closing or to any of its obligations under this Agreement that the Equity Investor, Parent, Acquisition Sub and/or any of their respective Affiliates obtain any financing (including the Debt Financing) for any of the transactions contemplated by this Agreement. As of the date of this Agreement, the Equity Investor owns, directly or indirectly, all the issued and outstanding capital stock and other equity interests of the Margin Loan Borrower.

Section 5.5 Information Supplied. None of the information supplied or required to be supplied by or on behalf of Parent or any of its Representatives expressly for inclusion or incorporation by reference in the Proxy Statement shall, at the time it is first mailed to the Company's stockholders and at the time of the Company Stockholders' Meeting to be held in connection with the Merger, contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 5.6 Brokers. Except for Morgan Stanley & Co. LLC, Bank of America Merrill Lynch and Barclays, each of whose fees and expenses shall be borne solely by Parent, no broker, finder, investment banker, consultant or intermediary is entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with the Merger or any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent, Acquisition Sub, or any of their respective Subsidiaries.

Section 5.7 Compliance With Laws.

(a) Neither the Parent, Acquisition Sub nor any of their Affiliates is in default or violation of any applicable Law, except for any such defaults or violations that would not have a Parent Material Adverse Effect.

(b) As of the date of this Agreement, there is no suit, action or proceeding pending or, to the knowledge of Parent, threatened in writing against Parent, Acquisition Sub or any of their Affiliates, that would have a Parent Material Adverse Effect, nor is there any judgment of any Governmental Authority outstanding against, or, to the knowledge of Parent, investigation by any Governmental Authority involving Parent, Acquisition Sub or any of their Affiliates or any of the transactions contemplated hereby that would have a Parent Material Adverse Effect.

Section 5.8 Ownership of Company. As of the date hereof, the Equity Investor, Parent and Acquisition Sub beneficially own, in the aggregate, 73,115,038 shares of Company Common Stock (the "**Parent Owned Shares**"). None of Parent, Acquisition Sub or any of their respective directors, officers, general partners or Affiliates has been an "interested stockholder" (as defined in Section 203 of the DGCL) of the Company, in each case during the three years prior to the date of this Agreement.

Section 5.9 Solvency. Neither Parent nor Acquisition Sub is entering into this Agreement with the actual intent to hinder, delay or defraud either present or future creditors of the Company or any of its Subsidiaries. Parent is Solvent as of the date of this Agreement, and each of Parent and the Company and its Subsidiaries (on a consolidated basis) will, after giving effect to the Merger or any other transaction contemplated by this Agreement, including the funding of the Financing, payment of the Funding Obligations, and payment of all other amounts required to be paid in connection with the consummation of the Merger or any other transaction contemplated by this Agreement and the payment of all related fees and expenses, be Solvent at and immediately after the Closing. As used in this Section 5.8, the term "**Solvent**" shall mean, with respect to a particular date, that on such date, (a) the sum of the assets, at a fair valuation, of Parent and, after the Closing, Parent and the Surviving Corporation and its Subsidiaries (on a consolidated basis) and each of them (on a stand-alone basis) will exceed their debts, (b) Parent and, after the Closing, Parent and the Surviving Corporation and its Subsidiaries (on a consolidated basis) and each of them (on a stand-alone basis) has not incurred and does not intend to incur, and does not believe that it will incur, debts beyond its ability to pay such debts as such debts mature, and (c) Parent has and, after the Closing, the Surviving Corporation and its Subsidiaries (on a consolidated basis) and of each of them (on a stand-alone basis) will have, sufficient capital and liquidity with which to conduct its business. For purposes of this Section 5.8, "debt" means any liability on a claim, and "claim" means any (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, and (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

Section 5.10 Parent Guarantee. Parent has furnished the Company with a true, complete and correct copy of the Parent Guarantee. The Parent Guarantee is in full force and effect and has not been amended, modified or terminated. The Parent Guarantee is a (i) legal, valid and binding obligation of the Guarantor and of each of the parties thereto and (ii) enforceable in accordance

with its respective terms against the Guarantor and each of the other parties thereto. There is no default under the Parent Guarantee by the Guarantor, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by the Guarantor.

Section 5.11 Acknowledgment of Disclaimer of Other Representations and Warranties. Except for the representations and warranties expressly set forth in this Article V, in the Equity Commitment Letter and in the Guarantee none of Parent, Acquisition Sub or any other Person makes or has made any representation or warranty of any kind whatsoever, express or implied, at Law or in equity, with respect to Parent or Acquisition Sub or their Affiliates or their respective business, operations, assets, liabilities, conditions (financial or otherwise), notwithstanding the delivery or disclosure to the Company or any of its Affiliates or Representatives of any documentation, forecasts or other information with respect to any one or more of the foregoing. Each of Parent and Acquisition Sub has conducted, to its satisfaction, its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company and its Subsidiaries. In making its determination to proceed with the transactions contemplated by this Agreement, including the Merger, each of Parent and Acquisition Sub has relied solely on the results of its own independent review and analysis and the covenants, representations and warranties of the Company contained in this Agreement. Parent and Acquisition Sub hereby acknowledge that, notwithstanding anything contained in this Agreement to the contrary, (i) neither the Company nor any of its Subsidiaries, nor any other Person, makes or has made or is making any express or implied representation or warranty with respect to the Company or any of its Subsidiaries or their respective business or operations, in each case, other than those expressly given solely by the Company in Article IV; and (ii) neither Parent nor Acquisition Sub is relying on any express or implied representation or warranty, or the accuracy or the completeness of the representations and warranties set forth in Article IV, with respect to the Company or any of its Subsidiaries or their respective business or operations, in each case, other than those expressly given solely by the Company in Article IV.

ARTICLE VI

COVENANTS AND AGREEMENTS

Section 6.1 Conduct of Business by the Company Pending the Merger. The Company covenants and agrees that, between the date of this Agreement and the earlier of the Effective Time and the date, if any, on which this Agreement is terminated pursuant to Section 8.1, except (a) as may be required by Law, (b) as may be agreed to in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (c) as may be expressly required or permitted pursuant to this Agreement, or (d) as set forth in Section 6.1 of the Company Disclosure Letter, (x) the Company shall use its commercially reasonable efforts to conduct the business of the Company and its Subsidiaries in the ordinary course of business (except with respect to actions or omissions that constitute COVID-19 Measures), and to the extent consistent therewith, the Company shall use its commercially reasonable efforts to preserve substantially intact the material components of its current business organization, and to preserve in all material respects its present relationships with key customers, suppliers and other Persons with which it has material business relations; provided that no action by the Company or its Subsidiaries with respect to the matters specifically addressed by any provision of this Section 6.1 shall be deemed a breach of this sentence, unless such action would constitute a breach of such relevant provision; and (y) the

Company shall not, and shall not permit any of its Subsidiaries to (except for actions or omissions that constitute COVID-19 Measures, following reasonable prior consultation with Parent):

(a) amend or otherwise change, in any material respect, the Company Certificate of Incorporation or the Company Bylaws (or, except in the ordinary course of business, such equivalent organizational or governing documents of any of its Subsidiaries);

(b) split, combine, reclassify, redeem, repurchase or otherwise acquire or amend the terms of any capital stock or other equity interests or rights (except in connection with (i) the acceptance of shares of Company Common Stock as payment for the per share exercise price of the Company Options or as payment for Taxes incurred in connection with the exercise, vesting and/or settlement of Company Equity Awards, in each case, in accordance with the applicable Company Benefit Plan, (ii) the forfeiture of Company Equity Awards), (iii) pursuant to the exercise of purchase rights under the Company ESPP or (iv) pursuant to other than the Company ASR Confirmations and the Company Bond Hedge Transactions;

(c) except as permitted pursuant to Section 6.1(f), issue, sell, pledge, dispose, encumber or grant any shares of its or its Subsidiaries' capital stock or other equity interests, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of its or its Subsidiaries' capital stock or equity interests except for transactions among the Company and its direct or indirect wholly owned Subsidiaries or among the Company's direct or indirect wholly owned Subsidiaries; provided, however, that the Company may issue shares of Company Common Stock upon the exercise of any Vested Company Option or payment of any other Company Equity Award that becomes vested, pursuant to the exercise of purchase rights under the Company ESPP or to satisfy any obligations under the Existing Convertible Notes;

(d) other than any shares of the Company Common Stock issuable upon conversion of any series of Existing Convertible Notes in accordance with their terms, authorize, declare, pay or make any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to the Company's or any of its Subsidiaries' capital stock or other equity interests, other than dividends paid by any Subsidiary of the Company to the Company or any wholly owned Subsidiary of the Company;

(e) except as required pursuant to existing Company Benefit Plans, (i) increase the compensation payable or to become payable or benefits provided or to be provided to any Company Service Provider except for increases in cash compensation or benefits to Company Service Providers in the ordinary course of business consistent with past practice, (ii) grant or provide any severance or termination payments or benefits to any Company Service Provider other than the payment of severance amounts or benefits in the ordinary course of business consistent with past practice and subject to the execution and non-revocation of a release of claims in favor of the Company and its Subsidiaries, (iii) provide any obligation to gross-up, indemnify or otherwise reimburse any Company Service Provider for any Tax incurred by any such individual, including under Section 409A or 4999 of the Code, (iv) accelerate the time of payment or vesting of, or the lapsing of restrictions related to, or fund or otherwise secure the payment of, any compensation or benefits (including any equity or equity-based awards) to any Company Service Provider, or (v) establish, amend or terminate any Company Benefit Plan (or any plan, program, arrangement or agreement that would be a Company Benefit Plan if it were in existence on the

date hereof) other than (x) entry into, amendment or termination of any Company Benefit Plan in a manner that would not materially increase costs to the Company, Parent or the Surviving Corporation or any of their affiliates, or materially increase the benefits provided under any Company Benefit Plan or (y) new hire offer letters entered into in the ordinary course and consistent with past practices;

(f) except in the ordinary course of business and consistent with past practice (including with regard to aggregate grant date value, terms and allocation) or as may be required by the terms of a Company Benefit Plan in effect as of the date hereof, grant, confer or award any Company Equity Awards or other equity-based awards, convertible securities or any other rights to acquire any of its or its Subsidiaries' capital stock, whether settled in cash or shares of Company Common Stock;

(g) unless required by Law or pursuant to existing written Company Benefit Plans, (i) enter into or materially amend any collective bargaining or other labor agreement with any labor organization or (ii) recognize or certify any labor organization or group of employees as the bargaining representative for any employees of the Company or any of its Subsidiaries;

(i) (i) acquire (including by merger, consolidation, or acquisition of stock or assets), except in respect of any merger, consolidation, business combination among the Company and its wholly owned Subsidiaries or among the Company's wholly owned Subsidiaries, any corporation, partnership, limited liability company, other business organization or any division or material amount of assets thereof, or (ii) sell, lease, license, abandon or otherwise subject to a Lien other than a Permitted Lien or otherwise dispose of any material properties, rights or assets of the Company or its Subsidiaries other than (A) sales of inventory in the ordinary course of business, (B) licenses of Company Intellectual Property in the ordinary course of business, or (C) pursuant to agreements existing as of the date of this Agreement or entered into after the date of this Agreement in accordance with the terms of this Agreement;

(j) incur, or amend in any material respect the terms of, any indebtedness for borrowed money for any of its Subsidiaries, or assume or guarantee any such indebtedness for any Person (other than a Subsidiary), except for indebtedness incurred (i) under the Company's existing credit facilities or incurred to replace, renew, extend, refinance or refund any existing indebtedness of the Company or its Subsidiaries on terms and conditions not materially less favorable to the Company and its Subsidiaries than, taken as a whole, the terms or conditions of the replaced, renewed, extended, refinanced or refunded debt or otherwise are not inconsistent with prevailing market conditions for substantially similar indebtedness at such time, as determined by the Company in good faith, (ii) pursuant to other agreements in effect prior to the execution of this Agreement, (iii) under capital leases, purchase money financing, equipment financing and letters of credit in the ordinary course of business, (iv) between or among the Company and/or any of its Subsidiaries or (v) otherwise in the ordinary course of business;

(k) enter into, or amend in any material respect, any Company Material Contract with a term longer than one (1) year which cannot be terminated without material penalty upon notice of ninety (90) days or less other than (x) in the ordinary course of business or (y) which would not have a Company Material Adverse Effect;

(l) make any material change to its methods of accounting in effect at December 31, 2021, except (i) as required by GAAP (or any interpretation thereof), Regulation S-X or a Governmental Authority or quasi-Governmental Authority (including the Financial Accounting Standards Board or any similar organization), (ii) to permit the audit of the Company's financial statements in compliance with GAAP, (iii) as required by a change in applicable Law, (iv) as disclosed in the Company SEC Documents or (v) to the extent that such change would not have a Company Material Adverse Effect;

(m) make or change any Tax election or accounting method, settle or compromise any Tax claim or assessment, file any amended Tax Return, or consent to any extension or waiver of any limitation period with respect to any Tax claim or assessment, except, in each case, that would not have a Company Material Adverse Effect;

(n) solely with respect to the Company, adopt or enter into a plan of complete or partial liquidation or dissolution;

(o) settle or compromise any litigation other than (i) in the ordinary course of business or (ii) settlements or compromises of litigation where the amount paid (less the amount reserved for such matters by the Company or otherwise covered by insurance) in settlement or compromise, in each case, does not exceed $25 million;

(p) adopt a stockholder rights plan (or other similar agreement, plan or arrangement having a similar intent, purpose or effect) that would be triggered (or whose rights would be affected in any way) by the consummation of the transactions contemplated hereby, including the Merger; or

(q) except as otherwise permitted by clauses (a) through (p) above, enter into any agreement to do any of the foregoing.

Section 6.2 Preparation of the Proxy Statement; Company Stockholders' Meeting.

(a) As promptly as reasonably practicable after the date of this Agreement, (i) the Company shall prepare the Proxy Statement, (ii) Parent and Acquisition Sub shall furnish to the Company all information concerning themselves and their Affiliates that is required to be included in the Proxy Statement and shall promptly provide such other assistance in the preparation of the Proxy Statement as may be reasonably requested by the Company from time to time, and (iii) subject to the receipt from Parent and Acquisition Sub of the information described in clause (ii) above, the Company shall file the Proxy Statement with the SEC. The Company shall, as promptly as practicable after receipt thereof, provide Parent with copies of any written comments, and advise Parent of any oral comments, with respect to the Proxy Statement received from the SEC. The Company shall use its reasonable best efforts (with the assistance of, and after consultation with, Parent as provided by this Section 6.2(a)) to respond as promptly as reasonably practicable to any comments from the SEC with respect to the Proxy Statement. No filing or mailing of, or amendment or supplement to, the Proxy Statement will be made by the Company without providing Parent a reasonable opportunity to review and comment thereon (which comments shall be considered by the Company in good faith) (except as required by applicable Law or in connection with and an Adverse Board Recommendation Change.

(b) If, at any time prior to the Company Stockholders' Meeting, any information relating to Parent, Acquisition Sub or the Company, or any of their respective Affiliates, officers or directors, is discovered by Parent, Acquisition Sub or the Company that should be set forth in an amendment or supplement to the Proxy Statement so that the Proxy Statement shall not contain an untrue statement or omit to state any material fact required to be stated therein or necessary to make the statements therein (in light of the circumstances under which they were made) not misleading, the party that discovers such information shall promptly notify the other parties hereto, and, to the extent required by Law, an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and disseminated to the Company's stockholders in accordance with applicable Law.

(c) The Company shall, as promptly as practicable following the date on which the SEC confirms that it has no further comments on the Proxy Statement, (i) establish a record date, for and give notice of a meeting of its stockholders, for the purpose of voting upon the approval of the Merger, holding the Company Stockholder Advisory Vote and voting on customary matters of procedure (together with any postponement, adjournment or other delay thereof, the "**Company Stockholders' Meeting**"), (ii) cause the Proxy Statement to be mailed to the Company's stockholders as of the record date established for the Company Stockholders' Meeting and (iii) duly call, convene and hold the Company Stockholders' Meeting; provided that the Company may postpone or adjourn the Company Stockholders' Meeting (on one or more occasions) (A) with the consent of Parent and Acquisition Sub, (B) for the absence of a quorum, (C) to allow reasonable additional time for any supplemental or amended disclosure that the Company has determined in good faith is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Company's stockholders prior to the Company Stockholders' Meeting, (D) to allow additional solicitation of votes in order to obtain the Company Stockholder Approval or (E) if required by applicable Law. Subject to the right of the Company Board to make an Adverse Board Recommendation Change pursuant to Section 6.5, Company Board Recommendation include the Company Board Recommendation in the Proxy Statement, and, unless there has been an Adverse Board Recommendation Change pursuant to Section 6.5, the Company shall use commercially reasonable efforts to solicit proxies in favor of the Company Stockholder Approval at the Company Stockholders' Meeting.

(d) The Equity Investor, Parent and Acquisition Sub shall not sell or dispose any shares of Company Common Stock while this Agreement is in effect, and shall cause their controlled Affiliates to, cause Parent Owned Shares and all other shares of Company Common Stock beneficially as of the record date for the Company Stockholder Meeting owned by them to be (A) present at the Company Stockholder Meeting for quorum purposes; and (B) voted at the Company Stockholder Meeting in favor of the adoption of this Agreement.

Section 6.3 Efforts to Close; Regulatory Filings.

(a) Subject to the terms and conditions of this Agreement (including the limitations set forth in Section 6.5), the parties hereto will use their respective reasonable best efforts to consummate and make effective the transactions contemplated by this Agreement and to cause the conditions to the Merger set forth in Article VII to be satisfied, including using reasonable best efforts to accomplish the following: (i) the obtaining of all necessary actions or

non-actions, Consents and approvals from Governmental Authorities necessary in connection with the consummation of the transactions contemplated by this Agreement, including the Merger, and the making of all necessary registrations and filings (including filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to obtain an approval from, or to avoid an action or proceeding by, any Governmental Authority necessary in connection with the consummation of the transactions contemplated by this Agreement, including the Merger; (ii) the obtaining of all other necessary Consents, approvals or waivers from Third Parties; (iii) the defending of any lawsuits or other legal proceedings through the Termination Date, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated by this Agreement, including the Merger, performed or consummated by such party in accordance with the terms of this Agreement, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed; and (iv) the execution and delivery of any additional instruments reasonably necessary to consummate the Merger and any other transactions to be performed or consummated by such party in accordance with the terms of this Agreement and to carry out fully the purposes of this Agreement. Each of the parties hereto shall (x) promptly (and in no event later than ten (10) Business Days following the date that this Agreement is executed) make its respective filings under the HSR Act, and (y) as promptly as reasonably practicable, make any other applications and filings as are mutually agreed by Parent and the Company, acting reasonably, to be (i) material and (ii) required or advisable under any Antitrust Laws or Foreign Investment Laws with respect to the transactions contemplated by this Agreement, including the Merger. Notwithstanding anything in this Agreement to the contrary, except as expressly provided in Section 7.1(b) or Section 7.1(c), obtaining any Consent of any Third Party, approvals or waivers referenced in this Section 6.3(a) above or otherwise shall not be considered a condition to the obligations of Parent and Acquisition Sub to consummate the Merger.

(b) The Equity Investor, Parent and Acquisition Sub agree to take promptly any and all steps necessary to avoid or eliminate each and every impediment and obtain all Consents, actions, non-actions, approvals or waivers (or, as applicable, expiration or termination of the waiting periods with respect thereto) under any Antitrust Laws, Foreign Investment Laws (or, as applicable, expiration or termination of the waiting periods with respect thereto) or other Law that may be required by any foreign or U.S. federal, state or local Governmental Authority, in each case, with competent jurisdiction, so as to enable the parties to consummate the transactions contemplated by this Agreement, including the Merger, as promptly as practicable, but prior to the Termination Date, including committing to or effecting, by consent decree, hold separate orders, trust, or otherwise, (i) the sale or other disposition of such assets or businesses as are required to be divested or (ii) the acceptance of restrictions on freedom of action, conduct, or operations with respect to the business of Company, in the case of the foregoing clauses (i) or (ii) in order to avoid the entry of, or to effect the dissolution of or vacate or lift, any Order, that would otherwise have the effect of preventing or materially delaying the consummation of the Merger and the other transactions contemplated by this Agreement as promptly as practicable. Further, the Equity Investor, Parent and Acquisition Sub will take such actions as are necessary in order to ensure that (x) no requirement for any non-action by, or Consent or approval of, any foreign or U.S. federal, state or local Governmental Authority, (y) no decree, judgment, injunction, temporary restraining order or any other Order in any suit or proceeding and (z) no other matter relating to any Antitrust Laws or Foreign Investment Laws, would preclude consummation of the Merger by the Termination Date. Notwithstanding the foregoing, nothing in Section 6.3(a), Section 6.3(b)

(including with respect to the foregoing clauses (i) and (ii)), or any other part of this Agreement shall require or obligate Parent, Acquisition Sub, or any of their respective Affiliates to (xx) propose, take, or agree to take any actions that would individually or in the aggregate have a material adverse effect on the business, assets, or financial condition of the Company and its Subsidiaries, taken as a whole or (yy) propose, negotiate, effect or agree to, the sale, divestiture, lease, license, hold separate, transfer, or disposition of, or any restriction on the freedom of action with respect to, any assets, business, or equity holdings of, or held or controlled directly or indirectly by, Equity Investor or any Affiliate of Parent (other than Parent, Acquisition Sub or Company after giving effect to the Merger and subject to the restrictions in subpart (xx) of this paragraph).

(c) Each of the parties hereto will furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with the preparation of any required governmental filings or submissions and will cooperate in responding to any inquiry from a Governmental Authority, including (i) promptly informing the other party of such inquiry, (ii) consulting in advance before making any presentations or submissions to a Governmental Authority, (iii) cooperating in the filing of any analyses, presentations, memoranda, briefs, arguments, opinions or other written communications explaining or defending the Merger, articulating any regulatory or competitive argument or responding to requests or objections made by any Governmental Authority, (iv) providing each other with a reasonable advance opportunity to review and comment upon, and consider in good faith the views of the other with respect to, all material written communications (including applications, analyses, presentations, memoranda, briefs, arguments and opinions) with a Governmental Authority regarding the Merger or any other transactions, (v) giving the other party the opportunity to attend and participate in any substantive meetings or discussions with any Governmental Authority, to the extent reasonably practical and not prohibited by such Governmental Authority, and (vi) supplying each other with copies of all material correspondence, or communications between any party and any Governmental Authority with respect to this Agreement (provided that such materials may be limited to counsel as required or advisable under applicable Law and may be redacted to remove valuation material). The parties agree that Parent shall control the strategy for all filings, notifications, submissions, and communications, proposals and litigation in connection with any filing, notice, petition, statement, registration, submission of information, application or similar filing under the Antitrust Laws after consulting with, and considering in good faith the view of the Company relating to such strategy.

Section 6.4 Access to Information; Confidentiality. Upon reasonable notice, the Company shall (and shall cause each of its Subsidiaries to) afford to the representatives, officers, directors, employees, agents, attorneys, accountants and financial advisors ("**Representatives**") of Parent reasonable access (at Parent's sole cost and expense), in a manner not disruptive in any material respect to the operations of the business of the Company and its Subsidiaries, during normal business hours and upon reasonable written notice throughout the period commencing on the date of this Agreement until the earlier of the Effective Time and the termination of this Agreement pursuant to Article VIII, to the properties, books and records of the Company and its Subsidiaries and, during such period, shall (and shall cause each of its Subsidiaries to) furnish promptly to such Representatives all information concerning the business, properties and personnel of the Company and its Subsidiaries as may reasonably be requested in writing, in each case, for any reasonable business purpose related to the consummation of the transactions contemplated by this Agreement; provided, however, that nothing

herein shall require the Company or any of its Subsidiaries to disclose any information to Parent or Acquisition Sub if such disclosure would, in the reasonable judgment of the Company, (i) cause significant competitive harm to the Company or its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (ii) violate applicable Law or the provisions of any agreement to which the Company or any of its Subsidiaries is a party, or (iii) jeopardize any attorney-client or other legal privilege. No investigation or access permitted pursuant to this Section 6.4 shall affect or be deemed to modify any representation or warranty made by the Company hereunder. Each of Parent and Acquisition Sub agrees that it will not, and will cause its Representatives not to, use any information obtained pursuant to this Section 6.4 (or otherwise pursuant to this Agreement) for any competitive or other purpose unrelated to the consummation of the transactions contemplated by this Agreement. Parent will use its reasonable best efforts to minimize any disruption to the respective business of the Company and its Subsidiaries that may result from requests for access under this Section 6.4 and, notwithstanding anything to the contrary herein, the Company may satisfy its obligations set forth above by electronic means if physical access is not reasonably feasible or would not be permitted under applicable Law as a result of COVID-19 or any COVID-19 Measures. Prior to any disclosure, the Company and Parent shall enter into a customary confidentiality agreement with respect to any information obtained pursuant to this Section 6.4 (or otherwise pursuant to this Agreement).

Section 6.5 Non-Solicitation; Competing Proposals.

(a) From the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, the Company shall, and shall cause each of its directors, executive officers and Subsidiaries to, and shall instruct its other Representatives to, immediately cease and cause to be terminated any existing solicitation of, or discussions or negotiations with, any Third Party relating to any Competing Proposal, and the Company further agrees that it shall promptly request that all non-public information previously provided in the past twelve (12) months by or on behalf of the Company or any of its Subsidiaries to any Persons that might reasonably be expected to consider making a Competing Proposal be promptly returned or destroyed in accordance with the terms of the applicable confidentiality agreement. Except as otherwise provided in this Section 6.5, from the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, the Company shall not, shall cause each of its directors, executive officers and Subsidiaries not to, and shall instruct its other Representatives not to, (i) solicit, initiate, knowingly encourage or knowingly facilitate, whether publicly or otherwise, any substantive discussion, offer or request that constitutes, or would reasonably be expected to lead to, a Competing Proposal and (ii) engage in negotiations or substantive discussions with (it being understood that the Company may inform Persons of the provisions contained in this Section 6.5), or furnish any material non-public information to, any Person relating to a Competing Proposal or any inquiry or proposal that would reasonably be expected to lead to a Competing Proposal; provided that, notwithstanding the foregoing, the Company shall be permitted to grant a waiver of or terminate any "standstill" or similar obligation of any Person with respect to the Company or any of its Subsidiaries to allow such Person to submit a Competing Proposal.

(b) From the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, as promptly as reasonably practicable, and in any event within one (1) Business Day of receipt by the Company or any of its directors, executive officers or Subsidiaries of any Competing Proposal or any request that would reasonably be expected to lead to the making of a Competing Proposal, the Company shall deliver to Parent a written notice setting forth: (i) the identity of the Person making such Competing Proposal or request; and (ii) the material terms and conditions of any such Competing Proposal. The Company shall keep Parent reasonably informed of any material amendment or other modification of any such Competing Proposal or request on a prompt basis, and in any event within two (2) Business Days following the Company's receipt in writing of such an amendment or modification.

(c) Notwithstanding anything to the contrary in this Agreement, at any time prior to obtaining the Company Stockholder Approval, in the event that the Company receives a Competing Proposal from any Person or group of Persons, (i) the Company and its Representatives may contact such Person to clarify the terms and conditions thereof and (ii) the Company, the Company Board and their respective Representatives may engage in negotiations or discussions with, or furnish any information and other access to, any Person or group of Persons making such Competing Proposal and any of its Representatives or potential sources of financing if the Company Board determines in good faith (after consultation with its legal counsel and financial advisors) that such Competing Proposal either constitutes a Superior Proposal or would reasonably be expected to result in a Superior Proposal; provided that (x) prior to furnishing any material non-public information concerning the Company or its Subsidiaries, the Company receives from such Person or group, to the extent that such Person or group is not already subject to a confidentiality agreement with the Company, an executed confidentiality agreement containing customary confidentiality terms, it being understood that such confidentiality agreement need not contain a standstill provision or otherwise restrict the making, or amendment, of a Competing Proposal (and related communications) to the Company or the Company Board (such confidentiality agreement, an "**Acceptable Confidentiality Agreement**") and (y) any such material non-public information so furnished in writing shall be promptly made available to Parent to the extent that it was not previously made available to Parent or its Representatives. For the avoidance of doubt, none of (A) the determination, in itself with no further action, by the Company Board that a Competing Proposal either constitutes a Superior Proposal or would reasonably be expected to result in a Superior Proposal or (B) the public disclosure, in itself, of such determination will constitute an Adverse Board Recommendation Change or violate this Section 6.5.

(d) Except as otherwise provided in this Agreement, the Company Board shall not (i) (A) publicly recommend that the Company's stockholders vote against the adoption of this Agreement and the approval of the transactions contemplated by this Agreement, including the Merger, or make any public statement or knowingly take any action with a similar intent, purpose or effect, or (B) approve or recommend, or propose publicly to approve or recommend, to the Company's stockholders any Competing Proposal (any action described in this clause (i) being referred to as an "**Adverse Board Recommendation Change**"), or (ii) approve or recommend, or allow the Company or any of its Subsidiaries to execute or enter into, any letter of intent, memorandum of understanding or definitive merger or similar agreement with respect to any Competing Proposal (other than an Acceptable Confidentiality Agreement). Notwithstanding anything in this Agreement to the contrary, at any time prior to receipt of the Company Stockholder

Approval, the Company Board may (i) make an Adverse Board Recommendation Change in response to an event, occurrence, change, effect, condition, development or state of facts or circumstances (other than related to a Competing Proposal or Superior Proposal, or any proposal that constitutes or would reasonably be expected to lead to a Competing Proposal or Superior Proposal) that was neither known to, nor reasonably foreseeable by, the Company Board as of the date of this Agreement (or, if known, the consequences of which were not known or reasonably foreseeable to the Company Board as of the date of this Agreement) (an "**Intervening Event**") (where, for the avoidance of doubt, (x) the fact, in itself, that the Company meets or exceeds projections, forecasts or estimates (it being understood that the underlying causes of (or contributors to) such performance that are not otherwise excluded from the definition of Intervening Event may be taken into account) and (y) changes, in themselves, in the price of the Company Common Stock or the trading volume thereof shall be considered known and reasonably foreseeable occurrences (it being understood that the underlying causes of (or contributors to) such changes in price or trading volume that are not otherwise excluded from the definition of Intervening Event may be taken into account)) if the Company Board has determined in good faith (after consultation with its legal counsel and financial advisors) that the failure to take such action would reasonably be expected to be inconsistent with the Company's directors' fiduciary duties under applicable Law; or (ii) (x) make an Adverse Board Recommendation Change if the Company has received a Competing Proposal that the Company Board has determined in good faith (after consultation with its legal counsel and financial advisors) constitutes a Superior Proposal, and (y) authorize, adopt or approve such Superior Proposal and cause or permit the Company to enter into a definitive agreement with respect to such Superior Proposal substantially concurrently with the termination of this Agreement pursuant to Section 8.1(c)(ii); provided, however, that (1) no Adverse Board Recommendation Change may be made and no termination of this Agreement pursuant to this Section 6.5(d) and Section 8.1(c)(ii) may be effected, in each case, until the end of the fourth (4^{th}) full Business Day following Parent's receipt of a written notice from the Company advising Parent that the Company Board intends to make an Adverse Board Recommendation Change (a "**Notice of Adverse Board Recommendation Change**") or terminate this Agreement pursuant to this Section 6.5(d) and Section 8.1(c)(ii) (a "**Notice of Superior Proposal**"); and (2) during such period, if requested by Parent, the Company and its Representatives shall negotiate with Parent and its Representatives in good faith (to the extent Parent so desires to negotiate) to make adjustments to the terms and conditions of this Agreement so that either the failure to make an Adverse Board Recommendation Change in response to such Intervening Event would no longer reasonably be expected to be inconsistent with the Company's directors' fiduciary duties under applicable Law or such Competing Proposal would cease to constitute a Superior Proposal, as appropriate, and (3) in determining whether to make such Adverse Board Recommendation Change or terminate this Agreement pursuant to this Section 6.5(d) and Section 8.1(c)(ii), the Company Board shall take into account any changes to the terms of this Agreement timely proposed by Parent in response to a Notice of Adverse Recommendation or a Notice of Superior Proposal (as may be extended). Any material amendment to the financial terms or any other material amendment of such Superior Proposal shall require a new Notice of Superior Proposal and the Company shall be required to comply again with the requirements of this Section 6.5(d) with respect to such new Superior Proposal; provided that the new notice period shall be three (3) Business Days. For the avoidance of doubt, none of (A) the delivery, in itself, of a Notice of Adverse Board Recommendation or a Notice of Superior Proposal or (B) the public

disclosure, in itself, of such delivery will constitute an Adverse Board Recommendation Change or violate this Section 6.5.

(f) Nothing in this Agreement shall restrict the Company or the Company Board from taking or disclosing a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act, or otherwise making disclosure to comply with applicable Law (it being agreed that a "stop, look and listen" communication by the Company Board to the Company's stockholders pursuant to Rule 14d-9(f) under the Exchange Act or a factually accurate public statement by the Company that describes the Company's receipt of a Competing Proposal and the operation of this Agreement with respect thereto shall not be deemed to be an Adverse Board Recommendation Change or give rise to a Parent termination right pursuant to Section 8.1(d)(ii)). For the avoidance of doubt, a factually accurate public statement by the Company or the Company Board (or a committee thereof) that (A) describes the Company's receipt of a Competing Proposal; (B) identifies the Person or group of Persons making such Competing Proposal; (C) provides the material terms of such Competing Proposal; or (D) describes the operation of this Agreement with respect thereto will not, in any case, be deemed to be (1) an adoption, approval or recommendation with respect to such Competing Proposal; or (2) an Adverse Board Recommendation Change.

(g) For purposes of this Agreement:

(i) "**Competing Proposal**" shall mean any proposal or offer made by any Person (other than Parent, Acquisition Sub or any Affiliate thereof) or group (as defined in Section 13(d)(3) of the Exchange Act) of Persons (i) to purchase or otherwise acquire, directly or indirectly, in one transaction or a series of transactions, (A) beneficial ownership (as defined under Section 13(d) of the Exchange Act) of fifteen percent (15%) or more of any class of equity securities of the Company pursuant to a merger, consolidation or other business combination, sale of shares of capital stock, tender offer, exchange offer or similar transaction; or (B) any one or more assets or businesses of the Company and its Subsidiaries that constitute fifteen percent (15%) or more of the revenues or assets of the Company and its Subsidiaries, taken as a whole; (ii) with respect to the issuance, sale or other disposition, directly or indirectly, to any Person (other than Parent, Acquisition Sub or any Affiliate thereof) or group (as defined in Section 13(d)(3) of the Exchange Act) of Persons of securities (or options, rights, or warrants to purchase, or securities convertible into or exchangeable for, such securities) representing fifteen percent (15%) or more of the voting power of the Company; or (z) with respect to any merger, consolidation, business combination, recapitalization, reorganization or other transaction involving the Company or its Subsidiaries pursuant to which any Person (as defined in Section 13(d)(3) of the Exchange Act) or group of Persons would have beneficial ownership (as defined pursuant to Section 13(d)(3) of the Exchange Act) of securities representing fifteen percent (15%) or more of the total outstanding equity securities of the Company after giving effect to the consummation of such transaction.

(iii) "**Superior Proposal**" shall mean a Competing Proposal (with all percentages in the definition of Competing Proposal increased to ninety percent (90%)) made by a Third Party on terms that the Company Board determines in good faith (after consultation with its legal counsel and financial advisors) and considering such factors as the Company Board considers to be appropriate, are more favorable to the Company's

stockholders than the transactions contemplated by this Agreement (including any changes to the terms of this Agreement committed to by Parent to the Company in writing in response to such Competing Proposal under the provisions of Section 6.5(d)).

Section 6.6 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Acquisition Sub agree that all rights to exculpation and indemnification for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), now existing in favor of the current or former directors, officers and employees, if any (the foregoing persons, the "**D&O Indemnified Parties**"), as the case may be, of the Company or its Subsidiaries as provided in their respective organizational documents as in effect on the date of this Agreement or in any Contract shall survive the Merger and shall continue in full force and effect. The Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) indemnify, defend and hold harmless, and advance expenses to D&O Indemnified Parties with respect to all acts or omissions by them in their capacities as such at any time prior to the Effective Time (including any matters arising in connection with this Agreement or the transactions contemplated by this Agreement), to the fullest extent that the Company or its Subsidiaries would be permitted by applicable Law and to the fullest extent required by the organizational documents of the Company or its Subsidiaries as in effect on the date of this Agreement. Parent shall cause the certificate of incorporation, bylaws or other organizational documents of the Surviving Corporation and its Subsidiaries to contain provisions with respect to exculpation, indemnification, advancement of expenses and limitation of director, officer and employee liability that are no less favorable to the D&O Indemnified Parties than those set forth in the Company's and its Subsidiaries' organizational documents as of the date of this Agreement, which provisions thereafter shall not, for a period of six (6) years from the Effective Time, be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of the D&O Indemnified Parties.

(b) Without limiting the provisions of Section 6.6(a), to the fullest extent that the Company would be permitted by applicable Law to do so, Parent shall or shall cause the Surviving Corporation to: (i) indemnify and hold harmless each D&O Indemnified Party against and from any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, to the extent such claim, action, suit, proceeding or investigation arises out of or pertains to: (A) any alleged action or omission in such D&O Indemnified Party's capacity as a director, officer or employee of the Company or any of its Subsidiaries prior to the Effective Time; or (B) this Agreement or the transactions contemplated by this Agreement and (ii) pay in advance of the final disposition of any such claim, action, suit, proceeding or investigation the expenses (including reasonable attorneys' fees) of any D&O Indemnified Party upon confirmation by the D&O Indemnified Party of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification applicable to him or her and a customary written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed if it is ultimately determined that the standard of conduct for indemnification was not met. Any determination required to be made with respect to whether the conduct of any D&O Indemnified Party complies or complied with any applicable standard shall be made by independent legal counsel selected by

the D&O Indemnified Party, which counsel shall be reasonably acceptable to the Surviving Corporation, and the fees of such counsel shall be paid by the Surviving Corporation. Notwithstanding anything to the contrary contained in this Section 6.6(b) or elsewhere in this Agreement, Parent shall not (and Parent shall cause the Surviving Corporation not to) settle or compromise or consent to the entry of any judgment or otherwise seek termination with respect to any claim, action, suit, proceeding or investigation, unless such settlement, compromise, consent or termination includes an unconditional release of all of the D&O Indemnified Parties covered by the claim, action, suit, proceeding or investigation from all liability arising out of such claim, action, suit, proceeding or investigation.

(c) Unless the Company shall have purchased a "tail" policy prior to the Effective Time as provided below, for at least six (6) years after the Effective Time, (i) Parent shall cause the Surviving Corporation and its other Subsidiaries to maintain in full force and effect the coverage provided by the existing directors' and officers' liability insurance and fiduciary insurance in effect as of the date of this Agreement and maintained by the Company or any of its Subsidiaries, as applicable (the "**Existing D&O Insurance Policies**"), or provide substitute policies for the Company and its current and former directors and officers who are currently covered by such Existing D&O Insurance Policies, in either case, on terms and conditions no less advantageous to the D&O Indemnified Parties, or any other Person entitled to the benefit of this Section 6.6, as applicable, than the Existing D&O Insurance Policies, covering claims arising from facts, events, acts or omissions that occurred at or prior to the Effective Time, including the transactions contemplated by this Agreement (provided that Parent or the Surviving Corporation, as applicable, shall not be required to pay an annual premium for such insurance in excess of three hundred percent (300%) of the aggregate annual premiums currently paid by the Company or any of its Subsidiaries, as applicable, on an annualized basis, but in such case shall purchase as much of such coverage as possible for such amount) and (ii) Parent shall not, and shall not permit the Surviving Corporation or its other Subsidiaries to, take any action that would prejudice the rights of, or otherwise impede recovery by, the beneficiaries of any such insurance, whether in respect of claims arising before or after the Effective Time. In lieu of such insurance, prior to the Effective Time, the Company may purchase a six (6) year "tail" prepaid policy on such terms and conditions (provided that the premium for such insurance shall not exceed three hundred percent (300%) of the aggregate annual premiums currently paid by the Company or any of its Subsidiaries, as applicable, on an annualized basis), in which event Parent shall cease to have any obligations under the first sentence of this Section 6.6(c).

(d) In the event that Parent, the Surviving Corporation, any of the Company's Subsidiaries or any of their successors or assigns shall (i) consolidate with or merge into any other Person and shall not be the continuing or surviving company or entity of such consolidation or merger or (ii) transfer all or substantially all its properties and assets to any Person, then, and in each such case, Parent shall cause proper provision to be made so that the successor and assign of Parent, the Surviving Corporation or any such Subsidiary assumes the obligations set forth in this Section 6.6.

(e) The D&O Indemnified Parties to whom this Section 6.6 applies shall be third-party beneficiaries of this Section 6.6. The provisions of this Section 6.6 are intended to be for the benefit of each D&O Indemnified Party and his or her successors, heirs or representatives. The Surviving Corporation shall pay all reasonable expenses, including reasonable attorneys' fees,

that may be incurred by any D&O Indemnified Party in enforcing its indemnity and other rights under this Section 6.6. The rights of each D&O Indemnified Party hereunder shall be in addition to, and not in limitation of, any other applicable rights such D&O Indemnified Party may have under the respective organizational documents of the Company or any of its Subsidiaries or the Surviving Corporation, any other indemnification arrangement, the DGCL or otherwise. Notwithstanding any other provision of this Agreement, this Section 6.6 shall survive the consummation of the Merger indefinitely (or any earlier period actually specified in this Section 6.6) and shall be binding, jointly and severally, on all successors and assigns of Parent and the Surviving Corporation, and shall be enforceable by the D&O Indemnified Parties and their successors, heirs or representatives.

(f) Nothing in this Agreement is intended to, or will be construed to, release, waive or impair any rights to directors' and officers' insurance claims pursuant to any applicable insurance policy or indemnification agreement that is or has been in existence with respect to the Company or any of its Subsidiaries for any of their respective directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 6.6 is not prior to or in substitution for any such claims pursuant to such policies or agreements. Following the Effective Time, the obligations of Parent and the Surviving Corporation under this Section 6.6 shall not be terminated or modified in any manner adverse to the rights of any D&O Indemnified Party without the consent of such affected D&O Indemnified Party.

Section 6.7 Notification of Certain Matters. From and after the date of this Agreement until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, the Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (a) any notice or other communication received by such party from any Governmental Authority in connection with this Agreement, the Merger or the other transactions contemplated by this Agreement, or from any Person alleging that the consent of such Person is or may be required in connection with the Merger or the other transactions contemplated by this Agreement, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the Surviving Corporation or Parent, and (b) any actions, suits, claims, investigations or proceedings commenced or, to such party's Knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to this Agreement, the Merger or the other transactions contemplated by this Agreement. The parties agree and acknowledge the Company's, on the one hand, and Parent's, on the other hand, compliance or failure of compliance with this Section 6.7 shall not be taken into account for purposes of determining whether the condition referred to in Section 7.2(a) or Section 7.3(a), respectively, shall have been satisfied with respect to performance in all material respects with this Section 6.7.

Section 6.8 Public Announcements. Except as otherwise contemplated by Section 6.5, so long as this Agreement is in effect, the Company, Parent and Acquisition Sub shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated by this Agreement, and none of the parties hereto or their Affiliates shall issue any such press release or make any public statement prior to obtaining the other parties' consent (which consent shall not be unreasonably withheld or delayed), except that no such consent shall be necessary to the extent disclosure may be required by Law, Order or applicable stock exchange rule or any listing agreement to which any party hereto is

subject, in which case the party required to make such disclosure shall use its reasonable best efforts to allow, to the extent legally permitted, each other party reasonable time to comment on such disclosure in advance of its issuance, or is consistent with prior communications previously consented to by the other parties. In addition, the Company may, without Parent or Acquisition Sub's consent, communicate to its employees, customers, suppliers and consultants; provided that such communication is consistent with prior communications of the Company or any communications plan previously agreed to by Parent and the Company, in which case such communications may be made consistent with such plan. Notwithstanding the foregoing, the restrictions set forth in this Section 6.8 shall not apply in connection with any Adverse Board Recommendation Change or dispute between the parties regarding this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, the Equity Investor shall be permitted to issue Tweets about the Merger or the transactions contemplated hereby so long as such Tweets do not disparage the Company or any of its Representatives.

Section 6.9 Employee Benefits.

(a) Continuing Employee Benefits. Employees of the Company or its Subsidiaries immediately prior to the Effective Time who remain employees of Parent, the Surviving Corporation or any of their Affiliates following the Effective Time are hereinafter referred to as the "**Continuing Employees**." For the period commencing at the Effective Time and ending on the one-year anniversary of the Effective Time (the "**Continuation Period**"), Parent shall, or shall cause the Surviving Corporation or any of their Affiliates to, provide for each Continuing Employee (i) at least the same base salary and wage rate, (ii) short- and long-term target incentive compensation opportunities that are no less favorable in the aggregate than those provided to each such Continuing Employee immediately prior to the Effective Time (provided that Parent shall not be obligated to provide such incentives in the form of equity or equity-based awards) and (iii) employee benefits (excluding equity and equity-based awards) which are substantially comparable in the aggregate (including with respect to the proportion of employee cost) to those provided to such Continuing Employee immediately prior to the Effective Time. Without limiting the generality of the foregoing, during the Continuation Period, Parent shall provide, or shall cause the Surviving Corporation or any of their Affiliates to provide severance payments and benefits to each Continuing Employee whose employment is terminated during such period that are no less favorable than those applicable to the Continuing Employee immediately prior to the Effective Time under the Company Benefit Plans.

(b) Parent agrees that the Surviving Corporation shall cause the Surviving Corporation's employee benefit plans established following the Closing Date (if any) and any other employee benefit plans covering the Continuing Employees following the Effective Time (collectively, the "**Post-Closing Plans**"), to recognize the service of each Continuing Employee (to the extent such service was recognized by the Company) for purposes of eligibility, vesting and determination of the level of benefits (but not for benefit accrual purposes under a defined benefit pension plan) under the Post-Closing Plans, to the extent such recognition does not result in the duplication of any benefits.

(c) For the calendar year including the Effective Time, the Continuing Employees shall not be required to satisfy any deductible, co-payment, out-of-pocket maximum or similar requirements under the Post-Closing Plans that provide medical, dental and other

welfare benefits (collectively, the "**Post-Closing Welfare Plans**") to the extent amounts were previously credited for such purposes under comparable Company Benefit Plans that provide medical, dental and other welfare benefits.

(d) As of the Effective Time, any waiting periods, pre-existing condition exclusions and requirements to show evidence of good health contained in such Post-Closing Welfare Plans shall be waived with respect to the Continuing Employees (except to the extent any such waiting period, pre-existing condition exclusion or requirement to show evidence of good health was already in effect with respect to such employees and has not been satisfied under the applicable Company Benefit Plan in which the participant then participates or is otherwise eligible to participate as of immediately prior to the Effective Time).

(e) Nothing contained in this Section 6.9, expressed or implied, shall (i) be treated as the establishment, amendment or modification of any Company Benefit Plan, Post-Closing Plan or other employee benefit plan or constitute a limitation on rights to amend, modify, merge or terminate after the Effective Time any Company Benefit Plan, Post-Closing Plan or other employee benefit plan, (ii) give any Company Service Provider (including any beneficiary or dependent thereof) or other Person any third-party beneficiary or other rights or (iii) obligate Parent or any of its Affiliates to (A) maintain any particular Company Benefit Plan, Post-Closing Plan or (B) retain the employment or services of any Company Service Provider.

Section 6.10 Financing.

(a) Each of the Equity Investor, Parent and Acquisition Sub shall take or cause to be taken, and shall cause their respective Affiliates and its and their respective Representatives to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange, obtain and consummate the Financing at or prior to the Closing on the terms and subject to the conditions set forth in the Financing Commitments (including any "flex" provisions), including executing and delivering all such documents and instruments as may be reasonably required thereunder and:

(i) complying with and maintaining in full force and effect the Financing and the Financing Commitments (and, once entered into, the Financing Agreements) in accordance with the terms and conditions thereof and negotiating and entering into definitive financing agreements with respect to the Debt Financing on the terms and conditions set forth in the Debt Commitment Letters (including any "flex" provisions) and containing no (I) conditions to the consummation of all or any portion of the Debt Financing other than the conditions set forth in Exhibit E to the Bank Debt Commitment Letter or Exhibit B to the Margin Loan Commitment Letter, as the case may be, in each case, as in effect on the date hereof, or (II) provisions that could reasonably be expected to prevent, impede, delay or adversely affect the availability of any of the Debt Financing or the consummation of the Merger and the other transactions contemplated by this Agreement (such definitive agreements, the "**Financing Agreements**") so that the Financing Agreements are in full force and effect no later than the Closing;

(ii) satisfying, or obtaining the waiver of, as promptly as practicable and on a timely basis (and in any event, no later than the Closing) all conditions to the Debt

Financing contemplated by the Debt Commitment Letters and Financing Agreements that are within its or their control, including, without limitation:

(A) on or prior to the Closing Date, transferring Tesla Shares to the Margin Loan Borrower and causing the Margin Loan Borrower to credit to collateral accounts pledged to the applicable Debt Financing Sources in respect of the Margin Loan Financing and held through the facilities of DTC, in each case, sufficient Tesla Shares, which shall be free from all transfer restrictions and restrictive conditions (other than permitted restrictions contemplated under the Financing Documents in respect of the Margin Loan Financing), to cause the LTV Ratio (as defined in the Margin Loan Commitment Letter) not to exceed 20% as of the Closing Date;

(B) ensuring the absence of (1) any default or event of default (or any equivalent term) under the Financing Agreements in respect of the Margin Loan Financing, or (2) any Potential Adjustment Event or Mandatory Prepayment Event (in each case, under and as defined in the Margin Loan Commitment Letter);

(C) (x) maintaining the Margin Loan Borrower as a wholly owned subsidiary of Parent and Elon Musk, and (y) causing the organizational documents of the Margin Loan Borrower not to contain, and causing the Margin Loan Borrower not to enter into any Contract, that would (1) impede or prevent the Margin Loan Borrower or any of its Affiliates from enforcing or the Margin Loan Borrower's rights in respect of the Debt Financing Sources under the Margin Loan Commitment Letter or any Financing Agreement in respect thereof or (2) impede or prevent the Margin Loan Borrower or any of its Affiliates from applying the proceeds of the loans to pay any Funding Obligations; and

(D) causing Elon Musk to (1) fully and unconditionally guarantee all obligations of the Margin Loan Borrower under the Margin Loan Financing to the extent required to consummate the Margin Loan Financing and (2) at all times through and including the Closing Date to own (beneficially and of record), directly or indirectly, all of the outstanding equity interests of, and Control, the Margin Loan Borrower;

(iii) accepting (and complying with) to the fullest extent all "flex" provisions contemplated by the Debt Commitment Letters;

(iv) causing the Financing Sources to fund the Financing no later than the Closing (including by enforcing its rights under the Debt Commitment Letters and/or Financing Agreements, as applicable).

(b) None of the Equity Investor, Parent, Acquisition Sub or the Margin Loan Borrower or any of their respective Affiliates shall agree to or permit any amendment, supplement, modification or replacement of, or grant any waiver of, any condition, remedy or other provision under any Financing Commitment or Financing Agreement, or permit any Financing Agreement to contain any provision, without the prior written consent of the Company, if such amendment, supplement, modification, replacement, waiver or provision would or would reasonably be expected to (i) reduce (or would reasonably be expected to

have the effect of reducing) the aggregate amount of the Financing (or the cash proceeds available therefrom) from that contemplated by the Financing Commitments delivered as of the date hereof, (ii) impose new or additional conditions or contingencies to the Financing or otherwise expand, amend or modify any of the existing conditions to the receipt of the Financing, or otherwise add, expand, amend or modify any other provision of, or remedies under, the Financing Commitments as in effect on the date hereof, in a manner that would reasonably be expected to delay, impede or prevent the consummation or funding of the Financing (or satisfaction of the conditions to obtaining any portion of the Financing) at the Closing or impair the ability or likelihood of the Closing or impair the ability of Parent and/or Acquisition Sub to timely consummate the Merger and the other transactions contemplated by this Agreement, (iii) make it less likely that any portion of the Financing would be funded (including by making the satisfaction of the conditions to obtaining any portion of the Financing less likely to occur) or otherwise prevent, impede or delay or impair the availability of any of the Financing or impair the ability or likelihood of the Closing or Parent and/or Acquisition Sub to timely consummate the transactions contemplated by this Agreement (including by requiring any additional filings, consents or approvals of any Governmental Authority) or (iv) adversely impact the ability of Parent, Acquisition Sub or the Margin Loan Borrower, or any of their respective Affiliates, to enforce their respective rights against the other parties to the Financing Commitments or the Financing Agreements; provided, however, subject to compliance with the other provisions of this Section 6.10, Parent, Acquisition Sub or their respective Affiliates may amend, modify, supplement or waive any provision of any Debt Commitment Letter (A) to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed such Debt Commitment Letter as of the date hereof or (B) amend any Debt Commitment Letters to implement any "market flex" provisions applicable thereto. The Equity Investor, Parent, Acquisition Sub, the Margin Loan Borrower and their respective Affiliates shall not agree to the withdrawal, termination, repudiation or rescission of any Financing Commitment without the prior written consent of the Company, and shall not release or consent to the termination of the commitments or obligations of any Debt Financing Source under any Debt Commitment Letter, in each case, unless such Financing Commitment is contemporaneously replaced with a new Financing Commitment that complies with the first sentence of this Section 6.10(b). Upon any permitted amendment, supplement, modification or replacement of, or waiver of, any Financing Commitment in accordance with this Section 6.10(b), Parent shall promptly deliver to the Company a true, correct and complete copy of each Financing Agreement and each amendment, supplement, modification, replacement or waiver to any Financing Commitment or any Financing Agreement and references herein to "Financing Commitments", "Bank Debt Commitment Letter", "Margin Loan Commitment Letter", "Debt Commitment Letters", "Equity Commitment Letter" and "Financing Agreements" shall include and mean such documents as amended, supplemented, modified, replaced or waived in compliance with this Section 6.10(b), as applicable, and references to "Financing", "Bank Debt Financing", "Margin Loan Financing" and "Equity Financing" shall include and mean the financing contemplated by the Financing Commitments or Financing Agreements as amended, supplemented, modified, replaced or waived in compliance with this Section 6.10(b), as applicable.

(c) In the event that (x) all or any portion of the Debt Financing expires, terminates, becomes or could reasonably be expected to become unavailable on the terms and conditions (including any "flex" provisions) or from the sources contemplated in the applicable Debt Commitment Letters or (y) any of the Debt Commitment Letters or the Financing Agreements shall be withdrawn, terminated, repudiated or rescinded, in whole or in part, for any reason, (i) Parent shall promptly so notify the Company in writing and (ii) Parent and/or its Affiliates shall use their respective reasonable best efforts to arrange and obtain, as promptly as practicable following the occurrence of such event (and in any event no later than the Closing), and to negotiate and enter into definitive agreements with respect to, alternative financing from the same or alternative sources with terms and conditions (including market flex provisions) not less favorable taken as a whole to Parent than the terms and conditions set forth in the applicable Debt Commitment Letter and which shall not include any conditions or contingencies to the Financing not otherwise included in the Debt Commitment Letters as of the date hereof or include any provision that would reasonably be expected to materially delay or prevent the consummation or funding of the Financing (or satisfaction of the conditions to obtaining any portion of the Financing) at the Closing or materially impair the ability or likelihood of the Closing or Parent and/or Acquisition Sub to timely consummate the Merger and the other transactions contemplated by this Agreement (the "**Alternative Financing**") in an amount sufficient to consummate the transactions contemplated by this Agreement (or replace any unavailable portion of the Debt Financing). In the event any Alternative Financing is obtained and any new debt commitment letters are entered into in accordance with this Section 6.10(c) (each such letter, an "**Alternative Financing Debt Commitment Letter**"), Parent shall promptly deliver a copy thereof to the Company (it being understood that any fee letters related thereto may be redacted in the same manner as the fee letters delivered on or prior to the date of this Agreement) and references herein to (A) "Financing Commitments" and "Debt Commitment Letters" shall be deemed to include any Alternative Financing Debt Commitment Letter to the extent then in effect, and (B) "Financing", "Bank Debt Financing", "Margin Loan Financing" or "Debt Financing" shall include the debt financing contemplated by such Alternative Financing Debt Commitment Letter. Parent, Acquisition Sub and Elon Musk shall be subject to the same obligations with respect to any Alternative Financing as set forth in this Agreement with respect to the Debt Financing.

(d) The Equity Investor, Parent, Acquisition Sub and/or the Margin Loan Borrower shall (i) give the Company prompt written notice of any default, breach or threatened default or breach (or any event or circumstance that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any default or breach) by any party to any of the Financing Commitments or the Financing Agreements of which Parent or any of its Affiliates or their respective Representatives becomes aware or any withdrawal, termination, repudiation or rescission or threatened withdrawal, termination, repudiation or rescission thereof, (ii) give the Company prompt notice of any dispute or disagreement between or among any parties to the Debt Commitment Letters, (iii) notify the Company promptly if for any reason Parent, Acquisition Sub or their respective Affiliates no longer believes in good faith that it will be able to obtain all or any portion of the Financing contemplated by the Financing Commitments, (iv) promptly provide and respond to any updates reasonably requested by the Company with respect to the status of Parent's efforts to arrange and finalize the Financing (or any Alternative Financing) and (v) otherwise keep the Company reasonably informed on a current basis of the status of its efforts to arrange and finalize the Financing (or any Alternative Financing). In no event shall Parent or any of its Affiliates be required to provide access to or disclose information that Parent or any of its Affiliates

reasonably determines could jeopardize any attorney-client privilege of, or conflict with any confidentiality requirements applicable to, Parent or any of its Affiliates.

(e) Each of Parent and the Equity Investor acknowledges and agrees that it shall be fully responsible for the Equity Financing and each shall take (or cause to be taken) all actions, and do (or cause to be done) all things necessary, proper or advisable to obtain the Equity Financing, including taking all actions necessary to (i) comply with the terms of and maintain in effect the Equity Commitment Letter, (ii) satisfy on a timely basis all conditions and obligations in such Equity Commitment Letter and (iii) consummate and fund the Equity Financing at or prior to the Closing. Parent further agrees that it shall take (or cause to be taken) all actions, and do (or cause to be done) all things necessary, proper or advisable to fully enforce its rights (including through litigation) under the Equity Commitment Letter.

(f) Parent acknowledges and agrees that neither the obtaining of the Financing or any alternative financing, nor the completion of any issuance of securities contemplated by the Financing or any alternative financing (including the Alternative Financing), is a condition to the Closing, and reaffirms its obligation to consummate the transactions contemplated by this Agreement irrespective and independently of the availability of the Financing or any alternative financing (including the Alternative Financing), or the completion of any such issuance, subject to the applicable conditions set forth in Article VII.

(g) Each of the Equity Investor, Parent and the Acquisition Sub shall on or prior to the Closing Date cause the Margin Loan Borrower to apply the cash proceeds of the Margin Loan Financing to payment of the Funding Obligations under this Agreement.

Section 6.11 Financing Cooperation.

(a) The Company shall and shall cause its Subsidiaries to, and shall use its commercially reasonable best efforts to cause each of its Representatives to, at Parent's sole expense, provide any reasonable cooperation reasonably requested by Parent in writing in connection with (i) the arrangement of the Bank Debt Financing and any other debt financing expressly contemplated by the Bank Debt Commitment Letter, including senior unsecured notes and senior secured notes, and (ii) subject to the requirements of Section 6.11(b), the payoff, redemption, defeasance, discharge or other satisfaction of the Existing Credit Agreement and the Existing Senior Notes on or subsequent to the Closing Date, in each case as is necessary, customary and reasonably requested in writing by Parent; provided that any notice of, or documentation with respect to, any such payoff, redemption or other satisfaction of existing indebtedness of the Company pursuant to this Section 6.11(a)(ii) shall provide that the obligation to repay, redeem or satisfy such indebtedness shall, as applicable, be subject to and is conditioned upon the occurrence of the Closing; provided, further, that such requested cooperation with respect to clauses (i) and (ii) of this Section 6.11(a) does not unreasonably or materially interfere with the ongoing operations of the Company and its Subsidiaries. Notwithstanding anything in this Agreement to the contrary, (A) neither the Company nor any of its Subsidiaries shall be required to pay any commitment or other similar fee, incur or reimburse any costs or expenses, enter into any binding agreement or commitment or incur any other liability, indemnity or obligation in connection with the Bank Debt Financing or the cooperation required by this Section 6.11(a) that would be effective prior to the Closing, (B) no director, manager, officer or employee or other

Representative or equityholder of the Company or any of its Subsidiaries shall be required to execute, deliver, enter into, approve or perform any agreement, commitment, document, instrument or certificate or take any other action pursuant to this Section 6.11(a) to the extent any such action could reasonably be expected to result in personal liability to such Representative or equityholder, (C) neither the Company nor any of its Subsidiaries (nor any of their respective boards of directors (or similar governing bodies) shall be required to adopt any resolutions, execute any consents or otherwise take any corporate or similar action or deliver any certificate, document, instrument or agreement in connection to the Bank Debt Financing or the incurrence of indebtedness thereby or any cooperation required by this Section 6.11(a) and (D) no cooperation under this Section 6.11(a) shall (I) require the Company or any of its Subsidiaries to provide, or cause to be provided, any information the disclosure of which is prohibited or restricted under applicable Law or any binding agreement with a third party or is legally privileged or consists of attorney work product or could reasonably be expected to result in the loss of any applicable legal privilege, (II) require the Company or any of its Subsidiaries to take any action that would reasonably be expected to conflict with or violate its organizational documents or any Laws or would reasonably be expected to result in (with or without notice, lapse of time, or both) a violation or breach of, or default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of such Person or to a loss of any benefit or privilege to which such Person is entitled under, any agreement to which the Company or any of its Subsidiaries is a party or result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries, except any Lien that becomes effective only upon the Closing, (III) cause (or require the taking of any action that would cause) any representation or warranty in this Agreement to be breached or cause any condition to Closing to fail to be satisfied or otherwise cause any breach of this Agreement or require the Company to waive or amend any terms of this Agreement, (IV) require the Company to disclose any material, non-public information other than to recipients of such information that agree to confidentiality arrangements as contemplated under Section 6.11(b) and Section 6.4 or any adjustments or assumptions used in connection therewith, (V) require the Company to prepare or provide any financial statements or other financial information (other than those financial statements (and any other financial information) from time to time filed by the Company with the SEC (and nothing in this Section 6.11(a) shall create or be implied to create any obligation to make any such filings or other readily available financial information), (VI) waive or amend any terms of this Agreement, (VII) require the Company or its Subsidiaries to take any action that, in the good faith determination of the Company or such Subsidiary would create a risk of damage or destruction to any property or assets of the Company or such Subsidiary, (VIII) require the Company or any of its Subsidiaries or any of their Representatives to deliver any legal opinions or reliance letters, (IX) file or furnish any reports or information with the SEC or change any fiscal period or accelerate the Company's preparation of its SEC reports or financial statements, or (X) prepare or provide any (1) information regarding officers or directors prior to consummation of the Merger, executive compensation and related party disclosure or any Compensation Discussion and Analysis or information required by Item 302 (to the extent not so provided in SEC filings) or 402 of Regulation S-K under the Securities Act and any other information that would be required by Part III of Form 10-K (except to the extent previously filed with the SEC), (2) any description of all or any component of the Bank Debt Financing or other information customarily provided by the Financing Sources or their counsel, (3) risk factors relating to all or any component of the Bank Debt Financing, (4) information regarding affiliate transactions that may exist following consummation of the Merger, or (5) other information that

is not available to the Company without undue effort or expense. The parties hereto agree that any information with respect to the prospects, projections and plans for the business and operations of the Company and its Subsidiaries in connection with the Financing will be the sole responsibility of Parent, and none of the Company, any of its Subsidiaries or any of their respective Representatives shall be required to provide any information or make any presentations with respect to capital structure, the incurrence of the Financing, other pro forma information relating thereto or the manner in which Parent intends to operate, or cause to be operated, the business of the Company or its Subsidiaries after the Closing. Nothing contained in this Section 6.11 or otherwise shall require the Company or any of its Subsidiaries, prior to the Closing, to be a borrower, an issuer, a guarantor or other obligor with respect to the Debt Financing. For the avoidance of doubt, the parties hereto acknowledge and agree that the provisions contained in this Section 6.11, represent the sole obligation of the Company, its Subsidiaries and their respective Representatives with respect to cooperation in connection with the arrangement of any financing (including the Financing) to be obtained by the Equity Investor, Parent, Acquisition Sub, the Margin Loan Borrower or any of their respective Affiliates with respect to the transactions contemplated by this Agreement and no other provision of this Agreement (including the Exhibits and Schedules hereto) shall be deemed to expand or modify such obligations. In no event shall the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Financing) by the Equity Investor, Parent, Acquisition Sub, the Margin Loan Borrower or any of their respective Affiliates or any other financing or other transactions be a condition to any of the Equity Investor's, Parent's, Acquisition Sub's or the Margin Loan Borrower's obligations under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Company will be deemed to be in compliance with this Section 6.11(a), and neither Parent nor any of its Affiliates shall allege that the Company is or has not been in compliance with this Section 6.11(a), unless Parent's failure to obtain the Bank Debt Financing was due solely to a deliberate action or omission taken or omitted to be taken by the Company in material breach of its obligations under this Section 6.11(a).

(b) On or prior to any applicable date of the Company's payoff, redemption or other satisfaction of the Existing Credit Agreement and/or Existing Senior Notes contemplated by Section 6.11(a), or if applicable, date of satisfaction and discharge, Parent shall deposit or cause to be deposited funds with the applicable paying agent sufficient to effect such payoff, redemption and/or satisfaction, as applicable, as required pursuant to the terms of the agreements governing such indebtedness (and in the event of any delay of the anticipated Effective Time, Parent shall deposit additional funds with the applicable paying agents sufficient to satisfy such payoff, redemption or other satisfaction of the Existing Credit Agreement and/or Existing Senior Notes, as required pursuant to the terms of the agreements governing such indebtedness); provided that the release of any such funds shall be subject to the occurrence of the Effective Time. Parent shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs and expenses (including outside attorneys' fees and disbursements) incurred by the Company, its Affiliates and their respective Representatives in connection with the cooperation contemplated by Section 6.11(a). Parent acknowledges and agrees that the Company, its Affiliates and their respective Representatives shall not have any responsibility for, or incur any liability to any Person under, any financing that Parent may raise in connection with the transactions contemplated by this Agreement or any cooperation provided pursuant to Section 6.11(a), and shall indemnify and hold harmless the Company, its Affiliates and their respective Representatives, from and against any and all losses suffered or incurred by any

of them in connection with the Debt Financing, any cooperation provided pursuant to Section 6.11(a) or any alternative financing and any information utilized in connection therewith, except to the extent any such cost or expense, judgment, fine, loss, claim, or damage results directly from the bad faith, willful misconduct or gross negligence of the Company or its Representatives or controlled Affiliates as determined by a court of competent jurisdiction in a final and non-appealable judgment. All non-public or other confidential information provided by or behalf of the Company to Parent or its Affiliates or any of their respective Representatives pursuant to this Section 6.11 shall be kept confidential in accordance with the terms of Section 6.4; provided that Parent and its Affiliates may share any confidential information with respect to the Company and its Subsidiaries with any Debt Financing Sources, and that Parent, such Debt Financing Sources and their respective Affiliates may share such information with potential Debt Financing Sources in connection with any marketing efforts with respect to the Debt Financing; provided, however, that the recipients of such confidential information contemplated to be provided by the preceding proviso shall agree to be bound by confidentiality obligations no less restrictive than those set forth in Section 6.4.

Section 6.12 Acquisition Sub. Parent and the Equity Investor shall take all actions necessary to (a) cause Acquisition Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement and (b) ensure that, prior to the Effective Time, Acquisition Sub shall not conduct any business, or incur or guarantee any indebtedness or make any investments, other than as specifically contemplated by this Agreement. Parent hereby (a) guarantees the due, prompt and faithful payment performance and discharge by Acquisition Sub of, and compliance by Acquisition Sub with, all of the covenants and agreements of Acquisition Sub under this Agreement and (b) agrees to take all actions necessary, proper or advisable to ensure such payment, performance and discharge by Acquisition Sub under this Agreement. Parent agrees that any breach by Acquisition Sub of a representation, warranty, covenant or agreement in this Agreement shall also be a breach of such representation, warranty, covenant or agreement by Parent.

Section 6.13 Rule 16b-3 Matters. Prior to the Effective Time, the Company may take such further actions, if any, as may be reasonably necessary or appropriate to ensure that the dispositions of equity securities of the Company (including any derivative securities) pursuant to the transactions contemplated by this Agreement by any officer or director of the Company who is subject to Section 16 of the Exchange Act are exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 6.14 Delisting of Company Common Stock. Parent shall, with the reasonable cooperation of the Company, take, or cause to be taken, all actions reasonably necessary to cause the Company's securities to be delisted from the New York Stock Exchange and deregistered under the Exchange Act as soon as reasonably practicable following the Effective Time.

ARTICLE VII

CONDITIONS TO THE MERGER

Section 7.1 Conditions to the Obligations of Each Party. The respective obligations of each party hereto to consummate the Merger, are subject to the satisfaction or waiver by the Company and Parent at or prior to the Effective Time of the following conditions:

(a) the Company Stockholder Approval shall have been obtained;

(b) any waiting period (or any extension thereof) applicable to the consummation of the Merger under the HSR Act shall have expired or early termination thereof shall have been granted; and each Consent or approval that is required under any Antitrust Laws or Foreign Investment Laws of the jurisdictions set forth on Schedule A with respect to the transactions contemplated by this Agreement, including the Merger shall have been made, obtained or received (or, as applicable, the waiting periods with respect thereto shall have expired or been terminated); and

(c) no Governmental Authority of the jurisdictions set forth on Schedule A shall have enacted, issued, promulgated, enforced or entered any Law or Order which is then in effect and has the effect of restraining, enjoining, rendering illegal or otherwise prohibiting consummation of the Merger, or causing the Merger to be rescinded following the completion thereof.

Section 7.2 Conditions to the Obligations of Parent and Acquisition Sub. The obligations of Parent and Acquisition Sub to consummate the Merger, are, in addition to the conditions set forth in Section 7.1, further subject to the satisfaction or waiver by Parent at or prior to the Effective Time of the following conditions:

(a) the Company shall have performed or complied, in all material respects, with its obligations required under this Agreement to be performed or complied with by the Company on or prior to the Closing Date;

(b) (i) each of the representations and warranties of the Company contained in this Agreement (except for the representations and warranties contained in Section 4.2(a) and Section 4.2(b)), without giving effect to any materiality or "Company Material Adverse Effect" qualifications therein, shall be true and correct as of the Closing Date (except to the extent such representations and warranties are expressly made as of a specific date, in which case such representations and warranties shall be so true and correct as of such specific date only), except for such failures to be true and correct as would not have a Company Material Adverse Effect; and (ii) each of the representations and warranties contained in Section 4.2(a) and Section 4.2(b) shall be shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties are expressly made as of a specific date, in which case such representations and warranties shall be so true and correct in all material respects as of such specific date only); and

(c) no Company Material Adverse Effect shall have occurred and be continuing.

Section 7.3 Conditions to the Obligation of the Company to Effect the Merger. The obligation of the Company to consummate the Merger, is, in addition to the conditions set forth in Section 7.1, further subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) Parent and Acquisition Sub shall have performed or complied, in all material respects, with its obligations required under this Agreement to be performed or complied with by Parent or Acquisition Sub, as the case may be, on or prior to the Closing Date; and

(b) each of the representations and warranties of Parent and Acquisition Sub contained in this Agreement, without giving effect to any materiality or "Parent Material Adverse Effect" qualifications therein, shall be true and correct as of the Closing Date, except for such failures to be true and correct as would not have a Parent Material Adverse Effect (except to the extent such representations and warranties are expressly made as of a specific date, in which case such representations and warranties shall be so true and correct as of such specific date only).

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

Section 8.1 Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Effective Time, whether before or after the Company Stockholder Approval is obtained (except as otherwise expressly noted), as follows:

(a) by mutual written agreement of each of Parent and the Company;

(b) by either Parent or the Company:

(i) if the Merger shall not have been consummated on or before 5:00 p.m. (Pacific Time) on October 24, 2022 (as such date may be extended pursuant to the terms hereof, the "**Termination Date**"); provided, however, that (x) the right to terminate this Agreement pursuant to this Section 8.1(b)(i) shall not be available to any party if the failure of such party to perform or comply with any of its obligations under this Agreement has been the principal cause of or resulted in the failure of the Closing to have occurred on or before such date and (y) the Termination Date shall be extended for an additional six (6) months if, as at the Termination Date, the condition set forth in Section 7.1(b) or Section 7.1(c) shall not have been satisfied;

(ii) if, prior to the Effective Time, any Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order or taken any other action permanently restraining, enjoining, rendering illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and such Law or Order or other action shall have become final and non-appealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 8.1(b)(ii) shall have used the efforts required by this Agreement to remove such Law, Order or other action; provided, further, that the right to terminate this Agreement under this Section 8.1(b)(ii) shall not be available to a party if the issuance of

such Law or Order or taking of such action was primarily due to the failure of such party, and, in the case of Parent, the failure of Acquisition Sub or the Equity Investor, to perform any of their obligations under this Agreement; or

(iii) if the Company Stockholder Approval shall not have been obtained at the Company Stockholders' Meeting duly convened therefor or at any adjournment or postponement thereof at which this Agreement and the transactions contemplated by this Agreement have been voted upon; or

(c) by the Company:

(i) if Parent, Acquisition Sub or the Equity Investor shall have breached or failed to perform any of their respective representations, warranties, covenants or other agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of any condition set forth in Section 7.3(a) or Section 7.3(b) and (B) is not capable of being cured, or is not cured, by Parent, Acquisition Sub or the Equity Investor on or before the earlier of (x) the Termination Date and (y) the date that is thirty (30) calendar days following the Company's delivery of written notice to Parent, Acquisition Sub or the Equity Investor, as applicable, of such breach; provided, however, that the Company shall not have the right to terminate this Agreement pursuant to this Section 8.1(c)(i) if the Company is then in material breach of any of its representations, warranties, covenants or agreements hereunder;

(ii) if the Company Board shall have authorized the Company to enter into a definitive agreement with respect to a Superior Proposal; provided that, substantially concurrently with such termination, the Company enters into such definitive agreement and pays (or causes to be paid) at the direction of Parent the Termination Fee as specified in Section 8.3(a); or

(iii) if (A) the conditions set forth in Section 7.1 and Section 7.2 (other than those conditions that by their nature are to be satisfied at the Closing, which conditions are capable of being satisfied if the Closing were to occur at such time) have been satisfied or waived in accordance with this Agreement and Parent and Acquisition Sub shall have been notified in writing of the same, (B) Parent and Acquisition Sub fail to consummate the Merger within three (3) Business Days following the date on which the Closing should have occurred pursuant to Section 2.2 and (C) during such three (3)-Business Days period described in clause (B), the Company stood ready, willing and able to consummate the Merger and the other transactions contemplated hereby;

(d) by Parent:

(i) if the Company shall have breached or failed to perform any of its representations, warranties, covenants or other agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of any condition set forth in Section 7.2(a) or Section 7.2(b), and (B) is not capable of being cured, or is not cured, by the Company on or before the earlier of (x) the Termination Date and (y) the date that is thirty (30) calendar days following Parent's delivery of written notice to the

Company of such breach; provided, however, that Parent shall not have the right to terminate this Agreement pursuant to this Section 8.1(d)(i) if Parent, Acquisition Sub or the Equity Investor is then in material breach of any of its representations, warranties, covenants or agreements hereunder; or

(ii) prior to the receipt of the Company Stockholder Approval, if the Company Board shall have made an Adverse Board Recommendation Change.

Section 8.2 Effect of Termination. In the event that this Agreement is terminated and the Merger abandoned pursuant to Section 8.1, written notice thereof shall be given to the other party or parties, specifying the provisions of this Agreement pursuant to which such termination is made, and this Agreement shall forthwith become null and void and of no effect without liability on the part of any party hereto (or any of its Representatives), and all rights and obligations of any party hereto shall cease; provided, however, that, except as otherwise provided in Section 8.3 or in any other provision of this Agreement, no such termination shall relieve any party hereto of any liability or damages (which the parties acknowledge and agree shall not be limited to reimbursement of Expenses or out-of-pocket costs, and, in the case of liabilities or damages payable by Parent and Acquisition Sub, would include the benefits of the transactions contemplated by this Agreement lost by the Company's stockholders) (taking into consideration all relevant matters, including lost stockholder premium, other combination opportunities and the time value of money), which shall be deemed in such event to be damages of such party, resulting from any knowing and intentional breach of this Agreement prior to such termination, in which case, except as otherwise provided in Section 8.3, the aggrieved party shall be entitled to all rights and remedies available at law or in equity; and provided, further, that the expense reimbursement and indemnification obligations contained in Section 6.11 and Section 6.12, and the provisions of this Section 8.2, Section 8.3, Section 8.6 and Article IX shall survive any termination of this Agreement pursuant to Section 8.1 in accordance with their respective terms.

Section 8.3 Termination Fee.

(a) In the event that:

(i) (A) a Third Party shall have made a Competing Proposal after the date of this Agreement, (B) this Agreement is subsequently terminated by (x) the Company or Parent pursuant to Section 8.1(b)(iii) or (y) Parent pursuant to Section 8.1(d)(i), and at the time of such Company Stockholders' Meeting in the case of clause (x) or at the time of such breach in the case of clause (y), a Competing Proposal has been publicly announced and has not been withdrawn, and (C) within twelve (12) months of such termination of this Agreement, the Company consummates a transaction involving a Competing Proposal or enters into a definitive agreement providing for the consummation of a Competing Proposal and such Competing Proposal is subsequently consummated; provided, however, that for purposes of this Section 8.3(a)(i), the references to "fifteen percent (15%)" in the definition of Competing Proposal shall be deemed to be references to "fifty percent (50%)";

(ii) this Agreement is terminated by the Company pursuant to Section 8.1(c)(ii); or

(iii) this Agreement is terminated by Parent pursuant to Section 8.1(d)(ii), then

the Company shall (A) in the case of clause (i) above, no later than two (2) Business Days following the date of the consummation of such transaction involving a Competing Proposal, (B) in the case of clause (ii) above, prior to or substantially concurrently with such termination, and (C) in the case of this clause (iii), no later than two (2) Business Days after the date of such termination, pay, or cause to be paid, by wire transfer of immediately available funds, at the direction of Parent, the Termination Fee; it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion.

(b) In the event that:

(i) the Agreement is terminated by the Company pursuant to Section 8.1(c)(i);

(ii) the Agreement is terminated by the Company pursuant to Section 8.1(c)(iii), then

Parent shall no later than two (2) Business Days after the date of such termination, pay, or cause to be paid, by wire transfer of immediately available funds, at the direction of the Company, the Parent Termination Fee; it being understood that in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion.

(c) Notwithstanding anything to the contrary set forth in this Agreement, but subject to Section 9.9, (i) except in the case of a knowing and intentional breach of this Agreement by the Company (in which case Parent shall be entitled to seek monetary damages, recovery or award from the Company in an amount not to exceed the amount of the Termination Fee in the aggregate), Parent's right to receive payment from the Company of the Termination Fee pursuant to Section 8.3(a), shall constitute the sole and exclusive monetary remedy of Parent and Acquisition Sub against the Company and its Subsidiaries and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Affiliates or assignees of any of the foregoing (collectively, the "**Company Related Parties**") for all losses and damages suffered as a result of the failure of the transactions contemplated by this Agreement to be consummated or for a breach or failure to perform hereunder, and upon payment of such amount, none of the Company Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement (except that the Company shall also be obligated with respect to Section 8.6); provided, that, in no event shall the Company be subject to an aggregate amount for monetary damages (including any payment of the Termination Fee) in excess of an aggregate amount equal to the Termination Fee (except in all cases that the Company shall also be obligated with respect to its applicable obligations under Section 8.3(d) and Section 8.6), and (ii) except in the case of a knowing and intentional breach of this Agreement by the Equity Investor, Parent or Acquisition Sub (in which case the Company shall be entitled to seek monetary damages, recovery or award from the Equity Investor, Parent or Acquisition Sub in an amount not to exceed the amount of the Parent Termination Fee, in the aggregate), the Company's right to receive payment

from Parent of the Parent Termination Fee pursuant to Section 8.3(b), shall constitute the sole and exclusive monetary remedy of the Company against the Parent, Acquisition Sub and the Equity Investor and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, Affiliates or assignees of any of the foregoing (collectively, the "**Parent Related Parties**") for all losses and damages suffered as a result of the failure of the transactions contemplated by this Agreement, the Equity Commitment Letter or the Parent Guarantee to be consummated or for a breach or failure to perform the applicable provisions hereunder, and upon payment of such amount, none of the Parent Related Parties shall have any further liability or obligation relating to or arising out of this Agreement, the Equity Commitment Letter or the Parent Guarantee or the transactions contemplated by thereby (except in all cases that Parent shall also be obligated with respect to its expense reimbursement and indemnification obligations contained in Section 6.11 and its applicable obligations under Section 8.3(d)(iii) and Section 8.6(b)); provided, that, in no event shall Equity Investor, Parent or Acquisition Sub collectively be subject to an aggregate amount for monetary damages (including any payment of the Parent Termination Fee) in excess of an aggregate amount equal to the Parent Termination Fee (except in all cases that Parent shall also be obligated with respect to its expense reimbursement and indemnification obligations contained in Section 6.11 and its applicable obligations under Section 8.3(d)(iii) and Section 8.6(b)). For the avoidance of doubt, any liability or obligation of the Parent, Acquisition Sub or Equity Investor hereunder shall be subject to the terms of the Equity Commitment Letter and the Parent Guarantee.

(d) Each of the parties hereto acknowledges that (i) the agreement contained in this Section 8.3 is an integral part of the transactions contemplated by this Agreement, (ii) the Termination Fee is not a penalty, but is liquidated damages, in a reasonable amount that will compensate Parent and its Affiliates in the circumstances in which such fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated by this Agreement, which amount would otherwise be impossible to calculate with precision, and (iii) without the agreement contained in this Section 8.3, the parties would not enter into this Agreement, accordingly, if the Company or Parent, as the case may be, fails to timely pay any amount due pursuant to this Section 8.3 and, in order to obtain such payment, either Parent or the Company, as the case may be, commences a suit that results in a judgment against the other party for the payment of any amount set forth in this Section 8.3, such paying party shall pay the other party its costs and Expenses in connection with such suit, together with interest on such amount at the annual rate of five percent (5%) plus the prime rate as published in *The Wall Street Journal* in effect on the date such payment was required to be made through the date such payment was actually received, or such lesser rate as is the maximum permitted by applicable law.

Section 8.4 Amendment. This Agreement may be amended by mutual agreement of the parties hereto by action taken by or on behalf of their respective boards of directors at any time before or after receipt of the Company Stockholder Approval; provided, however, that (i) after the Company Stockholder Approval has been obtained, there shall not be any amendment that by Law or in accordance with the rules of any stock exchange requires further approval by the Company's stockholders without such further approval of such stockholders nor any amendment or change not permitted under applicable Law and (ii) any amendment of this Section 8.4, Section 8.3(b), Section 8.3(c), Section 9.4, Section 9.7, Section 9.8, Section 9.10, Section 9.12 or Section 9.13, in each case, to the extent such amendment would adversely affect the rights of a Debt Financing Source

party to the Debt Commitment Letter under such Section, shall also be approved by such Debt Financing Source. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

Section 8.5 Extension; Waiver. At any time prior to the Effective Time, subject to applicable Law, the Company may (a) extend the time for the performance of any obligation or other act of Parent or Acquisition Sub, (b) waive any inaccuracy in the representations and warranties of Parent or Acquisition Sub contained herein or in any document delivered pursuant hereto and (c) waive compliance with any agreement or condition by Parent or Acquisition Sub contained herein. Any such extension or waiver shall only be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby. Notwithstanding the foregoing, no failure or delay by the Company, Parent or Acquisition Sub in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.6 Expenses; Transfer Taxes.

(a) Except as expressly set forth herein, all Expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such Expenses.

(b) Parent shall timely and duly pay all (i) transfer, stamp and documentary Taxes or fees, (ii) sales, use, gains, real property transfer and other similar Taxes or fees arising out of or in connection with entering into and carrying out this Agreement and (iii) filing fees incurred in connection with any applications and filings under any Antitrust Laws or Foreign Investment Laws.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Non-Survival of Representations, Warranties and Agreements. The representations, warranties, covenants and agreements in this Agreement and any certificate delivered pursuant hereto by any Person shall terminate at the Effective Time or, except as provided in Section 8.2, upon the termination of this Agreement pursuant to Section 8.1, as the case may be, except that this Section 9.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time or after termination of this Agreement, including those contained in Section 6.6 and Section 6.9.

Section 9.2 Notices. All notices, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery) or by confirmed electronic mail, addressed as follows:

if to Parent or Acquisition Sub:

2110 Ranch Road
620 S. #341886,
Austin, Texas 78734
Attn: Elon Musk

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

Skadden, Arps, Slate, Meagher & Flom LLP
525 University Ave, Suite 1400
Palo Alto, California 94301
Attn: Mike Ringler
Sonia K. Nijjar
Dohyun Kim
Email: mike.ringler@skadden.com
sonia.nijjar@skadden.com
dohyun.kim@skadden.com

if to the Company:

Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, California 94103
Attn: General Counsel
Email: vijaya@twitter.com

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

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Attn: Katharine A. Martin
Martin W. Korman
Douglas K. Schnell
Remi P. Korenblit
Email: kmartin@wsgr.com
mkorman@wsgr.com
dschnell@wsgr.com
rkorenblit@wsgr.com

and

Simpson Thacher & Bartlett LLP
425 Lexington Avenue

New York, New York 10017
Attn: Alan Klein
Anthony F. Vernace
Katherine M. Krause
Email: aklein@stblaw.com
avernace@stblaw.com
katherine.krause@stblaw.com

or to such other address or electronic mail address for a party as shall be specified in a notice given in accordance with this Section 9.2; provided that any notice received by electronic mail or otherwise at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) or on any day that is not a Business Day shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day; provided, further, that notice of any change to the address or any of the other details specified in or pursuant to this Section 9.2 shall not be deemed to have been received until, and shall be deemed to have been received upon, the later of the date specified in such notice or the date that is five (5) Business Days after such notice would otherwise be deemed to have been received pursuant to this Section 9.2.

Section 9.3 Interpretation; Certain Definitions.

(a) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(b) Disclosure of any fact, circumstance or information in any Section of the Company Disclosure Letter or Parent Disclosure Letter shall be deemed to be disclosure of such fact, circumstance or information with respect to any other Section of the Company Disclosure Letter or Parent Disclosure Letter, respectively, only if it is reasonably apparent that such disclosure relates to any such other Section. The inclusion of any item in the Company Disclosure Letter or Parent Disclosure Letter shall not be deemed to be an admission or evidence of materiality of such item, nor shall it establish any standard of materiality for any purpose whatsoever.

(c) The words "hereof," "herein," "hereby," "hereunder" and "herewith" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to articles, sections, paragraphs, exhibits, annexes and schedules are to the articles, sections and paragraphs of, and exhibits, annexes and schedules to, this Agreement, unless otherwise specified, and the table of contents and headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the phrase "without limitation." Words describing the singular number shall be deemed to include the plural and vice versa, words denoting any gender shall be deemed to include all genders, words denoting natural persons shall be deemed to include business entities and vice versa, and references to a Person are also to its permitted successors and assigns. The phrases "the date of this Agreement" and "the date of this Agreement" and terms or phrases of similar import shall be deemed to refer to April 25, 2022,

unless the context requires otherwise. When used in reference to the Company or its Subsidiaries, the term "material" shall be measured against the Company and its Subsidiaries, taken as a whole. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder (provided that for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to any statute shall be deemed to refer to such statute, as amended, and to any rules or regulations promulgated thereunder, in each case, as of such date). Terms defined in the text of this Agreement have such meaning throughout this Agreement, unless otherwise indicated in this Agreement, and all terms defined in this Agreement shall have the meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. Any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor Laws (provided that for purposes of any representations and warranties contained in this Agreement that are made as of a specific date or dates, references to any statute shall be deemed to refer to such statute, as amended, and to any rules or regulations promulgated thereunder, in each case, as of such date). All references to "dollars" or "$" refer to currency of the U.S. Nothing contained in Article IV or Article V may be construed as a covenant under the terms of this Agreement, other than the acknowledgments and agreements set forth in Section 4.25 and Section 5.10 to the extent necessary to give full effect to the acknowledgments and agreements set forth therein.

Section 9.4 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, illegal, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such determination that any term or other provision is invalid, void, illegal, unenforceable or against its regulatory policy, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement, including the Merger, be consummated as originally contemplated to the fullest extent possible.

Section 9.5 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns. Any attempted assignment in violation of this Section 9.5 shall be null and void.

Section 9.6 Entire Agreement. This Agreement (including the exhibits, annexes and appendices hereto) constitutes, together with the Company Disclosure Letter and the Parent Disclosure Letter, the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

Section 9.7 No Third-Party Beneficiaries. Subject to Section 9.13, this Agreement is not intended to and shall not confer upon any Person other than the parties hereto any rights or

remedies hereunder; provided, however, that it is specifically intended that (A) the D&O Indemnified Parties (with respect to Section 6.6 from and after the Effective Time), (B) the Company Related Parties (with respect to Section 8.3) are third-party beneficiaries and (C) the Parent Related Parties (with respect to Section 8.3) are third-party beneficiaries.

Section 9.8 Governing Law. This Agreement and all actions, proceedings or counterclaims (whether based on contract, tort or otherwise) arising out of or relating to this Agreement, or the actions of Parent, Acquisition Sub or the Company in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

Section 9.9 Specific Performance.

(a) The parties hereto agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties hereto acknowledge and agree that the parties hereto shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions or any other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to show proof of actual damages or provide any bond or other security in connection with any such order or injunction.

(b) Notwithstanding anything herein to the contrary, including the availability of the Parent Termination Fee or other monetary damages, remedy or award, it is hereby acknowledged and agreed that the Company shall be entitled to specific performance or other equitable remedy to enforce Parent and Acquisition Sub's obligations to cause the Equity Investor to fund the Equity Financing, or to enforce the Equity Investor's obligation to fund the Equity Financing directly, and to consummate the Closing if and for so long as, (i) all of the conditions set forth in Section 7.1 and Section 7.2 (other than those conditions that are to be satisfied at the Closing; provided, that such conditions are capable of being satisfied if the Closing were to occur at such time) have been satisfied or waived and Parent has failed to consummate the Closing on the date required pursuant to the terms of Section 2.2, (ii) the Debt Financing (or, as applicable, the Alternative Financing) has been funded or will be funded at the Closing if the Equity Financing is funded at the Closing, and (iii) the Company has confirmed that, if specific performance or other equity remedy is granted and the Equity Financing and Debt Financing are funded, then the Closing will occur. For the avoidance of doubt, (A) while the Company may concurrently seek (x) specific performance or other equitable relief, subject to the terms of this Section 9.9, and (y) payment of the Parent Termination Fee or other monetary damages, remedy or award if, as and when required

pursuant to this Agreement), under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance to cause the Equity Financing to be funded, on the one hand, and payment of the Parent Termination Fee or other monetary damages, remedy or award, on the other hand; provided, however, that in no event shall the Company be permitted or entitled to receive aggregate monetary damages in excess of the Parent Termination Fee (except in all cases that Parent shall also be obligated with respect to its expense reimbursement and indemnification obligations contained in Section 6.11 and its applicable obligations under Section 8.3(d)(iii) and Section 8.6(b)).

(c) To the extent any party hereto brings an action, suit or proceeding to specifically enforce the performance of the terms and provisions of this Agreement (other than an action to enforce specifically any provision that expressly survives the termination of this Agreement), the Termination Date shall automatically be extended to (i) the twentieth (20th) Business Day following the resolution of such action, suit or proceeding or (ii) such other time period established by the court presiding over such action, suit or proceeding.

Section 9.10 Consent to Jurisdiction.

(a) Each of the parties hereto hereby (i) expressly and irrevocably submits to the exclusive personal jurisdiction of the Delaware Court of Chancery, any other court of the State of Delaware or any federal court sitting in the State of Delaware in the event any dispute arises out of this Agreement or the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iii) agrees that it will not bring any action relating to this Agreement or the transactions contemplated by this Agreement in any court other than the Delaware Court of Chancery, any other court of the State of Delaware or any federal court sitting in the State of Delaware, (iv) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement and (v) agrees that each of the other parties shall have the right to bring any action or proceeding for enforcement of a judgment entered by the state courts of the Delaware Court of Chancery, any other court of the State of Delaware or any federal court sitting in the State of Delaware. Each of the Equity Investor, Parent, Acquisition Sub and the Company agrees that a final judgment in any action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each party hereto irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in Section 9.10(a) in any such action or proceeding by mailing copies thereof by registered or certified U.S. mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 9.2. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method.

Section 9.11 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall together be considered one and the same agreement. Delivery of an executed signature page to this Agreement by electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 9.12 WAIVER OF JURY TRIAL. EACH OF THE EQUITY INVESTOR, PARENT, ACQUISITION SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT, ACQUISITION SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF (INCLUDING THE DEBT FINANCING).

Section 9.13 Debt Financing Source Related Party. Notwithstanding anything in this Agreement to the contrary, but in all cases subject to and without in any way limiting the rights and claims of Parent or any of its Affiliates under and pursuant to any debt commitment letter or other applicable definitive document relating to the Debt Financing, the Company hereby:

(a) agrees that any claim, action, suit, investigation or other proceeding, whether in law or in equity, whether in contract or in tort or otherwise, involving the Debt Financing Sources, arising out of or relating to, this Agreement and/or the Debt Financing or any of the agreements entered into in connection therewith or any of the transactions contemplated hereby or thereby or the performance of any services thereunder shall be subject to the exclusive jurisdiction of the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York sitting in New York County (and appellate courts thereof) and each party hereto irrevocably submits itself and its property with respect to any such claim, action, suit, investigation or other proceeding to the exclusive jurisdiction of such court;

(b) agrees that any such claim, action, suit, investigation or other proceeding shall be governed by the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another state), except as otherwise provided in any debt commitment letter or other applicable definitive document relating to the Debt Financing;

(c) agrees not to bring or support or permit any of its respective Affiliates to bring or support any claim, action, suit, investigation or other proceeding of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Debt Financing Source in any way arising out of or relating to, this Agreement or the Debt Financing or any of the transactions contemplated hereby or the performance of any services thereunder in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the Southern District of New York sitting in New York County (and appellate courts thereof);

(d) irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such claim, action, suit, investigation or other proceeding in any such court;

(e) **KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW TRIAL BY JURY IN ANY CLAIM, ACTION, SUIT, INVESTIGATION OR OTHER PROCEEDING**

BROUGHT AGAINST ANY DEBT FINANCING SOURCE RELATED PARTY IN ANY WAY ARISING OUT OF OR RELATING TO, THIS AGREEMENT OR THE DEBT FINANCING OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PERFORMANCE OF ANY SERVICES THEREUNDER;

(f) agrees that no Debt Financing Source Related Party will have any liability to the Company or any its Affiliates or Representatives relating to or arising out of this Agreement or the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, whether in law or in equity, whether in contract or in tort or otherwise; and

(g) agrees that the Debt Financing Sources are express third party beneficiaries of, and may enforce, any of the provisions of this Section 9.13 and that such provisions and the definitions of "Debt Financing Sources" and "Debt Financing Source Related Party" shall not be amended or waived in any way adverse to the rights of any Debt Financing Source without the prior written consent of such Debt Financing Source.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, each of Parent, Acquisition Sub, the Company and, solely with respect to the Specified Provisions, the undersigned individual, have caused this Agreement to be executed as of the date first written above in their individual capacity or by their respective officers thereunto duly authorized, as applicable.

X HOLDINGS I, INC.

By: _____
Name: Elon R. Musk
Title: President, Secretary and Treasurer

X HOLDINGS II, INC.

By: _____
Name: Elon R. Musk
Title: President, Secretary and Treasurer

TWITTER, INC.

By: DocuSigned by: Bret Taylor A0CB1C929F8C4DE...

Name: Bret Taylor
Title: Chair of the Board of Directors

SOLELY WITH RESPECT TO THE
SPECIFIED PROVISIONS:

ELON R. MUSK

SCHEDULE A
Specified Jurisdictions

With respect to Section 7.1(b):

Any Consent or approval that is required under any Antitrust Laws or Foreign Investment Laws of the following jurisdictions, including as a result of any interventions by a Governmental Authority or voluntary filings under any Antitrust Laws or Foreign Investment Laws that Parent determines to make (for the avoidance of doubt, an approval shall be deemed to be required once the Parent determines it will make a voluntary filing in that jurisdiction, but only if an approval is typically granted for a filing of such a type in such a jurisdiction, whether through a decision or deemed by expiry of any applicable waiting periods):

1. The federal government of the United States
2. The State of Delaware
3. Japan
4. The United Kingdom
5. The European Commission (but not any member states)

With respect to Section 7.1(c):

1. The federal government of the United States
2. The State of Delaware
3. Japan
4. The United Kingdom
5. The European Commission (but not any member states)

EXHIBIT 2

Execution Version

MORGAN STANLEY SENIOR FUNDING, INC.
1585 Broadway
New York, NY 10036

BANK OF AMERICA, N.A.
BOFA SECURITIES, INC.
One Bryant Park
New York, NY 10036

BARCLAYS
745 Seventh Avenue
New York, NY 10019

MUFG
1221 Avenue of the Americas
New York, NY 10020

BNP PARIBAS
BNP PARIBAS SECURITIES CORP.
787 Seventh Avenue
New York, NY 10019

MIZUHO BANK, LTD.
1271 Avenue of the Americas
New York, NY 10020

SOCIETE GENERALE
245 Park Avenue
New York, NY 10167

CONFIDENTIAL

April 25, 2022

X Holdings I, Inc.
X Holdings II, Inc.
2110 Ranch Road
620 S. #341886,
Austin, TX 78734
Attn: Elon R. Musk

Project X
Commitment Letter

Ladies and Gentlemen:

You have advised each of Morgan Stanley Senior Funding , Inc. (acting through such of affiliates or branches as it deems appropriate, "***MSSF***"), Bank of America, N.A. ("***Bank of America***"), BofA Securities, Inc. (or any of its designated affiliates, "***BofA Securities***"), Barclays Bank PLC ("***Barclays***"), MUFG Bank, Ltd. ("***MUFG***"), BNP Paribas ("***BNP Paribas***"), BNP Paribas Securities Corp. ("***BNPP Securities***" and, together with BNP Paribas, "***BNPP***"), Mizuho Bank, Ltd. ("***Mizuho***") and Societe Generale ("***SocGen***" and, together with MSSF, Bank of America, BofA Securities, Barclays, MUFG, BNPP and Mizuho, the "***Commitment Parties***", "***we***" or "***us***") that X Holdings, II, Inc., a Delaware corporation ("***Bidco***" or "***you***"), and X Holdings, I, Inc., a Delaware corporation ("***Holdings***" or "***you***"), formed at the direction of Elon R. Musk and his affiliates (collectively, the "Investors"), intend to acquire (the "***Acquisition***"), directly or indirectly, all of the outstanding equity interests of, or, directly or indirectly merge with, Twitter, Inc. (the "***Company***"). You have further advised us that, in connection with the foregoing, you intend to consummate the other Transactions described in the Transaction Description attached hereto as Exhibit A (the "***Transaction Description***"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Transaction Description and in the Summaries of Principal Terms and Conditions attached hereto as Exhibit B (the "***Bank Facilities Term Sheet***"), Exhibit C (the "***Secured Bridge Term Sheet***") and Exhibit D (the "***Unsecured Bridge Term Sheet***"; together with the Bank Facilities Term Sheet and the Secured Bridge Term Sheet, the "***Term Sheets***"; this commitment letter, the Transaction Description, the Term Sheets and the Summary of Conditions attached hereto as Exhibit E, collectively, the "***Commitment Letter***").

You have further advised us that, in connection therewith, it is intended that the financing for the Transactions will include (i) the senior secured term loan facility described in the Bank Facilities Term Sheet, in an aggregate principal amount of $6,500.0 million plus at the Borrower's election, an amount sufficient to fund any OID required to be funded due to the exercise of market flex provisions in the Fee Letter (as defined below) (the "***Term Loan Facility***"), (ii) a senior secured revolving credit facility described in the Bank Facilities Term Sheet, in an aggregate principal amount of $500 million (the "***Revolving Facility***" and, together with the Term Loan Facility, the "***Bank Facilities***"), (iii) either (x) up to $3,000.0 million in aggregate principal amount of senior secured notes (the "***Senior Secured Notes***") in a Rule 144A private placement or (y) if all or any portion of the Senior Secured Notes are not issued by the Borrower on or prior to the Closing Date (as defined below), up to $3,000.0 million of senior secured increasing rate loans (the "***Secured Bridge Loans***"), under the senior secured credit facility (the "***Secured Bridge Facility***" and, together with the Bank Facilities, the "***Senior Secured Facilities***") described in the Secured Bridge Term Sheet and (iv) either (x) up to $3,000 million in aggregate principal amount of senior unsecured notes (the "***Unsecured Notes***" and, together with the Senior Secured Notes, the "***Notes***") in a Rule 144A private placement or (y) if all or any portion of the Unsecured Notes are not issued by the Borrower on or prior to the Closing Date, up to $3,000 million of senior unsecured increasing rate loans (the "***Unsecured Bridge Loans***" and, together with the Secured Bridge Loans, the "***Bridge Loans***"), under the senior unsecured credit facility (the "***Unsecured Bridge Facility***") described in the Unsecured Bridge Term Sheet. The Bank Facilities, Secured Bridge Facility and the Unsecured Bridge Facility are collectively referred to herein as the "***Facilities***".

1. Commitments.

In connection with the foregoing, (a) each of MSSF, Bank of America, Barclays, MUFG, BNP Paribas, Mizuho and SocGen, respectively, is pleased to advise you of its several and not joint commitment to, and hereby agrees to, provide 26.9231%, 20.7692%, 20.7692%, 20.7692%, 5%, 3.6539% and 2.1154%, respectively, of the Term Loan Facility, (b) each of MSSF, Bank of America, Barclays, MUFG, BNP Paribas, Mizuho and SocGen, respectively, is pleased to advise you of its several and not joint commitment to, and hereby agrees to, provide 26.9231%, 20.7692%, 20.7692%, 20.7692%, 5%, 3.6539% and 2.1154%, respectively, of the Revolving Facility, (c) each of MSSF, Bank of America, Barclays, MUFG, BNP Paribas, Mizuho and SocGen, respectively, is pleased to advise you of its several and not joint commitment to, and hereby agrees to, provide 26.9231%, 20.7692%, 20.7692%, 20.7692%, 5%, 3.6539% and 2.1154%, respectively, of the Secured Bridge Facility and (d) each of MSSF, Bank of America, Barclays, MUFG, BNP Paribas, Mizuho and SocGen, respectively, is pleased to advise you of its several and not joint commitment to, and hereby agrees to, provide 26.9231%, 20.7692%, 20.7692%, 20.7692%, 5%, 3.6539% and 2.1154%, respectively, of the Unsecured Bridge Facility, in each case subject only to the satisfaction (or waiver in writing by the Commitment Parties) of the applicable conditions set forth in Exhibit E hereto. MSSF, Bank of America, Barclays, MUFG, BNP Paribas, Mizuho and SocGen are referred to herein as the "***Initial Lenders***" and each individually as an "***Initial Lender***", with the entities named in clause (a) above being herein called the "***Initial Term Lenders***", with the entities named in clause (b) above being herein called the "***Initial Revolving Lenders***" (and, together with the Initial Term Lenders, the "***Initial Bank Lenders***"), with the entities named in clause (c) above being herein called the "***Initial Secured Bridge Lenders***" and with the entities named in clause (d) above being herein called the "***Initial Unsecured Bridge Lenders***".

2. Titles and Roles.

It is agreed that (i) each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead arranger and joint bookrunner for the Term Loan Facility and the Revolving Facility (in such capacity, a "***Bank Lead Arranger***" and collectively, the "***Bank Lead Arrangers***"), (ii) each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead

arranger and joint bookrunner for the Secured Bridge Facility (in such capacity, an "***Secured Bridge Lead Arranger***" and collectively, the "***Secured Bridge Lead Arrangers***"), (iii) each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead arranger and joint bookrunner for the Unsecured Bridge Facility (each in such capacity, a "***Unsecured Bridge Lead Arranger***" and collectively, the "***Unsecured Bridge Lead Arrangers***" and, together with the Bank Lead Arrangers and the Secured Bridge Lead Arrangers, the "***Lead Arrangers***"), (iv) MSSF will act as joint physical bookrunner for the Bank Facilities, (v) MSSF will act as administrative agent and collateral agent for the Term Loan Facility and the Revolving Facility (in such capacity, the "***Bank Administrative Agent***"), (vi) MSSF will act as administrative agent and collateral agent for the Secured Bridge Facility (in such capacity, the "***Secured Bridge Administrative Agent***") and (vii) MSSF will act as administrative agent for the Unsecured Bridge Facility (in such capacity, the "***Unsecured Bridge Administrative Agent***" and, together with the Bank Administrative Agent and the Secured Bridge Administrative Agent, the "***Administrative Agents***"). It is further agreed that (i) MSSF, shall have "left" placement in any and all marketing materials or other documentation used in connection with the Bank Facilities, (ii) MSSF shall have "left" placement in any and all marketing materials or other documentation used in connection with the Secured Bridge Facility and (iii) MSSF shall have "left" placement in any and all marketing materials or other documentation used in connection with the Unsecured Bridge Facility.

Except as set forth in the immediately preceding paragraph, no other titles will be awarded and no compensation (other than that expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid to any Lender in order to obtain its commitment to participate in the Facilities unless you and the Commitment Parties shall so agree. The respective commitments of the Initial Lenders shall be several and not joint.

3. Syndication.

The applicable Lead Arrangers reserve the right, prior to or after the execution of the applicable Facilities Documentation (as defined in Exhibit E) to syndicate all or a portion of the Initial Lenders' respective commitments hereunder to a group of banks, financial institutions and other institutional lenders identified by the Lead Arrangers in consultation with you and reasonably acceptable to them and you with respect to the identity of such lenders (your consent not to be unreasonably withheld or delayed) including, without limitation, any relationship lenders designated by you and reasonably acceptable to the Lead Arrangers (such banks, financial institutions and other institutional lenders, together with the Initial Lenders, the "***Lenders***"); *provided* that, notwithstanding each Lead Arranger's right to syndicate the Facilities and receive commitments with respect thereto, it is agreed that (i) syndication of, or receipt of commitments or participations in respect of, all or any portion of an Initial Lender's commitments hereunder prior to the date of the consummation of the Acquisition and the date of the initial funding under the Facilities (the date of such funding, the "***Closing Date***") shall not be a condition to such Initial Lender's commitments or the funding of the Facilities on the Closing Date; (ii) no Initial Lender shall be relieved, released or novated from its obligations hereunder (including its obligation to fund the Facilities on the Closing Date) in connection with any syndication, assignment or participation of the Facilities, including its commitments in respect thereof, until after the initial funding of the Facilities has occurred; (iii) no assignment or novation (except as contemplated in the immediately preceding clause (ii)) shall become effective with respect to all or any portion of any Initial Lender's commitments in respect of the Facilities until after the initial funding of the Facilities; (iv) unless you otherwise agree in writing, each Commitment Party shall retain exclusive control over all rights and obligations with respect to its commitments in respect of the Facilities, including all rights with respect to consents, modifications, supplements, waivers and amendments, until the Closing Date has occurred; and (v) we will not syndicate our commitments to certain banks, financial institutions and other institutional lenders and investors (a) that have been separately identified by name in writing by you or the Investors to us prior to the date hereof (or, if after such date and prior to the launch of general syndication, that are reasonably acceptable to the Lead Arrangers holding (or

their affiliates holding) a majority of the aggregate amount of outstanding financing commitments in respect of the Facilities on the date hereof (the "***Majority Lead Arrangers***")), (b) those persons who are competitors of the Company and its subsidiaries that are separately identified by name in writing by you or the Investors to us from time to time, and (c) in the case of each of clauses (a) and (b) above, any of their affiliates (other than bona fide debt fund affiliates) that are either (x) identified by name in writing by you or the Investors from time to time or (y) clearly identifiable on the basis of such affiliate's name (clauses (a), (b) and (c) above, collectively "***Disqualified Lenders***"); *provided* that designations of Disqualified Lenders may not apply retroactively to disqualify any entity that has previously acquired an assignment or participation in any Facility.

Without limiting your obligations to assist with syndication efforts as set forth herein, it is understood that the Initial Lenders' commitments hereunder are not conditioned upon the syndication of, or receipt of commitments or participations in respect of, the Facilities and in no event shall the commencement or successful completion of syndication of the Facilities constitute a condition to the availability of the Facilities on the Closing Date. The Lead Arrangers intend to commence syndication efforts promptly upon the execution by each party of this Commitment Letter and as part of their syndication efforts, it is their intent to have Lenders commit to the Facilities prior to the Closing Date (subject to the limitations set forth in the preceding paragraph). You agree actively to assist the Lead Arrangers, until the earlier to occur of (i) a Successful Syndication (as defined in the Fee Letter) and (ii) 30 days after the Closing Date (such earlier date, the "***Syndication Date***"), in completing a timely syndication that is reasonably satisfactory to them and you. Such assistance shall include, without limitation, (a) your using commercially reasonable efforts to ensure that any syndication efforts benefit materially from your existing lending and investment banking relationships of the Investors (and, to the extent the Acquisition is consummated pursuant to a Merger Transaction (as defined below) and in any event, after the Closing Date, the existing lending and investment banking relationships and the existing lending and investment banking relationships of the Company), (b) direct contact between senior management, representatives and advisors of you and the Investors, on the one hand, and the proposed Lenders, on the other hand (and, to the extent the Acquisition is consummated pursuant to a Merger Transaction and in any event, after the Closing Date, your using commercially reasonable efforts to ensure such contact between senior management, representatives and advisors of the Company, on the one hand, and the proposed Lenders, on the other hand, to the extent not in contravention of the Acquisition Agreement), in all such cases at times and places mutually agreed upon (which meeting may, if mutually agreed, be virtual), (c) your and the Investors' assistance, and (to the extent the Acquisition is consummated pursuant to a Merger Transaction and in any event, after the Closing Date) your using commercially reasonable efforts to cause the Company to assist in the preparation of customary confidential information memoranda for the Facilities (any such memorandum, a "***Confidential Information Memorandum***") and other marketing materials to be used in connection with the syndications (including a customary lender presentation, in each case, by using commercially reasonable efforts to provide information and other customary materials reasonably requested in connection with such Confidential Information Memorandum no less than 15 business days prior to the Closing Date), in each case to the extent not in contravention of the Acquisition Agreement, (d) to the extent requested by the Lead Arrangers, using your commercially reasonable efforts to procure a public corporate credit rating and a public corporate family rating in respect of the Borrower from each of Standard & Poor's Ratings Services ("***S&P***") and Moody's Investors Service, Inc. ("***Moody's***"), respectively, and public ratings for each of the Facilities and the Notes from each of S&P and Moody's, in each case, prior to the launch of general syndication, (e) the hosting, with the Lead Arrangers, of no more than two meetings of prospective Lenders at times and locations to be mutually agreed upon with the Principal attending and participating in at least one of the aforesaid meetings (which meeting shall not exceed two (2) hours in duration and may be virtual) and (f) your ensuring (and to the extent the Acquisition is consummated pursuant to a Merger Transaction and in any event, after the Closing Date, with respect to the Company and its subsidiaries your using commercially reasonable efforts to ensure, to the extent not in contravention of the Acquisition Agreement) that there shall be no competing issues of debt securities or commercial bank

or other credit facilities (other than the Facilities) of you, Holdings, the Borrower, the Company or any of their respective subsidiaries being offered, placed or arranged (other than the Notes (or the issuance of any "demand securities" issued in lieu of the Notes or other indebtedness issued in lieu of the Notes that has otherwise been consented to by the Majority Lead Arrangers (such consent not to be unreasonably withheld or delayed) or any debt disclosed to us on or prior to the date hereof) if such debt securities or commercial bank or other credit facilities would, in the reasonable judgment of the Lead Arrangers, materially impair the primary syndication of the Facilities without the prior consent of the Lead Arrangers (such consent not to be unreasonably withheld or delayed) (it is understood and agreed that any deferred purchase price obligations, ordinary course working capital and revolving facilities and ordinary course capital lease, purchase money and equipment financings will not be deemed to materially impair the primary syndication of the Facilities (and any refinancing, replacement, extension or renewal of existing debt of the Company or any amendment to any of the foregoing)). Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter or any other letter agreement or undertaking concerning the financing of the Transactions to the contrary, neither the obtaining of the ratings referenced above nor the compliance with any of the other provisions set forth in clauses (a) through (f) above or any other provision of this paragraph shall constitute a condition to the commitments hereunder or the funding of the Facilities on the Closing Date or at any time thereafter and the only financial statements required to be delivered as a condition to the commitments hereunder shall be those set forth in paragraph 6 of Exhibit E.

The Lead Arrangers, in their capacities as such, will, in consultation with you, manage all aspects of any syndication of the Facilities, including decisions as to the selection of institutions reasonably acceptable to you to be approached and when they will be approached, when their commitments will be accepted, which institutions will participate (subject to your consent rights and rights of appointment set forth in the second preceding paragraph), the allocation of the commitments among the Lenders and the amount and distribution of fees among the Lenders from the amounts to be paid to the Commitment Parties pursuant to this Commitment Letter and the Fee Letter. To assist the Lead Arrangers in their syndication efforts, you agree promptly to prepare and provide (and to use commercially reasonable efforts to cause the Investors to provide, and, to the extent the Acquisition is consummated pursuant to a Merger Transaction and in any event, after the Closing Date, to use commercially reasonable efforts to cause the Company to provide) to the Lead Arrangers all customary information with respect to you and the Company and each of your and its respective subsidiaries and the Transactions, including all financial information and projections (such projections, including financial estimates, budgets, forecasts and other forward-looking information, the "***Projections***"), as the Lead Arrangers may reasonably request in connection with the structuring, arrangement and syndication of the Facilities; it being understood that such information regarding the Company and its subsidiaries shall be limited to publicly filed information to the extent the Acquisition is consummated pursuant to a Tender Offer. For the avoidance of doubt, you will not be required to provide any information to the extent that the provision thereof would violate any law, rule or regulation binding upon you or any of your subsidiaries or affiliates or upon the Company or any of its respective subsidiaries or affiliates or any obligation of confidentiality binding upon, or waive any attorney-client privilege of, you, the Company or your or its respective subsidiaries and affiliates (in which case you agree to use commercially reasonable efforts to have any such confidentiality obligation waived, and otherwise in all instances, to the extent practicable and not prohibited by applicable law, rule or regulation, promptly notify us that information is being withheld pursuant to this sentence). Notwithstanding anything herein to the contrary, the only financial statements that shall be required to be provided to the Commitment Parties in connection with the syndication of the Facilities shall be those required to be delivered pursuant to paragraph 6 of Exhibit E.

You shall use commercially reasonable efforts with respect to the Bridge Facilities, (a) to provide that each Investment Bank (as defined in Exhibit E) receives (i) a customary preliminary offering memorandum containing (A) all customary information, including financial statements (other than pro forma financial statements which are described below), business and other financial data of the type and

form that are customarily included in private placements pursuant to Rule 144A promulgated under the Securities Act (including information required by Regulation S-X and Regulation S-K under the Securities Act, which is understood not to include (I) a "description of notes," "plan of distribution" and information customarily provided by the Investment Banks or their counsel or advisors in the preparation of an offering memorandum for an offering of high yield unsecured debt securities in a private placement under Rule 144A of the Securities Act, including any risk factors relating to, or any description of, all or any component of the financing contemplated thereby or by this Commitment Letter, (II) segment reporting or consolidating financial statements, separate subsidiary financial statements and other financial statements and data that would be required by Sections 3-05, 3-09, 3-10, 3-16, 13-01 and 13-02 of Regulation S-X, (III) management's CD&A and other information required by Item 402 of Regulation S-K and information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A, and (IV) other customary exceptions) and (B) pro forma financial statements of the type and form that are customarily included in private placements pursuant to Rule 144A promulgated under the Securities Act to be prepared in a manner consistent with Regulation S-X (and in the case of pro forma financial statements for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period presented, as if Regulation S-X was applicable to such financial statements) and (ii) all other financial data that would be reasonably necessary for the Investment Banks to receive customary "comfort" letters from the independent accountants of the Company in connection with the offering of the Notes (and the Borrower shall have made all commercially reasonable efforts to cause such accountants to provide the Investment Banks with drafts of such "comfort" letters (which shall provide customary "negative assurance" comfort), which such accountants would be prepared to issue upon completion of customary procedures) and (b) to afford the Investment Banks a period (the "***Notes Marketing Period***") of at least 15 consecutive business days upon receipt of the information described above in clause (a)(i) (the "***Notes Required Information***") to seek to place the Notes with qualified purchasers thereof; provided that (i) July 4 and 5, 2022 shall not constitute business days for purposes of the Notes Marketing Period and (ii) if the Notes Marketing Period has not ended by August 19, 2022 then the Notes Marketing Period shall not begin before September 6, 2022. If the Borrower shall in good faith reasonably believe that the Notes Required Information has been delivered to the Lead Arrangers, the Borrower may deliver to the Lead Arrangers a written notice to that effect (stating when it believes the delivery of the Notes Required Information to the Lead Arrangers was completed), in which case the Borrower shall be deemed to have complied with such obligation to furnish the Notes Required Information and the Lead Arrangers shall be deemed to have received the Notes Required Information, unless the Lead Arrangers in good faith reasonably believe that the Borrower has not completed delivery of the Notes Required Information and not later than 5:00 p.m. (New York City time) two (2) business days after the delivery of such notice by the Borrower, delivers a written notice to the Borrower to that effect (stating with specificity which such Notes Required Information the Borrower has not delivered); provided that notwithstanding the foregoing, the delivery of the Notes Required Information shall be satisfied at any time at which (and so long as) the Lead Arrangers shall have actually received the Notes Required Information. Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter or any other letter agreement or undertaking concerning the financing of the Transactions to the contrary, neither the occurrence of the Notes Marketing Period referred to above or any other provision of this paragraph shall constitute a condition to the commitments hereunder or the funding of the Facilities on the Closing Date or at any time thereafter and the only financial statements required to be delivered as a condition to the commitments hereunder shall be those set forth in paragraph 6 of Exhibit E.

4. Information.

You hereby represent and warrant that (a) all written information and written data (such information and data, other than (i) the Projections and (ii) information of a general economic or industry specific nature, the "***Information***") (in the case of Information regarding the Company and its subsidiaries and its and their respective businesses, to your knowledge) that has been or will be made available to the Commitment

Parties by or on behalf of you or any of your representatives, taken as a whole, is or will be, when furnished, correct in all material respects and does not or will not, when furnished, and when taken as a whole and together with the Company's public filings with the Securities and Exchange Commission (other than any portions thereof under the "risk factors" section or other cautionary language), contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time) and (b) the Projections that have been or will be made available to the Commitment Parties by or on behalf of you or any of your representatives have been or will be, at the time furnished, prepared in good faith based upon assumptions that you believe to be reasonable at the time made and at the time the related Projections are so furnished to the Commitment Parties, it being understood that the Projections are predictions as to future events and are not to be viewed as facts, that the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results and such differences may be material. You agree that if, at any time prior to the later of the Closing Date and the Syndication Date, you become aware that any of the representations and warranties in the preceding sentence would be incorrect in any material respect if the Information and Projections were being furnished, and such representations and warranties were being made, at such time, then you will (or, with respect to the Information and Projections relating to the Company and its subsidiaries, will use commercially reasonable efforts to) promptly supplement the Information and the Projections so that such representations and warranties will be correct in all material respects under those circumstances. Notwithstanding anything to the contrary herein, the accuracy of the foregoing representations shall not be a condition to the Commitment Parties' obligations hereunder or the funding of the Facilities on the Closing Date. In arranging and syndicating the Facilities, the Commitment Parties will be entitled to use and rely primarily on the Information and the Projections without responsibility for independent verification of the veracity or completeness thereof.

You hereby acknowledge that (a) the Lead Arrangers will make available Information and Projections to the proposed syndicate of Lenders by posting such Information and Projections on IntraLinks, SyndTrak Online or similar electronic means and (b) certain of the Lenders may be "public side" Lenders (i.e., Lenders that wish to receive only information that (i) is publicly available, (ii) is not material with respect to you, Holdings, the Borrower, the Company, your or its respective subsidiaries or the respective securities of any of the foregoing for purposes of United States federal and state securities laws or (iii) constitutes information of a type that would be publicly available if you, Holdings, the Borrower, the Company or your or their respective subsidiaries, were public reporting companies (as reasonably determined by you) (collectively, the "***Public Side Information***"; any information that is not Public Side Information, "***Private Side Information***")) and who may be engaged in investment and other market-related activities with respect to you, Holdings, the Borrower, the Company, any of your or its respective subsidiaries or the respective securities of any of the foregoing (each, a "***Public Sider***" and each Lender that is not a Public Sider, a "***Private Sider***").

If reasonably requested by the Lead Arrangers you will use commercially reasonable efforts to assist us in preparing a customary additional version of the Confidential Information Memorandum to be used in connection with the syndication of the Facilities that includes only Public Side Information with respect to you, Holdings, the Borrower, the Company, your or their respective subsidiaries or the respective securities of any of the foregoing to be used by Public Siders. The Public Side Information will be substantially consistent with the information that would be included in any offering memorandum for the Notes (including customary "risk factors") and in any filings that would be required to be made by you, the Company, or any of your or its respective subsidiaries with the Securities and Exchange Commission if you, the Company or any of your or its respective subsidiaries were public reporting companies. It is understood that in connection with your assistance described above, customary authorization letters will be

included in any Confidential Information Memorandum that authorize the distribution of the Confidential Information Memorandum to prospective Lenders that contain the representations set forth in the second preceding paragraph (and represent that the additional version of the Confidential Information Memorandum contains only Public Side Information with respect to you, Holdings, the Borrower, the Company your or its respective subsidiaries and the respective securities of any of the foregoing (other than as set forth in the following paragraph)) and that the Confidential Information Memorandum shall exculpate you, the Investors, the Company and your and their respective subsidiaries and affiliates and us and our affiliates with respect to any liability related to the use or misuse of the contents of the Confidential Information Memorandum or any related marketing material by the recipients thereof; *provided* that (x) the Company shall be required to deliver authorization letters only to the extent the Acquisition is to be consummated pursuant to a Merger Transaction at the time such authorization letters are to be delivered and in any event, after the Closing Date, and to the extent not in contravention of the Acquisition Agreement and (y) any representations as to the Company in the case of authorization letters to be delivered by the Company shall not be qualified by knowledge.

You agree to use commercially reasonable efforts to identify that portion of the Information that may be distributed to the Public Siders as "PUBLIC". You agree that, subject to the confidentiality and other provisions of this Commitment Letter, the Lead Arrangers on your behalf may distribute the following documents to all prospective lenders in the form provided to you and to your counsel a reasonable time prior to their distribution, unless you or your counsel advise the Lead Arrangers in writing (including by email) within a reasonable time prior to their intended distribution that such material should only be distributed to Private Siders: (a) the Term Sheets, (b) interim and final drafts of the Facilities Documentation, (c) administrative materials prepared by the Lead Arrangers for prospective Lenders (such as a lender meeting invitation, allocations and funding and closing memoranda) and (d) changes in the terms of the Facilities. If you advise us that any of the foregoing items should be distributed only to Private Siders, then the Lead Arrangers will not distribute such materials to Public Siders without your consent.

5. Fees.

As consideration for the commitments of the Initial Lenders hereunder and for the agreement of the Lead Arrangers to perform the services described herein, you agree to pay (or cause to be paid) the fees set forth in the Term Sheets and in the Fee Letter dated the date hereof and delivered herewith with respect to the Facilities (the "***Fee Letter***"), if and to the extent payable. Once paid, such fees shall not be refundable under any circumstances, except as otherwise contemplated by the Fee Letter.

6. Conditions Precedent.

The several commitments of the Initial Lenders hereunder to fund the Facilities on the Closing Date and the several agreements of the Lead Arrangers to perform the services described herein are subject solely to the applicable conditions set forth in Exhibit E hereto, and upon satisfaction (or waiver in writing by the Commitment Parties) of such conditions, the initial funding of the Facilities shall occur, it being understood that there are no conditions (implied or otherwise) to the commitments hereunder and there will be no conditions (implied or otherwise) under the Facilities Documentation to the funding of the Facilities on the Closing Date, including compliance with the terms of this Commitment Letter, the Fee Letter or the Facilities Documentation, other than those that are expressly stated in Exhibit E hereto.

Notwithstanding anything to the contrary in this Commitment Letter (including each of the exhibits attached hereto), the Fee Letter, the Facilities Documentation or any other letter agreement or other undertaking concerning the financing of the Transactions to the contrary, (i) the only representations and warranties the making of which shall be a condition to the availability of the Facilities on the Closing Date shall be (A) solely to the extent the Acquisition is consummated pursuant to a Merger Transaction, such of the

representations and warranties made by the Company with respect to the Company, its subsidiaries and their respective businesses in the Acquisition Agreement as are material to the interests of the Initial Lenders, but only to the extent that you (or one of your affiliates) have the right (taking into account any applicable cure provisions) to terminate your (or its) obligations under the Acquisition Agreement (as defined in Exhibit E) (or otherwise decline to consummate the Acquisition without any liability) as a result of a breach of such representations and warranties in the Acquisition Agreement (to such extent, the "***Company Representations***") and (B) the Specified Representations (as defined below) and (ii) the terms of the Facilities Documentation shall be in a form such that they do not impair the availability of the Facilities on the Closing Date if the applicable conditions set forth in Exhibit E hereto are satisfied (or waived by the Commitment Parties) (it being understood and agreed that, to the extent any security interest in any Collateral (as defined in Exhibit B) is not or cannot be provided and/or perfected on the Closing Date (other than pledge and perfection of the security interests (1) in the certificated equity securities, if any, of the Borrower and any material wholly-owned U.S. domestic subsidiaries of the Borrower (to the extent required by the Term Sheets (provided that such certificated equity securities, will be required to be delivered on the Closing Date only to the extent the Acquisition is consummated pursuant to a Merger Transaction and received from the Company after your use of commercially reasonable efforts to do so)) and (2)(a) in the case of Holdings and the Borrower, in other assets with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code and (b) solely to the extent the Acquisition is consummated pursuant to a Merger Transaction, in the case of the Company and the other Guarantors, in other assets with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code) after your use of commercially reasonable efforts to do so or without undue burden or expense, then the provision and/or perfection of a security interest in such Collateral shall not constitute a condition precedent to the availability and funding of the applicable Facilities on the Closing Date but instead shall be required to be delivered and/or perfected after the Closing Date pursuant to arrangements and timing to be mutually agreed (but, in any event, not later than (x) to the extent the Acquisition is consummated pursuant to a Tender Offer (as defined below), in the case of assets of the Company and the other Guarantors with respect to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code, five (5) business days after the Closing Date and (y) otherwise 90 days after the Closing Date or such longer period as may be agreed by the Bank Administrative Agent, in its sole discretion, and the Borrower acting reasonably without any requirement for Lender consent. Notwithstanding anything to the contrary contained herein, to the extent the Acquisition is consummated pursuant to a Tender Offer, the Company and the other Guarantors shall not be required to become a Guarantor or grant a lien in any of their assets until five (5) business days after the Closing Date (or such longer period as may be agreed by the Bank Administrative Agent, in its sole discretion without any requirement for Lender consent); provided that, for the avoidance of doubt, the Borrower shall, on the Closing Date, pledge the shares of the Company acquired on the Closing Date. For purposes hereof, "***Specified Representations***" means the representations and warranties made by Holdings and the Borrower (and, to the extent the Acquisition is consummated pursuant to a Merger Transaction, the other Guarantors) to be set forth in the Facilities Documentation relating to the corporate or other organizational existence of Holdings and the Borrower (and, if applicable, the other Guarantors) power and authority, due authorization, execution, delivery and enforceability, in each case related to the borrowing under, guaranteeing under, granting of security interests in the Collateral to, entry into and performance of, the Facilities Documentation; the incurrence of the loans and the provision of the Guarantees, in each case under the Facilities, and the granting of the security interests in the Collateral to secure the Senior Secured Facilities, not conflicting with Holdings' and the Borrower's (and, if applicable, the other Guarantors') constitutional documents (after giving effect to the Acquisition); solvency as of the Closing Date (after giving effect to the Transactions) of the Borrower and its restricted subsidiaries on a consolidated basis (solvency to be defined in a manner consistent with the manner in which solvency is defined in the solvency certificate to be delivered pursuant to paragraph 11 of Exhibit E); creation, validity and perfection of security interests in the Collateral to be perfected on the Closing Date (subject to permitted liens and the foregoing provisions of this paragraph relating to Collateral); Federal Reserve margin regulations; the use

of loan proceeds not violating OFAC or the FCPA, and other anti-terrorism, anti-bribery, anti-corruption and anti-money laundering laws; the PATRIOT Act; and the Investment Company Act. This paragraph, and the provisions herein, shall be referred to as the "***Funding Conditions Provisions***". Without limiting the conditions precedent provided herein to funding the consummation of the Acquisition with the proceeds of the Facilities, the Lead Arrangers will cooperate with you as reasonably requested in coordinating the timing and procedures for the funding of the Facilities in a manner consistent with the Tender Offer Documents and/or the Acquisition Agreement, as applicable.

7. Indemnification; Expenses.

You agree (a) to indemnify and hold harmless each of the Commitment Parties, their respective affiliates and the respective officers, directors, employees, agents, advisors, controlling persons, members and the successors and permitted assigns (other than Lenders that are not Initial Lenders) of each of the foregoing (each an "***Indemnified Person***") from and against any and all reasonable and documented out-of-pocket expenses, losses, claims, damages and liabilities of any kind or nature, joint or several, to which any such Indemnified Person may become subject, to the extent arising out of or in connection with any claim, litigation, investigation or proceeding, actual or threatened, relating to this Commitment Letter (including the Term Sheets), the Fee Letter, the Transactions, the Facilities or any related transaction contemplated hereby (any of the foregoing, a "***Proceeding***"), regardless of whether any such Indemnified Person is a party thereto and whether such Proceeding is brought by you, your affiliates, equity holders, security holders, creditors or any other person and whether or not the Transactions are consummated, and to reimburse each such Indemnified Person upon written demand (with reasonable supporting detail if you shall so request in writing) for any reasonable and documented out-of-pocket legal fees and expenses incurred in connection with investigating or defending any of the foregoing by one firm of counsel for all Indemnified Persons, taken as a whole, and, if necessary, by a single firm of local counsel in each appropriate jurisdiction for all such Indemnified Persons, taken as a whole (and, in the case of an actual or perceived conflict of interest where the Indemnified Person affected by such conflict notifies you of the existence of such conflict and thereafter, after receipt of your written consent (which consent shall not be unreasonably withheld or delayed), retains its own counsel, by another firm of counsel for such affected Indemnified Person); *provided* that the foregoing indemnity will not, as to any Indemnified Person, apply to out-of-pocket expenses, losses, claims, damages, liabilities or related expenses to the extent that they have resulted from (i) the willful misconduct, bad faith, gross negligence or material breach of this Commitment Letter of such Indemnified Person or any of such Indemnified Person's affiliates or any of its or their respective officers, directors, employees, agents, controlling persons, members, advisors or the successors and permitted assigns (other than Lenders that are not Initial Lenders) of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (ii) in the case of a Proceeding initiated by you or one of your permitted assignees against the relevant Indemnified Person, a material breach of the obligations of such Indemnified Person or any of such Indemnified Person's affiliates or of any of its or their respective officers, directors, employees, agents, advisors or their representatives of any of the foregoing under this Commitment Letter, the Fee Letter or the Facilities Documentation (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) any Proceeding not arising from any act or omission by you or any of your affiliates that is brought by an Indemnified Person against any other Indemnified Person (other than disputes involving claims against any Lead Arranger or Administrative Agent in its capacity as such), and (b) to reimburse each Commitment Party and each Indemnified Person from time to time, upon presentation of a summary statement (with reasonable supporting detail if you shall so request in writing), for all reasonable and documented out-of-pocket expenses (including but not limited to expenses of each Commitment Party's due diligence investigation, consultants' fees (to the extent any such consultant has been retained with your prior written consent (such consent not to be unreasonably withheld or delayed)), syndication expenses, travel expenses and reasonable fees, disbursements and other charges of one counsel to all Lead Arrangers and, if necessary, of a single firm of local counsel to all Lead Arrangers in each appropriate jurisdiction

(other than any allocated costs of in-house counsel) or otherwise retained with your consent (such consent not to be unreasonably withheld or delayed)), in each case incurred in connection with the Facilities and the preparation of this Commitment Letter, the Fee Letter, the Facilities Documentation and any security arrangements in connection therewith (collectively, the "***Expenses***"); *provided* that, except as set forth in the Fee Letter, you shall not be required to reimburse any of the Expenses in the event the Closing Date does not occur.

Notwithstanding any other provision of this Commitment Letter, (i) no Protected Person (as defined below) shall be liable for any damages arising from the use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission systems (including IntraLinks or SyndTrak Online), except to the extent that such damages have resulted from the willful misconduct, bad faith, gross negligence or material breach of this Commitment Letter of such Protected Person or any of such Protected Person's affiliates or any of its or their officers, directors, employees, agents, advisors, controlling persons, members or the successors and permitted assigns (other than Lenders that are not Initial Lenders) of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision) and (ii) none of we, you, the Company, the Investors (or any of their respective affiliates), any subsidiaries of the foregoing or any of their respective affiliates or the respective officers, directors, employees, agents, advisors, controlling persons, members and the successors and permitted assigns (other than Lenders that are not Initial Lenders) of any of the foregoing (each, a "***Protected Person***") shall be liable for any indirect, special, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) in connection with this Commitment Letter, the Fee Letter, the Transactions (including the Facilities and the use of proceeds thereunder), or with respect to any activities related to the Facilities, including the preparation of this Commitment Letter, the Fee Letter and the Facilities Documentation; *provided* that nothing in this paragraph shall limit your indemnity and reimbursement obligations to the extent that such indirect, special, punitive or consequential damages are included in any claim by a third party unaffiliated with any of the Commitment Parties with respect to which the applicable Protected Person is entitled to indemnification under the preceding paragraph.

You shall not be liable for any settlement of any Proceeding effected without your written consent (which consent shall not be unreasonably withheld or delayed), but if settled with your written consent or if there is a final and non-appealable judgment by a court of competent jurisdiction in any such Proceeding, you agree to indemnify and hold harmless each Indemnified Person from and against any and all out-of-pocket expenses, losses, claims, damages, liabilities and reasonable and documented legal or other out-of-pocket expenses by reason of such settlement or judgment in accordance with and to the extent provided in the other provisions herein.

You shall not, without the prior written consent of any Indemnified Person affected thereby (which consent shall not be unreasonably withheld or delayed) (it being understood that the withholding of consent due to non-satisfaction of any conditions described in clauses (i) and (ii) of this sentence shall be deemed reasonable), effect any settlement of any pending or threatened proceedings in respect of which indemnity could have been sought hereunder by such Indemnified Person unless such settlement (i) includes an unconditional release of such Indemnified Person in form and substance reasonably satisfactory to such Indemnified Person from all liability or claims that are the subject matter of such proceedings and (ii) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

8. Sharing Information; Absence of Fiduciary Relationship; Affiliate Activities.

You acknowledge that the Commitment Parties and their affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other persons in respect of which

you may have conflicting interests regarding the transactions described herein and otherwise. Neither the Commitment Parties nor any of their affiliates will use confidential information obtained from you or the Company by virtue of the transactions contemplated by this Commitment Letter or their other relationships with you in connection with the performance by them of services for other persons, and neither the Commitment Parties nor any of their affiliates will furnish any such information to other persons. You also acknowledge that neither the Commitment Parties nor any of their affiliates have any obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained by them from other persons.

Each of the parties hereto further acknowledges that MSSF or one of its affiliates has been retained as a financial advisor (in such capacity, the "***Financial Advisor***") in connection with the Acquisition. The parties hereto agree not to assert any claim that could be alleged based on any actual or potential conflicts of interest that might be asserted to arise or result from, on the one hand, the engagement of the Financial Advisor and, on the other hand, the relationship of the Financial Advisor and its affiliates with the other parties hereto as described and referred to herein.

You acknowledge that we may receive a future benefit on matters unrelated to this matter, including, without limitation, discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with us, including without limitation, fees paid pursuant hereto (it being understood and agreed that, in no event, shall the expenses include items in respect of any unrelated matter or otherwise be increased as a result of such counsel's representation of us on another matter or on account or our relationship with such counsel).

As you know, each Commitment Party and its respective affiliates is a full service securities firm engaged, either directly or through its affiliates, in various activities, including securities trading, commodities trading, hedging, investment management, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. In the ordinary course of these activities, the Commitment Parties and their respective affiliates may actively engage in commodities trading or trade the debt and equity securities (or related derivative securities) and financial instruments (including bank loans and other obligations) of you, the Company, any of your or their respective subsidiaries and affiliates and other companies which may be the subject of the arrangements contemplated by this letter for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities. The Commitment Parties and their respective affiliates may also co-invest with, make direct investments in, and invest or co-invest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of you, the Company, any of your or their respective subsidiaries and affiliates or other companies which may be the subject of the arrangements contemplated by this Commitment Letter or engage in commodities trading with any thereof.

The Commitment Parties and their respective affiliates may have economic interests that conflict with those of the Company and you. You agree that the Commitment Parties will act under this letter as independent contractors and that nothing in this Commitment Letter or the Fee Letter or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Commitment Parties and you and the Company, your and its respective equity holders or your and its respective affiliates. You acknowledge and agree that (i) the transactions contemplated by this Commitment Letter and the Fee Letter are arm's-length commercial transactions between the Commitment Parties, on the one hand, and you and the Company, on the other, (ii) in connection therewith and with the process leading to such transaction each Commitment Party is acting solely as a principal and not as agents or fiduciaries of you, the Company, your and its management, equity holders, creditors or any other person, (iii) the Commitment Parties have not assumed an advisory or fiduciary responsibility or any other obligation in favor of you with respect to the transactions contemplated hereby or the process leading thereto

(irrespective of whether the Commitment Parties or any of their respective affiliates have advised or are currently advising you or the Company on other matters) except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (iv) you have consulted your own legal, tax, accounting and financial advisors to the extent you deemed appropriate. You further acknowledge and agree that you are responsible for making your own independent judgment with respect to such transactions and the process leading thereto. Please note that the Commitment Parties and their affiliates have not provided any legal, accounting, regulatory or tax advice. You agree that you will not claim that the Commitment Parties (in their capacity as such) or their applicable affiliates, as the case may be, have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to you or your affiliates, in connection with the transactions contemplated by this Commitment Letter or the process leading thereto.

9. Assignments; Amendments; Governing Law, Etc.

This Commitment Letter and any claim, controversy or dispute arising under or related to this Commitment Letter and the commitments hereunder shall not be assignable by any party hereto (other than, (i) occurring as a matter of law pursuant to, or otherwise substantially simultaneously with (and subject to the consummation of), the Acquisition, in each case to one or more of the Company and/or any other domestic subsidiary of the Company and (ii) by you to the Borrower, and/or to other U.S. domestic entities already existing or established in connection with the Transactions and wholly-owned, directly or indirectly, immediately after giving effect to the Transactions by the Investors, with all obligations and liabilities of Holdings hereunder being assumed by the Borrower and/or such other entities upon the effectiveness of such assignment)) without the prior written consent of each other party hereto (such consent not to be unreasonably withheld or delayed) (and any attempted assignment without such consent shall be null and void). This Commitment Letter and the commitments hereunder are intended to be solely for the benefit of the parties hereto (and Indemnified Persons) and are not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto (and Indemnified Persons to the extent expressly set forth herein). Subject to the limitations otherwise set forth herein, each Commitment Party reserves the right to employ the services of its respective affiliates or branches in providing services contemplated hereby and to allocate, in whole or in part, to their affiliates or branches certain fees payable to such Commitment Party in such manner as such Commitment Party and its respective affiliates or branches may agree in their sole discretion and, to the extent so employed, such affiliates and branches shall be entitled to the benefits and protections afforded to, and subject to the provisions governing the conduct of, such Commitment Party hereunder. This Commitment Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by each of the Commitment Parties and you. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or other electronic transmission (i.e., a "pdf" or "tif"), including by electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter (including the exhibits hereto) and the Fee Letter (i) are the only agreements that have been entered into among the parties hereto with respect to the Facilities and (ii) supersede all prior understandings, whether written or oral, among us with respect to the Facilities and sets forth the entire understanding of the parties hereto with respect thereto.

Each of the parties hereto agrees that (i) this Commitment Letter is a binding and enforceable agreement (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law)) with respect to the subject matter contained herein, including an agreement to negotiate in good faith the Facilities Documentation by the parties hereto in a manner consistent with this Commitment Letter, it being acknowledged and agreed that the funding of the

Facilities is subject only to the conditions precedent as provided herein and (ii) the Fee Letter is a binding and enforceable agreement (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law)) of the parties thereto with respect to the subject matter set forth therein.

THIS COMMITMENT LETTER AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED THAT, NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT (A) TO THE EXTENT THE ACQUISITION IS CONSUMMATED PURSUANT TO THE ACQUISITION AGREEMENT, THE LAWS OF THE STATE SET FORTH IN THE ACQUISITION AGREEMENT SHALL GOVERN IN DETERMINING (I) WHETHER A MATERIAL ADVERSE EFFECT UNDER THE ACQUISITION AGREEMENT HAS OCCURRED, (II) THE ACCURACY OF ANY COMPANY REPRESENTATION AND WHETHER YOU (OR ANY OF YOUR SUBSIDIARIES OR AFFILIATES) HAVE THE RIGHT TO TERMINATE YOUR (OR THEIR) OBLIGATIONS UNDER THE ACQUISITION AGREEMENT OR DECLINE TO CONSUMMATE THE ACQUISITION AS A RESULT OF A BREACH OF SUCH REPRESENTATIONS IN THE ACQUISITION AGREEMENT AND (III) WHETHER THE ACQUISITION HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THE ACQUISITION AGREEMENT AND (B) TO THE EXTENT THE ACQUISITION IS CONSUMMATED PURSUANT TO THE TENDER OFFER, THE FEDERAL SECURITIES LAWS OF THE UNITED STATES SHALL GOVERN IN DETERMINING WHETHER THE INITIAL OFFER TO PURCHASE HAS BEEN CONSUMMATED IN ACCORDANCE WITH THE TERMS AND CONDITIONS THEREOF.

10. WAIVER OF JURY TRIAL.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY HERETO RELATED TO OR ARISING OUT OF THIS COMMITMENT LETTER OR THE PERFORMANCE OF SERVICES HEREUNDER.

11. Jurisdiction.

Each of the parties hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America, in each case, sitting in New York City in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Commitment Letter, the Fee Letter, the Transactions or the transactions contemplated hereby, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court, (b) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Commitment Letter, the Fee Letter, the Transactions or the transactions contemplated hereby in any such New York State court or in any such Federal court, (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and (d) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other matter provided by law. Each of the parties hereto agrees to commence any such action, suit, proceeding or claim either in the United States District Court for the Southern District of New York or in the Supreme Court of the State of New York, New York County located in the Borough of Manhattan.

12. Confidentiality.

This Commitment Letter is delivered to you on the understanding that none of the Fee Letter and its terms or substance, or, prior to your acceptance hereof, this Commitment Letter and its terms or substance or the activities of any Commitment Party pursuant hereto or to the Fee Letter, shall be disclosed, directly or indirectly, to any other person or entity (including other lenders, underwriters, placement agents, advisors or any similar persons) except (a) to the Investor Group (as defined below), and to your and any of the Investor Group's subsidiaries and affiliates and your and their respective officers, directors, employees, agents, attorneys, accountants, advisors and controlling persons who are informed of the confidential nature thereof, on a confidential and need-to-know basis, (b) if the Commitment Parties consent to such proposed disclosure (such consent not to be unreasonably conditioned, withheld or delayed) or (c) pursuant to the order of any court or administrative agency in any pending legal or administrative proceeding, or otherwise as required by applicable law, rule or regulation or compulsory legal process or to the extent requested or required by governmental and/or regulatory authorities, in each case based on the reasonable advice of your legal counsel (in which case, you agree, to the extent practicable and not prohibited by applicable law, rule or regulation, to inform us promptly thereof); *provided* that (i) you may disclose this Commitment Letter, (but not the Fee Letter) and the contents hereof to the Company and their officers, directors, employees, agents, attorneys, accountants, advisors and controlling persons, on a confidential and need-to-know basis, (ii) you may disclose the Commitment Letter (but not the Fee Letter) and its contents in any offering memoranda or private placement memoranda relating to the Notes, in any syndication or other marketing materials in connection with the Facilities (including any Confidential Information Memorandum and other customary marketing materials) or in connection with any public or regulatory filing requirement relating to the Transactions, (iii) you may disclose the Term Sheet and the other exhibits and annexes to the Commitment Letter (but not the Fee Letter, other than the existence thereof) and the contents thereof, to potential Lenders and their affiliates involved in the related commitments, to equity investors and to rating agencies in connection with obtaining ratings for the Borrower and the Facilities, (iv) you may disclose the aggregate fees contained in the Fee Letter as part of Projections, pro forma information or a generic disclosure of aggregate sources and uses related to fee amounts related to the Transactions to the extent customary or required in offering and marketing materials for the Facilities or in any public or regulatory filing requirement relating to the Transactions, (v) to the extent the amounts of fees and other economic terms of the market flex provisions set forth therein have been redacted in a customary manner, you may disclose the Fee Letter and the contents thereof to the Company, the Sellers and their officers, directors, employees, agents, attorneys, accountants, advisors and controlling persons, on a confidential and need-to-know basis, (vi) you may disclose this Commitment Letter (but not the Fee Letter) in any tender offer or proxy relating to the Transactions and (vii) you may disclose the Fee Letter and the contents thereof to any prospective equity investor and its officers, directors, employees, attorneys, accountants and advisors, in each case on a confidential basis. You agree that you will permit us to review and approve (such approval not to be unreasonably withheld or delayed) any reference to us or any of our affiliates in connection with the Facilities or the transactions contemplated hereby contained in any press release (or other written public statement that references any Commitment Party or affiliate thereof by name) prior to public release. The confidentiality provisions set forth in this paragraph shall survive the termination of this Commitment Letter and expire and shall be of no further effect after the second anniversary of the date hereof.

Each Commitment Party and its affiliates will use all non-public information provided to any of them or such affiliates by or on behalf of you hereunder or in connection with the Transactions solely for the purpose of providing the services which are the subject of this Commitment Letter and negotiating, evaluating and consummating the transactions contemplated hereby and shall treat confidentially all such information and shall not publish, disclose or otherwise divulge such information; *provided* that nothing herein shall prevent such Commitment Party and its affiliates from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative

proceeding, or otherwise as required by applicable law, rule or regulation or compulsory legal process (in which case such Commitment Party agrees (except with respect to any audit or examination conducted by bank accountants or any governmental, bank regulatory or self-regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, rule or regulation, to inform you promptly thereof prior to disclosure), (b) upon the request or demand of any regulatory authority (including any self-regulatory authority) having jurisdiction over such Commitment Party or any of its affiliates (in which case such Commitment Party agrees (except with respect to any audit or examination conducted by bank accountants or any governmental, bank regulatory or self-regulatory authority exercising examination or regulatory authority) to the extent practicable and not prohibited by applicable law, rule or regulation, to inform you promptly thereof prior to disclosure), (c) to the extent that such information becomes publicly available other than by reason of improper disclosure by such Commitment Party or any of its affiliates or any related parties thereto in violation of any confidentiality obligations owing to you, the Investors, the Company or any of your or their respective subsidiaries or affiliates or related parties (including those set forth in this paragraph), (d) to the extent that such information is received by such Commitment Party from a third party that is not, to such Commitment Party's knowledge, subject to confidentiality obligations owing to you, the Investors, the Company or any of your or their respective subsidiaries or affiliates or related parties, (e) to the extent that such information was already in our possession prior to any duty or other undertaking of confidentiality or is independently developed by the Commitment Parties without the use of such information, (f) to other Commitment Parties and such Commitment Party's affiliates and to its and their respective officers, directors, partners, employees, legal counsel, independent auditors and other experts, advisors or agents who need to know such information in connection with the Transactions and who are informed of the confidential nature of such information and who are subject to customary confidentiality obligations of professional practice or who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph) (with each such Commitment Party, to the extent within its control, responsible for such person's compliance with this paragraph), (g) to potential or prospective Lenders, hedge providers, participants or assignees, in each case who agree (pursuant to customary syndication practice) to be bound by the terms of this paragraph (or language substantially similar to this paragraph); *provided* that (i) the disclosure of any such information to any Lenders, hedge providers or prospective Lenders, hedge providers or participants or prospective participants referred to above shall be made subject to the acknowledgment and acceptance by such Lender, hedge provider or prospective Lender or participant or prospective participant that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to you and each Commitment Party, including, without limitation, as agreed in any Information materials or other marketing materials) in accordance with the standard syndication processes of such Commitment Party or customary market standards for dissemination of such type of information, which shall in any event require "click through" or other affirmative actions on the part of recipient to access such information and (ii) no such disclosure shall be made by such Commitment Party to any person that is at such time a Disqualified Lender, (h) for purposes of establishing a "due diligence" defense or (i) to rating agencies in connection with obtaining ratings for the Borrower, the Facilities and the Notes. In addition, each Commitment Party may disclose the existence of the Facilities to market data collectors, similar service providers to the lending industry and service providers to the Commitment Parties in connection with the administration and management of the Facilities. In the event that the Facilities are funded, the Commitment Parties' and their respective affiliates', if any, obligations under this paragraph, shall terminate automatically and be superseded by the confidentiality provisions in the Facilities Documentation upon the initial funding thereunder to the extent that such provisions are binding on such Commitment Parties. Otherwise, the confidentiality provisions set forth in this paragraph shall survive the termination of this Commitment Letter and expire and shall be of no further effect after the second anniversary of the date hereof.

13. Surviving Provisions.

The syndication, information, reimbursement (if applicable), compensation (if applicable in accordance with the terms hereof and the Fee Letter), indemnification, confidentiality, jurisdiction, governing law, absence of fiduciary relationship and waiver of jury trial provisions contained herein and in the Fee Letter shall remain in full force and effect regardless of whether Facilities Documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or the Commitment Parties' commitments hereunder; *provided* that your obligations under this Commitment Letter, other than those relating to confidentiality, information and the syndication of the Facilities, shall automatically terminate and be superseded by the corresponding provisions of the Facilities Documentation upon the initial funding thereunder, and you shall be automatically released from all liability in connection therewith at such time. You may terminate this Commitment Letter and/or the Initial Lenders' commitments (on a pro rata basis amongst the Initial Lenders) with respect to the Facilities (or any portion thereof as selected by you) hereunder at any time subject to the provisions of the preceding sentence.

14. PATRIOT ACT Notification.

We hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001, as amended from time to time, the "***PATRIOT Act***"), each of us and each of the Lenders may be required to obtain, verify and record information that identifies the Borrower and the Guarantors, which information may include their names, addresses, tax identification numbers, a certification regarding beneficial ownership as required by 31 C.F.R. § 1010.230 (such certification, the "***Beneficial Ownership Certification***") and other information that will allow each of us and the Lenders to identify the Borrower and Guarantors in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective as to each of us and each Lender.

15. Acceptance and Termination.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms of this Commitment Letter and of the Fee Letter by returning to the Bank Administrative Agent on behalf of the Commitment Parties executed counterparts hereof and of the Fee Letter not later than 11:59 p.m., New York City time, on April 25, 2022. The Initial Lenders' respective commitments hereunder and the obligations and agreements of the Commitment Parties contained herein will expire at such time in the event that the Bank Administrative Agent has not received such executed counterparts in accordance with the immediately preceding sentence. If you do so execute and deliver to us this Commitment Letter and the Fee Letter by all of the parties hereto and thereto, this Commitment Letter and the commitments and undertakings of each of the Commitment Parties shall remain effective and available for you until the earliest to occur of (i) the termination of your obligations under the Tender Offer unless the Acquisition Agreement shall have been entered into on or prior to such date or otherwise contemporaneously therewith, (ii) after execution of the Acquisition Agreement and prior to the consummation of the Acquisition, the termination in writing of the Acquisition Agreement by you in accordance with its terms in the event that the Acquisition is not consummated, (iii) the consummation of the Acquisition with or without the funding of the Facilities, (iv) 11:59 p.m. New York City time on the date that is 75 days after the date of this Commitment Letter, if as of such time, an Acquisition Agreement has not been executed, (v) after the execution of the Acquisition Agreement, 11:59 p.m. New York City time on the "outside date" (or similar defined term) set forth in the Acquisition Agreement and (vi) 11:59 p.m., New York City time, on April 25, 2023. Upon the occurrence of any of the events referred to in the preceding sentence, this Commitment Letter and the commitments of the Commitment Parties hereunder and the agreement of the Commitment Parties to provide the services described herein shall automatically terminate unless each of the Commitment Parties shall, in its sole discretion, agree to an extension; *provided* that the termination of any such commitment pursuant to such paragraph does not prejudice our or your rights and remedies in respect of any breach of this Commitment Letter

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The Commitment Parties are pleased to have been given the opportunity to assist you in connection with the financing for the Acquisition.

Very truly yours,

MORGAN STANLEY SENIOR FUNDING INC.

By: 

Name: Andrew Earls
Title: Authorized Signatory

BANK OF AMERICA, N.A.

By: 

Name: Scott Tolchin
Title: Managing Director

BOFA SECURITIES, INC.

By: 

Name: Scott Tolchin
Title: Managing Director

BARCLAYS BANK PLC

By: 

Name: Jeremy Hazan
Title: Managing Director

MUFG BANK, LTD.

By: 

Name: Timothy Dilworth
Title: Managing Director

BNP PARIBAS

By: 

Name: David Berger
Title: Managing Director

By: 

Name: Aadil Zuberi
Title: Director

BNP PARIBAS SECURITIES CORP.

By: 

Name: David Berger
Title: Managing Director

By: 

Name: Aadil Zuberi
Title: Director

MIZUHO BANK, LTD.

By: 

Name: Raymond Ventura
Title: Managing Director

SOCIETE GENERALE

By: 

Name: Richard Knowlton
Title: Managing Director

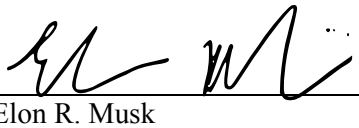
Accepted and agreed to as of
the date first above written:

X HOLDINGS I, INC.

By: 

Name: Elon R. Musk
Title: President, Treasurer and Secretary

X HOLDINGS II, INC.

By: 

Name: Elon R. Musk
Title: President, Treasurer and Secretary

Project X
Transaction Description

Capitalized terms used but not defined in this Exhibit A shall have the meanings set forth in the other Exhibits to the Commitment Letter to which this Exhibit A is attached (the "***Commitment Letter***") or in the Commitment Letter.

X Holdings II, Inc., a newly created corporation organized under the laws of Delaware ("Bidco"), formed at the direction of the Investors, together with certain other investors (which may include management) arranged by and designated by the Investors (collectively with the Investors, the "Investor Group"), intends to directly or indirectly, acquire all of the outstanding equity interests of, or, directly or indirectly merge with, Twitter, Inc., a corporation organized under the laws of Delaware (the "Company").

In connection with the foregoing, it is intended that:

a) The Investors have established (i) Bidco and (ii) X Holdings I, Inc., a newly organized corporation organized under the laws of Delaware ("Holdings").

b) The Investor Group will directly or indirectly make equity contributions to Holdings and Holdings will make equity contributions to Bidco (provided that any such contribution to Holdings or Bidco not made in the form of cash common equity or Rollover Equity (as defined below) shall be reasonably acceptable to the Commitment Parties) (the foregoing, collectively, the "***Equity Contribution***") in an aggregate amount equal to, when combined with the fair market value of the equity of the Investors, management and certain other existing equity holders of the Company rolled over (the "***Rollover Equity***") or invested in connection with the Transactions (as defined below) (which such rollover investment may be consummated immediately after the Acquisition), at least 40.0% (the "***Minimum Equity Contribution***") of the sum of (1) the aggregate gross proceeds of the Facilities and (if applicable) the Notes borrowed on the Closing Date, excluding the gross proceeds of any loans to fund (A) working capital needs on the Closing Date and (B) original issue discount and/or upfront fees (including by any increase in the aggregate principal amount of the Term Loan Facility) in connection with the exercise of the "Market Flex Provisions" or "Securities Demand" under the Fee Letter and (2) the equity capitalization of Holdings and its subsidiaries on the Closing Date after giving effect to the Transactions, which amount, together with proceeds from the Facilities and (if applicable) the Notes, shall be used to consummate the Acquisition (the "***Acquisition Consideration***"), the Refinancing (as defined below), and to pay fees, premiums and expenses incurred in connection with the Transactions (such fees, premiums and expenses, the "***Transaction Costs***", and together with the Acquisition Consideration and the Refinancing, the "***Acquisition Funds***"); provided, that the Investors shall directly or indirectly own at least 50.1% of the voting equity securities of the Company immediately following the consummation of the Transactions.

c) Pursuant to the Amendment 2 to Schedule 13D/A under the Securities Exchange Act of 1934 filed on behalf of Elon Musk ("***Bidder***") on April 13, 2022, Bidder intends to, directly or indirectly, buy 100% of the issued and outstanding common stock of the Company for $54.20 per share in cash. Bidco will acquire directly or indirectly (the "***Acquisition***") all of the issued and outstanding equity interests of the Company, pursuant to either (a) a tender offer (as such tender offer may be amended, supplemented or otherwise modified from time to time, the "***Tender Offer***") pursuant to the initial offer to purchase, to be dated on or about April 2022 (as such offer to purchase may be amended, supplemented or otherwise modified from time to time, the "***Initial Offer to Purchase***") (it being acknowledged that the draft of the Initial Offer to Purchase received by counsel to the Lead Arrangers on April 20, 2022 at 5:34 p.m. (New York time) is reasonably acceptable to the Lead Arrangers) and all material documents entered into by Bidco in connection with the Tender Offer, including all exhibits thereto, as they may be amended, supplemented or otherwise modified from time to time, are collectively referred to herein

as the "***Tender Offer Documents***")) for all of the issued and outstanding equity interests of the Company (collectively, the "***Shares***"), including any Shares that may become outstanding upon the exercise of options or other rights to acquire Shares after the commencement of the Tender Offer and/or (b) an agreement and plan of merger (or similarly styled agreement) to be entered into among Holdings and/or Bidco (and/or one or more of its wholly-owned subsidiaries) and the Target (the "***Acquisition Agreement***" and the related transaction contemplated by the Acquisition Agreement being referred to herein as the "***Merger Transaction***").

d) The Borrower (i) will obtain $6,500.0 million under the Term Loan Facility, (ii) will obtain commitments in respect of the Revolving Credit Facility, in an aggregate principal amount of $500 million, (iii) will either issue the full amount of the Senior Secured Notes and/or borrow up to the unissued amount of the contemplated $3,000.0 million issuance in an aggregate principal amount of Secured Bridge Loans and (iv) will either issue the full amount of the Unsecured Notes and/or borrow up to the unissued amount of the contemplated $3,000.0 million issuance in an aggregate principal amount of Unsecured Bridge Loans, in each case on the Closing Date of the Acquisition.

e) It is understood that (A) all amounts outstanding (other than contingent obligations) under that certain Revolving Credit Agreement, dated as of August 7, 2018, by and among the Company, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent. (as amended, amended and restated or otherwise modified prior to the date hereof, the "***Existing Credit Agreement***") will be repaid and all commitments in respect thereof will be terminated and all liens in respect of the foregoing (if any) and guarantees related thereto (if any) will be released, (B) all obligations with respect to the 3.875% Senior Notes due 2027 issued pursuant to that certain Indenture, dated December 9, 2019, among the Company, as issuer, and U.S. Bank National Association, as trustee will be discharged or defeased in accordance with the such indenture and (C) all obligations with respect to the 5.000% Senior Notes due 2030 issued pursuant to that certain Indenture, dated February 25, 2022, among the Company, as issuer, and U.S. Bank National Association, as trustee will be discharged or defeased in accordance with the such indenture (this paragraph (e), the "***Refinancing***").

The transactions described above and the payment of related fees and expenses are collectively referred to herein as the "***Transactions***".

Project X
$6,500.0 million Term Loan Facility
$500.0 million Revolving Facility
Summary of Principal Terms and Conditions

All capitalized terms used but not defined herein shall have the meanings given to them in the Commitment Letter to which this term sheet is attached, including Exhibit A thereto.

Borrower:	Initially, Bidco and, following the consummation of the Merger Transaction, the Company as the survivor of the merger contemplated thereby (the "***Borrower***").
Transaction:	As set forth in Exhibit A to the Commitment Letter.
Bank Administrative Agent:	MSSF will act as sole and exclusive administrative agent and collateral agent (in such capacity, the "***Bank Administrative Agent***") in respect of the Bank Facilities (as hereinafter defined) for a syndicate of banks, financial institutions and other institutional lenders reasonably acceptable to the Borrower and excluding any Disqualified Lenders (together with the Initial Bank Lenders, the "***Bank Lenders***"), and will perform the duties customarily associated with such roles.
Joint Bookrunners and Lead Arrangers:	Each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead arranger and joint bookrunner (together with any additional joint bookrunner appointed pursuant to the Commitment Letter, each in such capacity, a "***Bank Lead Arranger***") and will perform the duties customarily associated with such roles.
Other Agents:	The Borrower may designate additional financial institutions to act as syndication agent, documentation agent or co-documentation agent as provided in the Commitment Letter.
Term Loan Facility / Revolving Facility:	A senior secured first lien term loan facility in an aggregate principal amount of $6,500.0 million (plus, at the Borrower's election, an amount sufficient to fund any upfront fees or flex OID required to be funded due to the exercise of the market flex provisions in the Fee Letter) (the "***Term Loan Facility***"; the loans thereunder, the "***Term Loans***"; the Bank Lenders thereunder, the "***Term Loan Lenders***"). A senior secured first lien revolving credit facility in an aggregate principal amount of $500.0 million (the "***Revolving Facility***"; and, together with the Term Loan Facility, the "***Bank Facilities***"; the commitments thereunder, the "***Revolving Commitments***"; the loans thereunder, are collectively referred to as the "***Revolving Loans***" and, together with the Term Loans; the Bank Lenders thereunder, the "***Revolving Lenders***"). The Revolving Facility shall be available to the Borrower and shall be available, subject to borrowing mechanics to be agreed, to be drawn in U.S. Dollars.
Swingline Facility:	In connection with the Revolving Facility, the First Lien Administrative Agent (in such capacity, the "***Swingline Lender***") will make available to the Borrower a swingline facility (the "***Swingline Facility***") under which the Borrower may make short-term borrowings (on same-day notice (in minimum amounts to be mutually

agreed upon and integral multiples to be agreed upon)) of up to an amount to be agreed. Except for purposes of calculating the commitment fee described on Annex I to this Exhibit B, any such swingline borrowings will reduce availability under the Revolving Facility on a dollar-for-dollar basis.

Incremental Facilities: The Bank Facilities will permit the Borrower to add one or more incremental term loan facilities to the Term Loan Facility or to increase any existing term loan facility (each, an "***Incremental Term Facility***"), and/or increase commitments under the Revolving Facility (any such increase, an "***Incremental Revolving Increase***") and/or add one or more incremental revolving credit facility tranches (each, an "***Incremental Revolving Facility***"; the Incremental Term Facilities, the Incremental Revolving Increases and the Incremental Revolving Facilities are collectively referred to as "***Incremental Bank Facilities***") in an aggregate principal amount of up to (a) the greater of (A) $1,700.0 million (this clause (A), "***Incremental Fixed Dollar Basket***") and (B) 100% of trailing four quarter EBITDA (as defined below) (this clause (B), the "***Incremental EBITDA Grower***"), in either case, *less* the aggregate outstanding principal amount of all Incremental Equivalent Debt (as defined below) pursuant to the corresponding basket, *plus* (b) (i) all voluntary prepayments and voluntary commitment reductions of the Term Loan Facility (including, in the case of loan buy-backs, the face amount of loans repurchased), any Incremental Term Facilities secured on a pari passu basis with the Term Loan Facility and any Incremental Equivalent Debt secured on a pari passu basis with the Term Loan Facility (including, in each case, voluntary prepayments made at a discount to par) and (ii) voluntary permanent commitment reductions of the Revolving Facility and any Incremental Revolving Facilities secured on a pari passu basis with the Term Loan Facility prior to the date of any such incurrence (in each case, to the extent not funded with the proceeds of long-term debt) *plus* (c) an additional amount such that, after giving effect to the incurrence of such additional amount (but without giving effect to any amount incurred simultaneously under clause (a) or (b) above) and after giving pro forma effect to any acquisition or investment consummated in connection therewith or any other appropriate pro forma adjustments, the First Lien Leverage Ratio (as defined below) is equal to or less than (x) the First Lien Leverage Ratio in effect on the Closing Date (such ratio, the "***Closing Date First Lien Leverage Ratio***") or (y) solely to the extent such indebtedness is incurred in connection with a permitted acquisition or other investment permitted under the Bank Facilities Documentation, less than or equal to the First Lien Leverage Ratio immediately prior to giving effect to such incurrence and all transactions in connection therewith if greater than the Closing Date First Lien Leverage Ratio (the "***First Lien Ratio Basket***") (in each case, assuming all such additional amounts (including, for the avoidance of doubt, any Incremental Equivalent Debt) were secured on a first lien basis, whether or not so secured), (including for this purpose the full amount of any Incremental Revolving Increase or Incremental Revolving Facility and not netting the proceeds of the incurrence of any Incremental Bank Facilities), subject to the following conditions:

(i) no existing Bank Lender will be required to participate in any such Incremental Bank Facilities,

(ii) no event of default exists, or would exist after, giving effect thereto (except in connection with any permitted acquisition or other investment, where no payment or bankruptcy event of default will be the standard),

(iii) the final maturity date and the weighted average maturity of any such Incremental Term Facility shall not be earlier than, or shorter than, as the case may be, the maturity date or the weighted average life to maturity (without giving effect to prepayments), as applicable, of the Term Loan Facility; provided that this clause (iii) shall not apply to (1) up to the greater of (x) $1,700.0 million and (y) 100% of the trailing four quarter EBITDA of the Incremental Term Facility (the "***Incremental Maturity Carveout Grower***") and/or Incremental Equivalent Debt (as defined below) (the "***Incremental Maturity Carveout***") or (2) any bridge financing converting to, or intended to be refinanced by, debt complying with the applicable maturity and weighted average life requirement,

(iv) the pricing, interest rate margins, discounts, premiums, rate floors, fees and amortization schedule applicable to any Incremental Term Facility shall be determined by the Borrower and the lenders thereunder; *provided* that, except with respect to (A) up to the greater of (x) $850.0 million and (y) 50% of trailing four quarter EBITDA of the Incremental Term Facility (as selected by the Borrower) (the "***MFN Dollar Carveout***"), (B) any Incremental Term Facility which is incurred pursuant to the First Lien Ratio Basket or (C) any Incremental Term Facility that (I) matures later than two years after the maturity date with respect to the Term Loan Facility (such maturity carveout, the "***MFN Maturity Carveout***") or (II) is incurred in connection with a Permitted Acquisition or other investment permitted under the Bank Facilities Documentation (such Permitted Acquisition or other investment carveout, the "***MFN Permitted Acquisition Carveout***"), only during the period commencing on the Closing Date and ending on the date that is six months after the Closing Date (the "***MFN Sunset Date***"), if the applicable interest rate relating to any such Incremental Term Facility of like currency exceeds the applicable interest rate relating to the Term Loan Facility by more than 1.00% (the "***MFN Margin***") the applicable interest rate relating to the existing Term Loan Facility shall be adjusted to be equal to the applicable interest rate relating to such Incremental Term Facility minus the MFN Margin at such time; provided that in determining such applicable interest rates, (x) OID or upfront fees (which shall be deemed to constitute a like amount of OID) paid by the Borrower to the lenders under such Incremental Term Facility (but exclusive of any arrangement, structuring or other fees payable in connection therewith that are not shared with lenders providing such Incremental Term Facility or consent fees for an amendment paid generally to consenting lenders) and the existing Term Loan Facility in the initial primary syndication thereof shall be included and equated to interest rate (with OID being equated to interest based on an assumed four-year life to maturity) and (y) any amendments to the applicable margin on the existing Term Loan Facility that became effective subsequent to the Closing Date but prior to the time of such Incremental Term Facility shall also be included in such calculations; provided, further, that (A) with respect to the existing Term Loan Facility, to the extent that Term SOFR for a three month interest period on the closing date of any such Incremental Term Facility is less than the interest rate floor applicable to any such existing Term Loan Facility, the amount of such difference shall be deemed added to the interest margin for the existing Term Loans, solely for the purpose of determining whether an increase in the interest rate margins for the existing Term Loans shall be required and (B) with respect to any Incremental Term Facility, to the extent that Term SOFR, as applicable to the existing Term Loan Facility for a three month interest period on the closing date of any such Incremental Term Facility is less than the interest rate floor, if any, applicable to any such

Incremental Term Facility, the amount of such difference shall be deemed added to the interest rate margins for the loans under the Incremental Term Facility,

(v) any Incremental Revolving Facility and any Incremental Revolving Increase shall be on the same terms and pursuant to the same documentation applicable to the Revolving Facility (other than, in the case of an Incremental Revolving Facility, pricing, fees, maturity and other immaterial terms which shall be determined by the Borrower and the lenders providing such Incremental Revolving Facility); *provided* that the final maturity date and the weighted average maturity of any such Incremental Revolving Facility shall not be earlier than, or shorter than, as the case may be, the maturity date or the weighted average life, as applicable, of the Revolving Facility, and

(vi) any Incremental Term Facility shall be on terms and pursuant to documentation to be determined by the Borrower and the lenders providing such financing, *provided* that, to the extent such terms and documentation are not consistent with, the Term Loan Facility (except to the extent permitted by clause (iii) or (iv) above), they shall be reasonably satisfactory to the Bank Administrative Agent (except for (x) covenants or other provisions applicable only to the periods after the latest maturity date of any Term Loan Facility or any existing Incremental Term Facility existing at the time such Incremental Term Facility is incurred, (y) terms beneficial to the lenders where the Term Loan Facility also receives the benefit of such beneficial terms and (z) terms that, taken as a whole and as reasonably determined by the Borrower, reflect current market terms for such type of indebtedness) (it being understood to the extent that any financial maintenance covenant is added for the benefit of any Incremental Term Facility, no consent shall be required from any Administrative Agent or any Lender to the extent that such financial maintenance covenant is also added for the benefit of all of the Term Loan Facility).

As used herein, (a) the "***First Lien Leverage Ratio***" means the ratio of total first lien net debt (calculated net of unrestricted cash and cash equivalents of the Borrower and its restricted subsidiaries (other than the proceeds of Incremental Term Facilities and Incremental Equivalent Debt to be incurred at such time that are applied for the specified transaction in connection with such incurrence)) for borrowed money secured by first or super senior priority liens on substantially all of the Collateral (including outstanding Revolving Loans) to trailing four-quarter EBITDA, and (b) the "***Total Leverage Ratio***" means the ratio of total net debt (calculated net of unrestricted cash and cash equivalents of the Borrower and its restricted subsidiaries (other than the proceeds of Incremental Term Facilities and Incremental Equivalent Debt to be incurred at such time that are applied for the specified transaction in connection with such incurrence)) for borrowed money, capital leases and purchase money obligations to trailing four-quarter EBITDA.

The Bank Facilities Documentation will permit the Borrower to utilize availability under the Incremental Term Facilities amount to issue first lien and second lien indebtedness (*provided* that any first lien term loans shall be subject to the applicable MFN protection) or junior lien secured indebtedness (in each case, subject to customary intercreditor terms consistent with the Documentation Principles and set forth in an exhibit to the definitive documentation for the Term Loan Facility), or unsecured indebtedness (such secured or unsecured indebtedness, "***Incremental Equivalent Debt***"), with the amount of such secured or unsecured indebtedness

reducing the aggregate principal amount available for the Incremental Term Facilities; *provided* that such secured or unsecured indebtedness (i) except with respect to the Incremental Maturity Carveout and any bridge financing converting to, or intended to be refinanced by, debt complying with the applicable maturity and weighted average life requirement, does not mature on or prior to the maturity date of, or have a shorter weighted average life to maturity than, loans under the Term Loan Facility, (ii) reflects market terms at the time of incurrence or issuance as reasonably determined by the Borrower (it being understood to the extent that any financial maintenance covenant is added for the benefit of any such debt, such financial maintenance covenant shall also be added for the benefit of any corresponding existing Facility), (iii) there shall be no borrower or guarantor in respect of any such indebtedness that is not the Borrower or a Guarantor and (iv) if secured, such indebtedness shall not be secured by any assets of the Borrower or its subsidiaries that do not constitute Collateral; provided that clauses (iii) and (iv) shall not apply to a sublimit to be agreed.

Purpose/Use of Proceeds: (A) The proceeds of borrowings under the Term Loan Facility will be used by the Borrower, on the date of the initial borrowing under the Term Loan Facility (the "***Closing Date***"), together with the proceeds of the Revolving Facility (as set forth under the heading "Availability" below), the issuance of the Notes and/or borrowings of the Bridge Loans and proceeds of the Equity Contribution and cash on hand of the Borrower and its subsidiaries, solely to finance the Transactions and fund upfront fees or flex OID in respect of any of the Facilities imposed due to the exercise of the "market flex provisions" under the Fee Letter.

(B) The Letters of Credit and proceeds of Revolving Loans will be used by the Borrower and its subsidiaries for working capital and for other general corporate purposes (including, subject to the "Availability" section immediately below, to finance the Transactions and any other transactions not prohibited by the Bank Facilities Documentation).

Availability: (A) The Term Loan Facility will be available in a single drawing on the Closing Date. Amounts borrowed under the Term Loan Facility that are repaid or prepaid may not be reborrowed.

(B) (i) Revolving Loans (exclusive of Letter of Credit usage) may be made available on the Closing Date to fund working capital in an amount not to exceed $40.0 million and (ii) any OID or upfront fees required to be funded on the Closing Date due to the exercise of the "Market Flex Provisions" under the Fee Letter may be funded with Revolving Loans on the Closing Date. Additionally, Letters of Credit may be issued on the Closing Date in order to backstop or replace letters of credit outstanding on the Closing Date under the facilities no longer available to the Company or any of its affiliates as of the Closing Date (and such existing letters of credit may be deemed Letters of Credit outstanding under the Revolving Facility). Otherwise, Revolving Loans will be available at any time prior to the final maturity of the Revolving Facility, in minimum principal amounts to be agreed upon. Amounts repaid under the Revolving Facility may be reborrowed. The Revolving Facility shall be available for same day borrowings in ABR on terms and conditions to be agreed.

Interest Rates and Fees:	As set forth on Annex I to this Exhibit B.
Default Rate:	During the continuance of any payment or bankruptcy event of default under the Bank Facilities Documentation, with respect to overdue principal, the applicable interest rate plus 2.00% per annum, and with respect to any other overdue amount, including overdue interest, the interest rate applicable to ABR loans (as defined in Annex I) plus 2.00% per annum.
Letters of Credit:	A portion of the Revolving Facility to be agreed (the "***LC Sublimit***") will be available to the Borrower for the purpose of issuing letters of credit (the "***Letters of Credit***"); *provided* that each of the Initial Lenders shall only be required to issue standby letters of credit. Each Initial Lender agrees to be an Issuing Lender (as defined below) in a fronting capacity for its proportionate share of such LC Sublimit (based on its Revolving Commitment), with the Initial Lenders, in the aggregate, committing to the full amount of the LC Sublimit. Letters of Credit will be issued by the Initial Lenders under the Revolving Facility (sharing ratably in the Letter of Credit sub-limit commitment) and other Revolving Lenders (reasonably acceptable to the Borrower and the Bank Administrative Agent) who agree to issue Letters of Credit (each, an "***Issuing Lender***"). Each Letter of Credit shall expire not later than the earlier of (a) 12 months after its date of issuance or such longer period of time as may be agreed by the applicable Issuing Lender and (b) the third business day prior to the final maturity of the Revolving Facility; *provided* that any Letter of Credit may provide for automatic renewal thereof for additional periods of up to 12 months or such longer period of time as may be agreed by the applicable Issuing Lender (which in no event shall extend beyond the date referred to in clause (b) above, except to the extent cash collateralized or backstopped pursuant to arrangements reasonably acceptable to the relevant Issuing Lender; *provided* that no Revolving Lender shall be required to fund participations in Letters of Credit after the maturity date applicable to its commitments). Letters of Credit shall be issued on terms and conditions (including with respect to defaulting lenders) consistent with Documentation Precedent and the Documentation Principles. The issuance of all Letters of Credit shall be subject to the customary policies and procedures of the relevant Issuing Lender.
Final Maturity and Amortization:	(A) The Term Loan Facility will mature on the date that is seven years after the Closing Date and, commencing one full fiscal quarter after the Closing Date, will amortize in equal quarterly installments in aggregate annual amounts equal to 1.00% of the original principal amount of the Term Loan Facility with the balance payable on the seventh anniversary of the Closing Date; *provided* that the Bank Facilities Documentation shall provide the right of individual Term Loan Lenders to agree to extend the maturity of their Term Loans upon the request of the Borrower and without the consent of any other Term Lender (as further described below). (B) Revolving Facility The Revolving Facility will mature, and Revolving Commitments will terminate, on the date that is five years after the Closing Date; *provided* that the Bank Facilities Documentation shall provide the right of individual Revolving Lenders to agree to

extend the maturity of their Revolving Commitments and Revolving Loans upon the request of the Borrower and without the consent of any other Lender (as further described below).

The Bank Facilities Documentation shall contain customary "amend and extend" provisions pursuant to which any individual Bank Lender may agree to extend (which may include, among other things, an increase in the interest rates payable with respect to such extended loans, which extensions shall not be subject to any "default stopper", financial tests or "most favored nation pricing provisions") the maturity date of its outstanding commitments in respect of the Revolving Facility or under any Incremental Revolving Facility or in respect of any class of Term Loans (including any loans under an Incremental Term Facility), in each case, upon the request of the Borrower and without the consent of any other Bank Lender (it is understood that (i) no existing Bank Lender will have any obligation to commit to any such extension and (ii) each Bank Lender under the class being extended shall have the opportunity to participate in such extension on the same terms and conditions as each other Bank Lender under such class).

Guarantees: All obligations of the Borrower (the "***Obligations***") under (i) the Bank Facilities, (ii) at the written request of the Borrower, interest rate protection, commodity trading or hedging, currency exchange or other non-speculative hedging or swap arrangements (other than any obligation of any Guarantor to pay or perform under any agreement, contract, or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act (a "***Swap***"), if, and to the extent that, all or a portion of the guarantee by such Guarantor of, or the grant by such Credit Party of a security interest to secure, such Swap (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof)) entered into by the Borrower or any of its restricted subsidiaries with the Bank Administrative Agent, any Lender, Bank Lead Arranger or any affiliate of the Bank Administrative Agent, a Lender or Bank Lead Arranger at the time of entering into such arrangement (the "***Hedging Arrangements***") (collectively, "***Hedging Obligations***") and (iii) at the written request of the Borrower, cash management and treasury arrangements entered into by the Borrower or any of its subsidiaries with the Bank Administrative Agent, any Lender, Lead Arranger or any affiliate of the Bank Administrative Agent, a Lender or Lead Arranger at the time of entering into such arrangement ("***Treasury Arrangements***") (collectively, "***Cash Management Obligations***") will be unconditionally guaranteed jointly and severally on an equal priority senior secured basis (the "***Guarantees***") by Holdings and each existing and subsequently acquired or organized direct or indirect wholly-owned U.S. restricted subsidiary of the Borrower (other than any such subsidiary (a) that is a subsidiary of a non-U.S. subsidiary of the Borrower, including any such non-U.S. subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code (a "***CFC***"), (b) that is a U.S. subsidiary substantially all of the assets of which consist of the equity and/or debt or receivables of one or more direct or indirect non-U.S. subsidiaries that are CFCs (a "***CFC Holdco***"), (c) that has been designated as an unrestricted subsidiary, (d) that is below a materiality threshold (based on assets or revenues) to be agreed consistent with the Documentation Principles, (e) that is not permitted by law, regulation or contract (to the extent existing on the Closing Date or, if later, the date it becomes a restricted subsidiary and in each case, not entered

into in contemplation thereof) to provide such guarantee, or would require third party or governmental (including regulatory) consent, approval, license or authorization to provide such guarantee, (unless such consent, approval, license or authorization has been received), or for which the provision of such guarantee would result in a material adverse tax consequence to the Borrower or one of its subsidiaries (as reasonably determined by the Borrower in consultation with the Bank Administrative Agent), (f) that is a special purpose entity (including not for profit entities and captive insurance companies), (g) that is a registered broker-dealer, or (h) any restricted subsidiary acquired pursuant to a Permitted Acquisition (to be defined in a manner consistent with the Documentation Principles)) financed with secured indebtedness permitted to be incurred pursuant to the Bank Facilities Documentation as assumed indebtedness (and not incurred in contemplation of such Permitted Acquisition) and any restricted subsidiary thereof that guarantees such indebtedness, in each case to the extent such secured indebtedness prohibits such subsidiary from becoming a Guarantor) (the "***Subsidiary Guarantors***") and by Holdings (together with the Subsidiary Guarantors, the "***Guarantors***"; and, together with the Borrower, the "***Credit Parties***"). In addition, certain subsidiaries may be excluded from the guarantee requirements under the Bank Facilities Documentation in circumstances where the Borrower and the Bank Administrative Agent reasonably agree that the cost of providing such a guarantee is excessive in relation to the value afforded thereby. The guarantees to be issued in respect of the Notes or the Bridge Loans (x) will be equal in right of payment with the obligations under the Guarantees and (y) will automatically be released upon the release of the corresponding guarantees under the Bank Facilities (other than in connection with a refinancing or repayment in full of the Bank Facilities). To the extent the Bank Administrative Agent determines any subsidiary of Holdings shall be excluded from the guarantee requirements under a provision that exists in substantially the same form in both the Bank Facilities Documentation, the Secured Bridge Facility Documentation, the Unsecured Bridge Facility Documentation, the Secured Bridge Administrative Agent and the Unsecured Bridge Administrative Agent shall automatically be deemed to accept such determination and shall execute any documentation, if applicable, requested by the Borrower in connection therewith. No Subsidiary Guarantor shall be relieved of its obligation under the Bank Facilities Documentation to provide a Guarantee in respect of the Obligations simply by virtue of such Guarantor becoming an Excluded Subsidiary (to be defined in the Bank Facilities Documentation) unless the transaction or series of transactions resulting in such Guarantor becoming an Excluded Subsidiary was undertaken with an unaffiliated third party on an arm's-length basis for purposes other than evading the aforesaid Guarantee obligations.

Subject only to the restricted payment covenant in the Bank Facilities Documentation and no continuing payment or bankruptcy event of default, the Borrower may designate any subsidiary as an "unrestricted subsidiary" and subsequently redesignate any such unrestricted subsidiary as a restricted subsidiary. Unrestricted subsidiaries will be excluded from the guarantee requirements and will not be subject to the representations and warranties, covenants, events of default or other provisions of the Bank Facilities Documentation, and the results of operations and indebtedness of unrestricted subsidiaries will not be taken into account for purposes of calculating any financial metric contained in the Bank Facilities Documentation except to the extent of distributions received therefrom. Notwithstanding the foregoing, the Bank Facilities Documentation shall prohibit (x) the designation of any Guarantor that holds material intellectual property from being designated as a non-Guarantor or

unrestricted subsidiary and (y) the transfer of any material intellectual property from the Borrower or any Guarantor to any non-Guarantor or unrestricted Subsidiary.

Security: Subject to the limitations set forth below in this section, and, on the Closing Date, the Funding Conditions Provisions, the Obligations, the Guarantees in respect of the Obligations, the Hedging Arrangements and the Treasury Arrangements will be secured on a first priority basis by substantially all of the present and after acquired assets of each of the Credit Parties (collectively, but excluding the Excluded Assets (as defined below), the "***Collateral***"), including, (a) a perfected pledge of all the capital stock of the Borrower and each direct, wholly owned material restricted subsidiary held by any Credit Party (which pledge, in the case of any foreign subsidiary of a U.S. entity or any CFC Holdco shall be limited to 65% of the voting capital stock and 100% of the non-voting capital stock of such foreign subsidiary or CFC Holdco, as applicable) and (b) a perfected security interest in substantially all other tangible and intangible assets of the Credit Parties (including but not limited to accounts receivable, inventory, equipment, general intangibles, investment property, real property, intellectual property and the proceeds of the foregoing).

Notwithstanding anything to the contrary, the Collateral shall exclude the following: (i) any fee owned real property and all leasehold interests in real property (including requirements to deliver landlord lien waivers, estoppels and collateral access letters), (ii) motor vehicles and other assets subject to certificates of title, letter of credit rights (other than to the extent such rights can be perfected by filing a UCC-1) and commercial tort claims, (iii) except to the extent a security interest therein can be perfected by filing a UCC-1, any assets specifically requiring perfection through control, control agreements or other control arrangements (other than delivery of certificated pledged capital stock to the extent required above and material promissory notes constituting Collateral), including deposit accounts, securities accounts and commodities accounts, (iv) those assets over which the granting of security interests in such assets would be prohibited by contract binding on such assets prior to the Closing Date, or, if acquired after the Closing Date, at the time of their acquisition and not incurred in contemplation of such acquisition (including permitted liens, leases and licenses), applicable law or regulation (in each case, except to the extent such prohibition is unenforceable after giving effect to applicable provisions of the Uniform Commercial Code, other than proceeds thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibitions) or to the extent that such security interests would require obtaining the consent of any governmental authority or would result in materially adverse tax consequences as reasonably determined by the Borrower in consultation with the Bank Administrative Agent, (v) margin stock (other than the shares of the Company to the extent constituting margin stock) and, to the extent requiring the consent of one or more third parties or prohibited by the terms of any applicable organizational documents, joint venture agreement or shareholders' agreement, equity interests in any person other than wholly-owned material restricted subsidiaries, (vi) those assets as to which the Bank Administrative Agent and the Borrower reasonably determine that the cost of obtaining such a security interest or perfection thereof (including, without limitation, the cost of title insurance, surveys or flood insurance (if necessary)) are excessive in relation to the benefit to the Bank Lenders of the security to be afforded thereby, (vii) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, (viii) any lease, license or other agreement or any property

subject to a purchase money security interest, capital lease obligation or similar arrangement permitted under the Bank Facilities Documentation to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money, capital lease or similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or a Guarantor) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code notwithstanding such prohibition and (ix) other exceptions to be mutually agreed or that are usual and customary for facilities of this type consistent with the Documentation Principles. The foregoing described in clauses (i) through (ix) are, collectively, the "***Excluded Assets***".

No actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required to be taken to create any security interests in assets located or titled outside of the U.S. or to perfect or make enforceable any security interests in any assets (it being understood that there shall be no security agreements, pledge agreements or similar agreements governed under the laws of any non U.S. jurisdiction).

All the above-described pledges, security interests and mortgages shall be created and perfected on the terms set forth in Bank Facilities Documentation, and none of the Collateral or other assets of the Credit Parties shall be subject to other pledges, security interests or mortgages, subject to permitted liens and customary exceptions for financings of this kind consistent with the Documentation Principles.

Intercreditor Agreement: The relative rights and priorities in the Collateral for the secured parties in (a) the Secured Bridge Facility and/or the Senior Secured Notes and (b) the Bank Facilities will be set forth in a customary pari passu intercreditor agreement as between the collateral agent for the Bank Facilities, on the one hand, and the collateral agent and/or trustee for the Secured Bridge Facility and/or the Senior Secured Notes, on the other hand based on market precedent for leading private equity sponsors to be agreed (the "***Intercreditor Agreement***").

Mandatory Prepayments: The Term Loans shall be prepaid with (a) commencing with the first full fiscal year of the Borrower to occur after the Closing Date, 50% of Excess Cash Flow (to be defined in a manner consistent with the Documentation Principles) of the Borrower (the "***ECF Initial Sweep***"), with a reduction to 25% and elimination based upon achievement of First Lien Leverage Ratios of (x) the Closing Date First Lien Leverage Ratio minus 0.50:1.00 and (y) the Closing Date First Lien Leverage Ratio minus 1.00:1.00, respectively; *provided* that (i) any voluntary prepayments or commitment reductions of loans secured on a pari passu basis with the Term Loans and Revolving Facility and, to the extent a revolving facility, accompanied by a permanent commitment reduction (including, without duplication, prepayments at a discount to par, or loan buy-backs permitted pursuant to the Bank Facilities Documentation under the Term Loan Facility, under any Incremental Term Facility, Ratio Debt or any Incremental Debt, in each case that is secured on a pari passu basis with the Term Loan Facility, in each case with credit given for the actual amount of the cash payment) shall, at the election of the Borrower, be credited against excess cash flow prepayment obligations of any fiscal year (including payments made after year-end and prior to the time such Excess Cash Flow prepayment is due) and to any

subsequent fiscal year to the extent the amount of such prepayments exceed the amount of prepayments required to be made from Excess Cash Flow for such year, when taken together with any other payments required for such year on a dollar-for-dollar basis (other than to the extent such prepayments are funded with the proceeds of long-term indebtedness) (with, at the election of the Borrower, the First Lien Leverage Ratio of the Borrower for purposes of determining the applicable Excess Cash Flow percentage above, recalculated to give pro forma effect to any such pay down or reduction after the end of the prior fiscal year and prior to making such Excess Cash Flow payment) (including payments made after year-end and prior to the time such Excess Cash Flow prepayment is due) (subject in each case to reversal to the extent not in fact made during such succeeding fiscal year or after year end), (ii) required Excess Cash Flow payments shall be reduced on a dollar-for-dollar basis, without duplication of any deductions to the definition of Excess Cash Flow, for, among other things investments, capital expenditures, certain restricted payments and permitted acquisitions in each case funded with internally generated cash and not with the proceeds of long term indebtedness and (iii) no Excess Cash Flow payment shall be required if Excess Cash Flow during such year is equal to or less than a dollar amount to be agreed; (b) 100% of the net cash proceeds received from the incurrence of indebtedness by the Borrower or any of its restricted subsidiaries (other than indebtedness permitted under the Bank Facilities Documentation (other than Refinancing Debt) (to be defined in a manner consistent with the Documentation Principles)) and (c) 100% (with step-downs to 50% and 0% based upon the achievement of First Lien Leverage Ratios equal to or less than (x) the Closing Date First Lien Leverage Ratio minus 0.50:1.00 and (y) the Closing Date First Lien Leverage Ratio minus 1.00:1.00, respectively (the "***Asset Sale Sweep Stepdowns***")) (any net cash proceeds not required to prepay the Term Loans due to the operation of the Asset Sale Sweep Stepdowns, "***Retained Asset Sale Proceeds***") of the net cash proceeds of all non-ordinary course asset sales or other dispositions of Collateral (including insurance and condemnation proceeds) in excess of an amount to be agreed for each individual asset sale or disposition or series of related asset sales or dispositions and an amount to be agreed in the aggregate for any fiscal year (with only the amount in excess of such annual limit required to be offered to prepay) and subject to the right of the Borrower to reinvest such proceeds if such proceeds are reinvested (or committed to be reinvested) within 540 days (the "***Reinvestment Date***") and, if so committed to reinvestment, reinvested within 6 months thereafter, and other exceptions to be agreed upon

Notwithstanding the foregoing, mandatory prepayments under clauses (a) and (c) above shall be limited to the extent that the Borrower determines that such prepayments would either (i) result in material adverse tax consequences related to the repatriation of funds in connection therewith by non-guarantor subsidiaries or (ii) be prohibited or delayed by applicable law.

Mandatory prepayments required under the Bank Facilities Documentation may, if required pursuant to the terms of any other indebtedness secured pari passu with the Term Loans (including the Secured Bridge Loans and/or the Senior Secured Notes), be applied to the Term Loans and such other pari passu indebtedness, in each case on a ratable basis based on the outstanding principal amounts thereof.

Within the Term Loan Facility, mandatory prepayments shall be applied first, to accrued interest and fees due on the amount of the prepayment under the Term Loan

Facility and second, directly to the scheduled installments of principal of the Term Loan Facility in direct order of maturity.

Any Term Lender may elect not to accept any mandatory prepayment made pursuant to clauses (a) or (c) above (each a "***Declining Lender***"). Any prepayment amount declined (such amount, a "***Declined Amount***") by a Declining Lender, subject to any prepayment requirements of the Notes, the Secured Bridge Facility and/or the Unsecured Bridge Facility, may be retained by the Borrower and shall be added to the Available Amount Basket (as defined below).

Voluntary Prepayments and Reductions in Commitments:

Voluntary reductions of the unutilized portion of the Revolving Commitments and prepayments of borrowings under the Bank Facilities will be permitted at any time, in minimum principal amounts to be agreed upon, without premium (except as set forth in the immediately succeeding paragraph) or penalty, subject to reimbursement of the Bank Lenders' redeployment costs estimated to be incurred in the case of a prepayment of Term SOFR borrowings other than on the last day of the relevant interest period. All voluntary prepayments of the Term Loan Facility and any Incremental Term Facility will be applied to the remaining amortization payments under the Term Loan Facility or such Incremental Term Facility, as directed by the Borrower (and absent such direction, in direct order of maturity thereof), including to any class of extending or existing Loans in such order as the Borrower may designate, and shall be applied to either the Term Loan Facility or any Incremental Term Facility as determined by the Borrower.

(1) Any voluntary prepayment or refinancing, in whole or in part (other than a refinancing of the Term Loan Facility in connection with any transaction that would, if consummated, constitute a change of control, initial public offering, Transformative Acquisition (as defined below) or Transformative Disposition (as defined below)) of the Term Loan Facility with other broadly syndicated term B loans under credit facilities with a lower Effective Yield (as defined below) than the Effective Yield of the Term Loan Facility, (2) any amendment (other than an amendment of the Term Loan Facility in connection with any transaction that would, if consummated, constitute a change of control, initial public offering, Transformative Acquisition or Transformative Disposition) that reduces the Effective Yield of the Term Loan Facility, or (3) in the event that a Lender must assign its loans under the Term Loan Facility as a result of its failure to consent to an amendment, amendment and restatement or other modification (other than any such amendment, amendment and restatement or other modification in connection with any transaction that would, if consummated, constitute a change of control, initial public offering, Transformative Acquisition or Transformative Disposition), in any of the foregoing cases, that occurs prior to the 6 month anniversary of the Closing Date (the "***Soft Call Date***") and the primary purpose (as determined by the Borrower in good faith) of which is to lower the Effective Yield on the Term Loan Facility, shall be subject to a prepayment premium of 1.00% of the principal amount of the Term Loans so prepaid, refinanced or amended. For the purposes of the foregoing, (i) "***Transformative Acquisition***" shall mean any acquisition by the Borrower or any restricted subsidiary that (a) is not permitted by the terms of the Bank Facilities Documentation immediately prior to the consummation of such acquisition, (b) if permitted by the terms of the Bank Facilities Documentation immediately prior to the consummation of such acquisition, would not provide the Borrower and the other restricted subsidiaries with adequate flexibility under the Bank Facilities

Documentation for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith or (c) results in a refinancing of the Term Loan Facility that involves a downsizing in connection with such acquisition, (ii) "***Transformative Disposition***" shall mean any disposition by the Borrower or any restricted subsidiary that (a) is not permitted by the terms of the Bank Facilities Documentation immediately prior to the consummation of such disposition, (b) if permitted by the terms of the Bank Facilities Documentation immediately prior to the consummation of such disposition, would not provide the Borrower and the other restricted subsidiaries with a durable capital structure, as determined by the Borrower acting in good faith or (c) results in a refinancing of the Term Loan Facility that involves an upsizing in connection with such disposition and (iii) "***Effective Yield***" shall mean, as of any date of determination, the sum of (x) the higher of (A) the Term SOFR rate on such date for a deposit in dollars with a maturity of one month and (B) the Term SOFR floor, if any, with respect thereto as of such date, (y) the interest rate margins as of such date, (with such interest rate margin and interest spreads to be determined by reference to the Term SOFR rate) and (z) the amount of OID and upfront fees thereon paid generally to lenders (converted to yield assuming a four-year average life and without any present value discount).

Documentation: The definitive documentation for the Bank Facilities (the "***Bank Facilities Documentation***") will (i) be "covenant-lite" with incurrence-based covenants, (ii) contain the terms and conditions set forth in this Exhibit B and in Exhibit E, (iii) be negotiated in good faith within a reasonable time period to be determined based on the expected Closing Date and be based on a market precedent for leading private equity sponsors to be agreed between MSSF and the Borrower prior to the launch of general syndication of the Bank Facilities (the "***Documentation Precedent***"), (iv) be modified to reflect (x) the operational and strategic requirements of the Borrower and its subsidiaries in light of their size, industries, businesses and business practices, locations, operations, financial accounting, and the Projections set forth in the Acquisition Model (as defined below), (y) the nature of the Transactions and (z) modifications to reflect changes in law since the date of the Documentation Precedent and the reasonable administrative, agency and operational requirements of the Bank Administrative Agent (including, without limitation, customary EU/UK Bail-In provisions, erroneous payment provisions, benchmark adjustment provisions and QFC stay provisions, (iv) contain only those mandatory prepayments, representations, warranties, affirmative, financial and negative covenants and events of default provided for in this Exhibit B to the Commitment Letter, in each case, applicable to Borrower and the restricted subsidiaries (and in certain customary cases, Holdings) and with exceptions for materiality or otherwise and "baskets" as set forth in this Exhibit B (or, if not so specified in this Exhibit B, as agreed by Borrower and MSSF) and (v) provide that with respect to exceptions and thresholds that are subject to a monetary cap and "baskets" that specify a dollar-denominated amount, include a "grower" component (a "***Grower Component***") regardless of whether any such exceptions, thresholds or "baskets" specified in this Exhibit B refer to Grower Components based on a percentage of Consolidated EBITDA, in each case, that is substantially equivalent to the initial monetary cap. Notwithstanding the foregoing, the only conditions to the availability of the Bank Facilities on the Closing Date shall be the applicable conditions set forth in Exhibit E to the Commitment Letter. This paragraph is referred to as the "***Documentation Principles***".

Limited Condition Transaction:	For purposes of (i) determining compliance with any provision of the Bank Facilities Documentation which requires the calculation of the First Lien Leverage Ratio, the Total Leverage Ratio or the Fixed Charge Coverage Ratio (as defined below), (ii) determining compliance with representations, warranties, defaults or events of default or (iii) testing availability under baskets set forth in the Facilities Documentation (including baskets measured as a percentage of EBITDA), in each case, in connection with (x) a transaction whose consummation is not conditioned on the availability of, or on obtaining, third party financing or (y) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment (any such transaction, a "***Limited Condition Transaction***"), at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "***LCT Election***"), the date of determination of whether any such action is permitted hereunder, shall be deemed to be the date the definitive agreements or notice, as applicable, for such Limited Condition Transaction are entered into (the "***LCT Test Date***"), and if, after giving pro forma effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith as if they had occurred at the beginning of the most recent test period ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio or basket (including due to fluctuations of the target of any Limited Condition Transaction) at or prior to the consummation of the relevant transaction or action, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated or (ii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such calculation shall be made on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of debt and the use of proceeds thereof) had been consummated.
Conditions Precedent to Initial Borrowing:	The availability of the initial borrowing and other extensions of credit under the Bank Facilities on the Closing Date will be subject solely to the applicable conditions set forth in Exhibit E to the Commitment Letter.
Conditions Precedent to All Subsequent Borrowings:	After the Closing Date, each extension of credit (except in connection with certain incurrences under any Incremental Facilities or refinancing facility, which shall be subject to applicable terms as set forth herein or otherwise consistent with the Documentation Principles) will be conditioned upon: (a) delivery of a borrowing notice, (b) accuracy of representations and warranties in all material respects (*provided* that any such representations and warranties which are qualified by materiality, material adverse effect or similar language shall be true and correct in all

respects) and (c) absence of defaults or events of default, subject to, in the case of clauses (b) and (c), the limitations set forth in the section entitled "Limited Condition Transaction" hereof to the extent the proceeds of any extension of credit is being used to finance a Limited Condition Transaction.

Representations and Warranties: Limited to the following (to be applicable to Holdings (where applicable consistent with the Documentation Principles), Borrower and its restricted subsidiaries): organizational status; power and authority, qualification, execution, delivery and enforceability of the Facilities Documentation; with respect to the execution, delivery and performance of the Facilities Documentation, no violation of, or conflict with, law, charter documents or material agreements; litigation; margin regulations; material governmental approvals with respect to the execution, delivery and performance of the Facilities; Investment Company Act; PATRIOT Act; to the knowledge of the Borrower, accuracy of the Beneficial Ownership Certification as of the Closing Date in all material respects; accuracy of disclosure and financial statements; since the Closing Date, no material adverse effect (to be defined in a manner consistent with the Documentation Principles); taxes; compliance with laws; OFAC, FCPA, anti-bribery and corruption, sanctions and anti-money laundering laws; ERISA; subsidiaries; intellectual property; creation, validity and perfection of security interests; environmental laws; properties; consolidated closing date solvency; subject, in the case of each of the foregoing representations and warranties, to qualifications and limitations for materiality consistent with the Documentation Principles.

Affirmative Covenants: Limited to the following (to be applicable to Holdings (where applicable consistent with the Documentation Principles), the Borrower and its restricted subsidiaries): delivery of annual and quarterly financial statements (with 120 days for delivery of annual financial statements and 45 days for quarterly financials (with extended time periods of 135 days for delivery of the first annual and 60 days for delivery of the first three quarterly financial statements, in each case, to be delivered after the Closing Date)), and with annual financial statements to be accompanied by an audit opinion from nationally recognized auditors that is not subject to qualification as to "going concern" or the scope of such audit (other than solely with respect to, or resulting solely from (i) an upcoming maturity date under any debt, (ii) any actual or potential inability to satisfy any financial maintenance covenant on a future date or in a future period or (iii) the activities, operations, financial results, assets or liabilities of any unrestricted subsidiary); delivery of notices of defaults and certain material events; at the request of the Administrative Agent (or any Lender through the Administrative Agent), delivery of KYC information (including beneficial ownership certificates); inspections (including books and records and subject to frequency (so long as there is no ongoing event of default) and cost reimbursement limitations); prior to an IPO, annual budget reports in the form customarily prepared by the Borrower (or otherwise as provided to its equity holders) (with delivery time periods to be consistent with the delivery requirements for the audited annual financial statements); officers' compliance certificates and other information reasonably requested by the Administrative Agents; maintenance of organizational existence and rights and privileges; maintenance of insurance (but not, for the avoidance of doubt, flood insurance except to the extent required by applicable law); commercially reasonable efforts to maintain ratings (but not to maintain a specific rating); payment of taxes; compliance with laws (including environmental laws and OFAC); ERISA; transactions with affiliates; changes in fiscal year; additional guarantors and

collateral; use of proceeds; changes in lines of business; and further assurances on collateral matters; subject, in the case of each of the foregoing covenants, to exceptions and qualifications consistent with the Documentation Principles.

Negative Covenants: Limited to (to be applicable to the Borrower and its restricted subsidiaries and, with respect to the passive holdings covenant, Holdings): limitations on the incurrence of debt (provided that (w) debt may be incurred if, after giving effect thereto, either (i) the Fixed Charge Coverage Ratio (defined in a manner consistent with the Documentation Principles) (the "***Fixed Charge Coverage Ratio***") would be at least 2.00:1.00 or (ii) the Total Leverage Ratio would be not greater than the Total Leverage Ratio as of the Closing Date (this clause (ii), the "***Total Leverage Ratio Prong***"), with a sublimit to be agreed for non-Guarantor Subsidiaries (this clause (w), "***Ratio Debt***"), (x) there shall be separate general debt basket with a sublimit on non-guarantors to be agreed and (y) there shall be a subsidiary debt basket for non-Guarantor subsidiaries in an amount to be agreed, which, in the case of secured debt, may be secured by assets of non-Guarantor subsidiaries); liens (with exceptions to allow (i) liens on Collateral, if such liens are subject to a customary intercreditor that will be attached to the Bank Facilities Documentation as an exhibit, and rank junior to the liens on such Collateral in relation to the liens securing the Facilities and the Guarantees subject to limitations consistent with the Documentation Principles, as applicable (this clause (i), the "***Junior Lien Exception***"), (ii) liens securing indebtedness referenced in clauses (x), (y) and (z) above and (iii) for a general lien basket in an amount equal to the general debt basket which may, at the election of the Borrower, be secured on a junior lien basis with the obligations under each of the Facilities, subject to a customary intercreditor agreement); fundamental changes; restrictions on subsidiary distributions and negative pledge clauses; asset sales (which shall be permitted subject to either (A) (i) a 75% aggregate cash consideration requirement for dispositions in excess of an amount to be agreed (with the ability to designate certain non-cash assets as cash), (ii) a fair market value requirement, and (iii) a requirement that the proceeds of asset sales be applied in accordance with "Mandatory Prepayments" or (B) (i) a 50% aggregate cash consideration requirement for dispositions in excess of an amount to be agreed (with the ability to designate certain non-cash assets as cash), (ii) a fair market value requirement, (iii) a requirement that the proceeds of asset sales be applied in accordance with "Mandatory Prepayments"; provided that there shall be no reinvestment rights if relying on this clause (B)); passive holding company; and restricted payments (including investments and repurchases and redemptions of debt subordinated by its terms ("***Subordinated Debt***")) (which shall allow for (i) separate baskets for each of dividends subject to no event of default, investments (including a general basket, an investment in unrestricted subsidiaries basket and investments in similar businesses basket) and repurchases of Subordinated Debt subject to no event of default in each case in amounts to be agreed, (ii) distributions in connection with IPO reorganization transactions (on terms consistent with the Documentation Principles), (iii) Permitted IPO Distributions (as defined below), (iv) unlimited redemptions of Subordinated Debt subject to compliance with a pro forma Total Leverage Ratio of 0.75:1.00 less than the Total Leverage Ratio as of the Closing Date (the "***Subordinated Debt Restricted Payment Ratio***") and no event of default, (v) customary permitted tax distributions, (vi) unlimited restricted payments subject to compliance with a pro forma Total Leverage Ratio of 1.00:1.00 less than the Total Leverage Ratio as of the Closing Date (the "***General Restricted Payment Ratio***") and no event of default; (vii) unlimited investments among the Borrower and its restricted subsidiaries and (viii)

the acquisition, repurchase or redemption of equity interests held by current or former officers, directors, employees or consultants not to exceed the greater of (x) an amount to be agreed and (y) the corresponding percentage of EBITDA in any calendar year (with unused portions of such basket rolling forward to succeeding years) and (x) unlimited investments subject to pro forma compliance with a pro forma Total Leverage Ratio of 0.50:1.00 less than the Total Leverage Ratio as of the Closing Date (the "***Investment Restricted Payment Ratio***") and no payment or bankruptcy event of default; subject, in the case of each of the foregoing covenants, to exceptions, qualifications and, as appropriate, baskets (including each basket grown based off of the EBITDA of the Borrower and its restricted subsidiaries) to be agreed upon consistent with the Documentation Principles.

The Borrower or any restricted subsidiary will be permitted:

(a) to incur Incremental Equivalent Debt;

(b) to incur indebtedness to finance an acquisition so long as, (x) in the case of unsecured debt, (i) the Fixed Charge Coverage Ratio (calculated on a pro forma basis) shall either be (A) greater than or equal to the Fixed Charge Coverage Ratio immediately prior to such transactions (the "***Accretive FCCR Prong***") or (B) at least 2.00:1.00, in either case, recomputed as of the last day of the most recently ended fiscal quarter of the Company for which financial statements are available or (ii) the Total Leverage Ratio (calculated on a pro forma basis) shall either be (A) less than or equal to the Total Leverage Ratio immediately prior to such transactions or (B) less than or equal to the Closing Date Total Leverage Ratio (this clause (ii), the "***Acquisition Debt Total Leverage Ratio Prong***"), (y) in the case of indebtedness secured on a junior basis to the Bank Facilities, the Total Leverage Ratio (calculated on a pro forma basis) shall either be (A) less than or equal to the Total Leverage Ratio immediately prior to such transactions or (B) less than or equal to the Closing Date Total Leverage Ratio or (z) in the case of indebtedness secured on an equal priority basis with the Bank Facilities, the First Lien Leverage Ratio (calculated on a pro forma basis) shall either be (A) less than or equal to the First Lien Leverage Ratio immediately prior to such transactions or (B) less than or equal to the Closing Date First Lien Leverage Ratio, in each case, recomputed as of the last day of the most recently ended fiscal quarter of the Company for which financial statements have been delivered; provided that, in each case, there will be a sublimit to be agreed for non-Subsidiary Guarantors (the debt incurred pursuant to this clause (b), "***Acquisition Debt***");

(c) to incur indebtedness, consummate fundamental changes, make distributions, sell assets and make restricted payments (including investments), in each case, among the Borrower, the Guarantors and their restricted subsidiaries, in each case, on terms and conditions consistent with those in the Documentation Principles;

(d) settle, redeem or repurchase (1) all obligations with respect to the 0.25% Convertible Senior Notes due 2024 issued pursuant to that certain Indenture, dated June 11, 2018, among the Company, as issuer, and U.S. Bank National Association, as trustee in accordance with its terms, (2) all obligations with respect to the 0.375% Convertible Senior Notes due 2025 issued pursuant to that certain Indenture, dated March 12, 2020, among the Company, as issuer, and U.S. Bank National Association, as trustee in accordance with its terms and (3) all obligations with respect to the 0%

Convertible Senior Notes due 2026 issued pursuant to that certain Indenture, dated March 4, 2021, among the Company, as issuer, and U.S. Bank National Association, as trustee in accordance with its terms; in each case, so long as the Borrower has or its restricted subsidiaries has segregated the cash for such settlement, redemption or repurchase on the Closing Date until the date of such settlement, redemption or repurchase; and

(e) consummate the Transactions.

"***Permitted IPO Distributions***" shall mean after a qualified IPO (which shall be defined in a customary manner to include any initial public offering or other transaction which results in a controlling parent company of the Borrower being publicly traded), restricted payments in an aggregate amount per annum not to exceed the greater of (a) an aggregate amount per annum not to exceed 6% of the aggregate net proceeds received by (or contributed to) the Borrower and its restricted subsidiaries from such qualified IPO and (b) an aggregate amount per annum not to exceed 7% of market capitalization.

In addition, the restricted payment covenant shall include an "***Available Amount Basket***", which shall mean a cumulative amount equal to (a) the greater of (x) $850.0 million and (y) 50% of trailing twelve month EBITDA (this clause (y), the "***Available Amount EBITDA Grower***") plus (b) at the election of the Borrower prior to the launch of general syndication of the Facilities, (i) 50% of Consolidated Net Income (defined in a manner consistent with the Documentation Precedent) or, in the case of Consolidated Net Income for such period is a deficit, minus 100% of such deficit, (ii) retained Excess Cash Flow, commencing with the first full fiscal quarter for which financial statements are available after the Closing Date, which will accumulate on a quarterly basis (or, in the case of retained Excess Cash Flow (defined in a manner consistent with the Documentation Precedent), on an annual basis, commencing for the first full fiscal year after the Closing Date) or (iii) trailing twelve month EBITDA less 1.50x Fixed Charges (defined in a manner consistent with the Documentation Precedent), plus, in each of the following clauses (c) through (i), without duplication, (c) the cash proceeds of new public or private equity issuances of any parent of the Borrower or the Borrower (other than disqualified stock) to the extent the proceeds thereof are contributed to the Borrower as qualified equity and are not a Specified Equity Contribution, plus (d) after the Closing Date, capital contributions to the Borrower made in cash, cash equivalents or other property (other than disqualified stock) that are not a Specified Equity Contribution, plus (e) the net cash proceeds received by the Borrower from debt and disqualified stock issuances that have been issued after the Closing Date and which have been exchanged or converted into qualified equity, plus (f) the net cash proceeds received by the Borrower and its restricted subsidiaries from sales of investments made using the Available Amount Basket (and not in excess of the amount of such original investment), plus (g) returns, profits, distributions and similar amounts received by the Borrower and its restricted subsidiaries on investments made using the Available Amount Basket (and not in excess of the amount of such original investment), plus (h) the investments of the Borrower and its restricted subsidiaries in any unrestricted subsidiary so designated using the Available Amount Basket that has been re-designated as a restricted subsidiary or that has been merged or consolidated with or into the Borrower or any of its restricted subsidiaries (not in excess of the original investments or in respect of permitted investments) plus (i) Declined Amounts and Retained Asset Sale Proceeds

plus; *provided* that use of the Available Amount Basket (other than the amount of the Available Amount Basket attributable to clauses (a), (c), (d), (e) and (i) above) for (x) dividends and distributions in respect of capital stock of the Borrower (or any of its direct or indirect parent companies) and stock repurchases, shall in each case be subject to the absence of any Event of Default, (y) the prepayment, purchase or redemption of Subordinated Debt, shall in each case be subject to the absence of any Event of Default and (z) investments, shall be subject to the absence of any payment or bankruptcy Event of Default (the usages referenced in this proviso, the "***Limited Available Amount Usages***").

Financial Covenants: With respect to the Term Loan Facility: None.

With respect to the Revolving Facility: Limited to a maximum First Lien Leverage Ratio covenant which shall be set based on a 40% cushion to the Acquisition Model (with no step downs) (the "***Financial Covenant***").

The Financial Covenant shall be tested only in the event that on the last day of any fiscal quarter of Holdings (commencing with the second full fiscal quarter of Holdings ending after the Closing Date) the aggregate revolving credit exposure (excluding (i) cash collateralized Letters of Credit and additional issued and undrawn Letters of Credit up to a cap to be agreed and (ii) for the first four quarters for which the Financial Covenant could be tested after the Closing Date only, Revolving Loans borrowed on the Closing Date) under the Revolving Facility exceeds 35% of the aggregate commitments under the Revolving Facility.

For purposes of determining compliance with the Financial Covenant, any cash equity contribution (which shall be common equity or otherwise in a form reasonably acceptable to the First Lien Administrative Agent) made to the Borrower after the beginning of the most recently ended fiscal quarter and on or prior to the day that is 10 business days after the day on which financial statements are required to be delivered for such fiscal quarter will, at the request of the Borrower, be included in the calculation of EBITDA solely for the purposes of determining compliance with such Financial Covenant at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of EBITDA, a "***Specified Equity Contribution***"); *provided* that, (a) there shall be no more than two quarters in each four consecutive fiscal quarter period in respect of which a Specified Equity Contribution is made, (b) the amount of any Specified Equity Contribution shall be no more than the amount required to cause the Borrower to be in pro forma compliance with the Financial Covenant specified above, (c) no more than five Specified Equity Contributions shall be made during the term of the First Lien Facilities, (d) all Specified Equity Contributions shall be disregarded for purposes of any financial ratio determination under the Facilities Documentation other than for determining compliance with the Financial Covenant (and will not be credited as an addition to the applicable restricted payments build-up provisions or for any other negative covenant exception) and (e) there shall be no pro forma or other reduction in indebtedness with the proceeds of any Specified Equity Contribution for determining compliance with the Financial Covenant unless such proceeds are actually applied to prepay indebtedness under the Facilities prior to the end of the applicable fiscal period.

"***EBITDA***" shall be defined in a manner consistent with the Documentation Principles and in any event shall include, without limitation, add backs, deductions and adjustments, as applicable, without duplication, for (a) non-cash items, (b) extraordinary, unusual or non-recurring items, (c) restructuring charges and related charges, (d) pro forma adjustments, pro forma cost savings, operating expense reductions, operating enhancements and cost synergies, in each case, related to mergers and other business combinations, acquisitions, divestitures and other initiatives (including in respect of the pro forma adjustments and addbacks set forth in clause (c) above) consummated by the Borrower and projected by the Borrower in good faith to result from actions taken or expected to be taken (in the good faith determination of the Borrower) within eight fiscal quarters after the date any such transaction is consummated, (e) "run rate" cost savings, operating expense reductions, operating enhancements and synergies projected by the Borrower in good faith to result from actions either taken or expected to be taken within 24 months after the date of determination to take such action, so long as such cash savings and synergies are reasonably identifiable and factually supportable, (f) certain adjustments and addbacks in the Existing Credit Agreement and the Documentation Principles, (g) adjustments and add backs reflected in either (i) the Investors' financial model as agreed by the Lead Arrangers (the "***Acquisition Model***") or (ii) the management presentation and confidential information memorandum to be provided by the Company as agreed to by the Lead Arrangers and (h) other adjustments and add backs to be agreed.

Events of Default: Limited to the following (to be applicable to Holdings, the Borrower and its restricted subsidiaries): nonpayment of principal, interest or other amounts; violation of covenants; incorrectness of representations and warranties in any material respect (subject to a thirty day grace period in the case of misrepresentations that are capable of being cured); cross default and cross acceleration to material indebtedness (provided that a breach of the Revolving Facility Financial Covenant will not constitute an event of default with respect to the Term Loan Facility until the date on which the Revolving Loans and/or the Revolving Commitments have been accelerated or terminated, respectively, by a vote of the Revolving Lenders holding more than 50% of the aggregate amount of loans and unused commitments under the Revolving Facility (other than Defaulting Lenders) (the "***Required Revolving Lenders***")); bankruptcy and insolvency of Holdings, the Borrower or any of its significant restricted subsidiaries; material monetary judgments; ERISA events; actual or asserted invalidity of material guarantees or security documents; and change of control (with no continuing director prong), subject to thresholds (with growth components based off of EBITDA), notice and grace period provisions consistent with the Documentation Principles.

In addition, in the event that the Acquisition is consummated via the Tender Offer, it shall be an immediate event of default (with no grace period) if the Company and the other subsidiaries of the Company that are required to become Guarantors shall not become Guarantors or grant the requisite liens in their assets within five (5) business days after the Closing Date (or such longer period as may be agreed by the Bank Administrative Agent, in its sole discretion).

Notwithstanding the foregoing, (x) only Revolving Lenders holding at least a majority of the Revolving Commitments and Revolving Loans shall have the ability to (and be required in order to) amend the Financial Covenant and waive a breach of

the Financial Covenant, and (y) a breach of the Financial Covenant shall not constitute an Event of Default with respect to the Term Loan Facility or trigger a cross-default under the Term Loan Facility until the date on which the Revolving Loans (if any) have been accelerated or the Revolving Commitments have been terminated, in each case, by the Revolving Lenders in accordance with the terms of the Revolving Facility.

Voting: Amendments and waivers of the Bank Facilities Documentation will require the approval of Bank Lenders (other than Defaulting Lenders) holding more than 50% of the aggregate amount of the loans and unused commitments under the Bank Facilities held by the Bank Lenders (other than Defaulting Lenders) (the "***Required Lenders***"), except that (i) the consent of each Bank Lender directly and adversely affected thereby shall be required with respect to: (A) increases in the commitment of such Bank Lender, (B) reductions of principal, interest or fees owing to such Bank Lender, (C) extensions or postponement of final maturity or the scheduled date of payment of any principal, interest or fees, (D) releases of all or substantially all the value of the Guarantees or releases of liens on all or substantially all of the Collateral and (E) modifications to the pro rata sharing provisions, payments waterfall or any other provisions of the Bank Facilities Documentation that would have the effect of subordinating the claims of the Bank Lenders or the liens supporting the Obligations, (ii) the consent of 100% of the Bank Lenders will be required with respect to modifications to any of the voting percentages that result in a decrease of voting rights for Bank Lenders and (iii) customary protections for the Issuing Lenders and the Bank Administrative Agent will be provided. The Bank Facilities Documentation shall include customary restrictions on "net-short" Lenders' voting rights which (x) shall only apply to voting in rights in respect of the Term Loans and (y) for the avoidance of doubt, shall exclude regulated financial institutions that are Revolving Lenders (and their affiliates) as of the Closing Date.

Notwithstanding the foregoing, amendments and waivers of the Financial Covenant will be subject to the second paragraph under "Events of Default" above.

The Bank Facilities Documentation shall contain provisions permitting the Borrower to replace (i) non-consenting Term Loan Lenders in connection with amendments and waivers requiring the consent of all such class of Bank Lenders or of all such class of Bank Lenders directly affected thereby so long as the Required Lenders shall have consented thereto and (ii) Defaulting Lenders. The Bank Facilities Documentation shall also contain usual and customary provisions regarding Defaulting Lenders.

Cost and Yield Protection: Usual for facilities and transactions of this type, with provisions protecting the Lenders from withholding tax liabilities in form and substance reasonably satisfactory to the Borrower and the Bank Administrative Agent and subject to customary exceptions; provided that requests for additional payments due to increased costs from market disruption shall be limited to circumstances generally affecting the banking market and when (x) Term Loan Lenders holding a majority of the Term Loans or (y) the Required Revolving Lenders, as applicable, have made such a request; *provided further*, that protection for increased costs imposed as a result of rules enacted or promulgated under the Dodd-Frank Act or Basel III after the date of the Bank Facilities Documentation shall be included (but solely for such costs that would have been included if they had been otherwise imposed under the

applicable increased cost provisions and only to the extent the applicable Lender is imposing such charges on other similarly situated borrowers under comparable syndicated credit facilities). The Bank Facilities Documentation shall contain provisions regarding the timing for asserting a claim under these provisions and permitting the Borrower to replace a Bank Lender who asserts such claim without premium or penalty.

Assignments and Participations: The Bank Lenders will be permitted to assign (a) Term Loans with the consent of the Borrower (not to be unreasonably withheld or delayed) and (b) Revolving Commitments with the consent of the Borrower (not to be unreasonably withheld or delayed), and each Issuing Lender and Swingline Lender; *provided* that (i) no consent of the Borrower shall be required after the occurrence and during the continuance of an Event of Default, (ii) no consent of the Borrower shall be required for assignments of Term Loans to any existing Bank Lender or an affiliate of an existing Bank Lender or an approved fund, (iii) no consent of the Borrower shall be required for assignments of Revolving Commitments to any existing Revolving Lender or an affiliate of an existing Revolving Lender or (iv) with respect to Term Loans only, no consent of the Borrower shall be required unless the Borrower has already objected thereto by delivering written notice to the applicable Administrative Agent within 10 business days after the receipt of a request for consent thereto. All assignments of Term Loans, Revolving Loans and Revolving Commitments will require the consent of the Bank Administrative Agent unless such assignment is an assignment of Term Loans to another Term Lender, an affiliate of a Term Lender or an approved fund, such consent not to be unreasonably withheld or delayed. Assignments to natural persons shall be prohibited. Each assignment will be in an amount of an integral multiple of $1.0 million with respect to the Term Loan Facility and $5.0 million with respect to the Revolving Facility or, in each case, if less, all of such Bank Lender's remaining loans and commitments of the applicable class. Assignments will not be required to be pro rata among the Bank Facilities.

The Bank Lenders will be permitted to sell participations in the Bank Facilities without restriction, other than as set forth in the next sentence, and in accordance with applicable law. Voting rights of participants shall be limited to matters in respect of (a) increases in commitments participated to such participants, (b) reductions of principal, interest or fees, (c) extensions of final maturity or the scheduled date of payment of any principal, interest or fees and (d) releases of all or substantially all of the value of the Guarantees or all or substantially all of the Collateral.

The Bank Facilities Documentation shall provide that, subject to the absence of a continuing event of default or an event of default resulting therefrom (a) Term Loans may be purchased and assigned on a non-pro rata basis through (i) open market purchases and (ii) loan buy-backs or similar procedures to be agreed that are offered to all Lenders on a pro rata basis in accordance with customary procedures to be agreed and subject to customary restrictions to be agreed and (b) the Investors, the Borrower and any other affiliates of the Borrower shall be eligible assignees with respect to Term Loans only; *provided* that (i) any such Term Loans acquired by the Borrower or any of its respective subsidiaries shall be retired and cancelled promptly upon acquisition thereof (or contribution thereto, including as contemplated by the following clause (ii)) and (ii) any such Term Loans acquired by the Investors, Holdings or any of their affiliates may, with the consent of the Borrower, be

contributed to the Borrower (whether through any of its direct or indirect parent entities or otherwise) and exchanged for debt or equity securities of such parent entity or the Borrower that are otherwise permitted to be issued by such entity at such time. Assignments of Term Loans to the Investors and their respective affiliates (other than any such affiliate that is a bona fide debt fund or entity that extends credit or buys loans in the ordinary course of business ("***Affiliated Debt Fund***")) (each, an "***Affiliated Lender***") shall be permitted subject only to the following limitations:

(i) Affiliated Lenders will not receive information provided solely to Term Loan Lenders and will not be permitted to attend/participate in Term Lender meetings or receive any advice of counsel to the Administrative Agent or other Lenders and will not be permitted to challenge the Administrative Agent's or the other Lenders' attorney-client privilege on the basis of the Affiliated Lenders' status as Lenders;

(ii) the Affiliated Lenders shall have no right to vote any of its interest under the Term Loan Facility (such interest will be deemed voted in the same proportion as non-affiliated Term Loan Lenders voting on such matter) except that each Affiliated Lender shall have the right to vote on any amendment, modification, waiver or consent that would require the vote of all Term Loan Lenders or the vote of all Term Loan Lenders directly and adversely affected thereby and no amendment, modification, waiver or consent shall affect any Affiliated Lender (in its capacity as a Term Lender) in a manner that is disproportionate to the effect on any Term Lender of the same class or that would deprive such Affiliated Lender of its pro rata share of any payments to which Term Loan Lenders are entitled; and

(iii) the amount of Term Loans or loans under any Incremental Term Facility purchased by Affiliated Lenders may not exceed 30% of the aggregate outstanding amount of Term Loans at any time (determined as of the time of such purchase).

Expenses and Indemnification: The Borrower shall pay, if the Closing Date occurs, all reasonable and documented out-of-pocket expenses of the Bank Administrative Agent and the Commitment Parties (without duplication) in connection with the syndication of the Bank Facilities and the preparation, execution, delivery, administration, amendment, waiver or modification and enforcement of the Bank Facilities Documentation (including the reasonable fees and expenses of counsel identified herein and of a single firm of local counsel in each appropriate jurisdiction (other than any allocated costs of in-house counsel) or otherwise retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed)).

The Borrower will indemnify and hold harmless the Bank Lead Arrangers, the Bank Administrative Agent, the Commitment Parties and the Bank Lenders (without duplication) and their respective affiliates, and the officers, directors, employees, agents, controlling persons, members, advisors and the successors and permitted assigns of the foregoing (each, an "***Indemnified Person***") from and against any and all out-of-pocket expenses, losses, claims, damages and liabilities of any kind or nature (regardless of whether any such Indemnified Person is a party thereto and whether any such proceeding is brought by the Borrower or any other person) and reasonable and documented out-of-pocket fees and expenses incurred in connection with investigating or defending any of the foregoing by one firm of counsel for all Indemnified Persons, taken as a whole, and, if necessary, by a single firm of local counsel in each appropriate jurisdiction for all such Indemnified Persons, taken as a

whole (and, in the case of an actual or perceived conflict of interest where the Indemnified Person affected by such conflict notifies you of the existence of such conflict and thereafter, after receipt of your consent (which consent shall not be unreasonably withheld or delayed), retains its own counsel, by another firm of counsel for such affected Indemnified Person) of any such Indemnified Person arising out of or relating to any claim, litigation, investigation or other proceeding (including any inquiry or investigation of the foregoing) (regardless of whether such Indemnified Person is a party thereto or whether or not such action, claim, litigation or proceeding was brought by the Borrower, its equity holders, affiliates or creditors or any other third person) that relates to the Transactions, including the financing contemplated hereby; *provided* that no Indemnified Person will be indemnified for any out-of-pocket expenses, losses, claims, damages, liabilities or related expenses to the extent that they have resulted from (i) the willful misconduct, bad faith or gross negligence of such Indemnified Person or any of such Indemnified Person's affiliates or any of its or their respective officers, directors, employees, agents, controlling persons, members, advisors or the successors and permitted assigns of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) a material breach of the obligations of such Indemnified Person or any of such Indemnified Person 's affiliates or any of the officers, directors, employees, advisors, agents or other representatives of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision), (iii) in the case of any claim, litigation, investigation or other proceeding brought by a Credit Party or one of its permitted assignees against the relevant Indemnified Person, a material breach of the obligations of such Indemnified Person or any of such Indemnified Person affiliates or any of its or their respective officers, directors, employees, agents, advisors or other representatives of any of the foregoing (as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iv) any claim, litigation, investigation or other proceeding not arising from any act or omission by the Borrower or its affiliates that is brought by an Indemnified Person against any other Indemnified Person (other than disputes involving claims against any Bank Lead Arranger, Bank Administrative Agent, Swingline Lender or Issuing Bank in their capacity as such). No party to the Bank Facilities Documentation shall be liable for any special, indirect, consequential or punitive damages in connection with the Bank Facilities, the Bank Facilities Documentation or its activities related thereto; *provided* that nothing contained in this sentence will limit the Borrower's indemnity and reimbursement obligations set forth in this section.

Governing Law and Forum:	New York; *provided* that (a) to the extent the Acquisition is consummated pursuant to the Acquisition Agreement, the laws of the State set forth in the Acquisition Agreement shall govern in determining (i) whether a material adverse effect under the Acquisition Agreement has occurred, (ii) the accuracy of any Company Representation and whether you (or any of your subsidiaries or affiliates) have the right to terminate your (or their) obligations under the Acquisition Agreement or decline to consummate the Acquisition as a result of a breach of such representations in the Acquisition Agreement and (iii) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement and (b) to the extent the Acquisition is consummated pursuant to the Tender Offer, the federal securities laws of the United States shall govern in determining whether the Initial Offer to Purchase has been consummated in accordance with the terms and conditions thereof.
Counsel to the Bank Lead Arrangers and the Bank Administrative Agent:	Davis Polk & Wardwell LLP.

Interest Rates: The interest rates under the Bank Facilities will be as follows:

Term Loan Facility

At the option of the Borrower, initially, Term SOFR plus 4.75% or ABR plus 3.75%.

Revolving Facility

At the option of the Borrower, initially, Term SOFR plus 4.50% or ABR plus 3.50%.

From and after the delivery by the Borrower to the Bank Administrative Agent of financial statements for the period ending at least one full fiscal quarter following the Closing Date, the applicable margins under the Revolving Facility shall be subject to step-downs to (A) Term SOFR plus 4.25% or ABR plus 3.25% or (B) Term SOFR plus 4.00% or ABR plus 3.00%, as applicable, based upon achievement of a First Lien Leverage Ratio of 0.50:1.00 less than the Closing Date First Lien Leverage Ratio or 1.00:1.00 less than the Closing Date First Lien Leverage Ratio, respectively.

All Facilities

The Borrower may elect interest periods of 1, 3 or 6 months for Term SOFR borrowings.

Calculation of interest shall be on the basis of the actual days elapsed in a year of 360 days (or 365 or 366 days, as the case may be, in the case of ABR loans based on the Prime Rate) and interest shall be payable at the end of each interest period and, in any event, at least every 3 months and on the applicable maturity date.

ABR is the highest of (i) the rate of interest publicly announced by the Bank Administrative Agent as its prime rate in effect at its principal office in New York City (the "***Prime Rate***"), (ii) the federal funds effective rate from time to time (which, if negative, shall be deemed to be 0.00%) plus 0.50% and (iii) Term SOFR applicable for an interest period of one month plus 1.00%.

"*Term SOFR*" means the greater of (i) the rate *per annum* equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such interest period with a term equivalent to such interest period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto and (ii) (x) with respect to the Revolving Facility, 0.00% and (y) with respect to the Term Loan Facility, 0.50%.

"*Term SOFR Screen Rate*" means the forward-looking SOFR term rate administered by CME Group Benchmark Administration Limited (or any successor administrator reasonably satisfactory to the Bank Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Bank Administrative Agent from time to time).

"*U.S. Government Securities Business Day*" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for

business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

Revolving Commitment Fees: Initially, 0.50% per annum on the undrawn portion of the Revolving Commitments, payable to non-Defaulting Lenders quarterly in arrears after the Closing Date and upon the termination of the Revolving Commitments, calculated based on the number of days elapsed in a 360-day year.

From and after the delivery by the Borrower to the Bank Administrative Agent of financial statements for the period ending at least one full fiscal quarter following the Closing Date, the commitment fees under the Revolving Facility shall be subject to step-downs to 0.375% and 0.25% based upon achievement of a First Lien Leverage Ratio of 0.50:1.00 less than the Closing Date First Lien Leverage Ratio or 1.00:1.00 less than the Closing Date First Lien Leverage Ratio, respectively.

EXHIBIT C

Project X
$3,000.0 million Senior Secured Increasing Rate Secured Bridge Loans
Summary of Principal Terms and Conditions

All capitalized terms used but not defined herein shall have the meanings given to them in the Commitment Letter to which this term sheet is attached, including Exhibit A thereto.

Borrower:	The Borrower under the Bank Facilities (the "***Borrower***").
Transactions:	As set forth in Exhibit A to the Commitment Letter.
Secured Bridge Administrative Agent:	MSSF or an affiliate thereof will act as the sole and exclusive administrative agent (in such capacity, the "***Secured Bridge Administrative Agent***") for a syndicate of banks, financial institutions and other institutional lenders and investors reasonably acceptable to the Secured Bridge Lead Arrangers (as defined below) and the Borrower, excluding any Disqualified Lender (together with the Initial Secured Bridge Lenders, the "***Secured Bridge Lenders***"), and will perform the duties customarily associated with such role.
Secured Bridge Lead Arrangers:	Each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead arranger and joint bookrunner (together with any additional joint bookrunner appointed pursuant to the Commitment Letter, each in such capacity, a "***Secured Bridge Lead Arranger***") and will perform the duties customarily associated with such roles.
Syndication Agent, Documentation Agent or Co-Documentation Agents:	The Borrower may designate additional financial institutions reasonably acceptable to the Majority Lead Arrangers (such consent not to be unreasonably withheld, delayed or conditioned) to act as syndication agent, documentation agent or co-documentation agent as provided in the Commitment Letter.
Senior Secured Bridge Loans:	The Secured Bridge Lenders will make senior Secured increasing rate loans (the "***Secured Bridge Loans***") to the Borrower on the Closing Date in an aggregate principal amount of up to $3,000.0 million plus, at the Borrower's election, an amount sufficient to fund any OID or upfront fees required to be funded on the Closing Date in connection with the issuance of the Secured Notes or any other Securities (as defined in the Fee Letter) on the Closing Date (which amounts shall be automatically added to the Commitment Parties' commitments under the Commitment Letter) minus the amount of gross proceeds from Secured Notes on the Closing Date.
Availability:	The Secured Bridge Lenders will make the Secured Bridge Loans on the Closing Date simultaneously with (a) the consummation of the Acquisition and (b) the initial funding under the Term Loan Facility. Amounts borrowed under the Secured Bridge Facility that are repaid or prepaid may not be reborrowed.
Use of Proceeds:	The proceeds of the Secured Bridge Loans will be used by the Borrower on the Closing Date, together with the proceeds of borrowings under the Unsecured Bridge Facility,

the proceeds from the issuance of the Secured Notes, the proceeds from the Equity Contribution and cash on hand at the Borrower, to provide Acquisition Funds.

Ranking: The Secured Bridge Loans will rank equal in right of payment with the Bank Facilities and other senior indebtedness of the Borrower and will not be secured.

Guarantees: All obligations of the Borrower under the Secured Bridge Facility will be jointly and severally guaranteed by each Subsidiary Guarantor (as defined in Exhibit B to the Commitment Letter), on a senior basis (such guarantees, the "***Secured Bridge Guarantees***"). The Secured Bridge Guarantees will automatically be released upon the release of the corresponding guarantees of the Bank Facilities (other than in connection with a refinancing or repayment in full of the Bank Facilities). The Secured Bridge Guarantees will rank equal in right of payment with the guarantees of the Bank Facilities.

Security: The Secured Bridge Loans will be secured by the same assets that secure the Bank Facilities.

Intercreditor Agreement: The lien priority, relative rights and other creditors' rights issues in respect of the Secured Bridge Loans and the Bank Facilities will be set forth in the Intercreditor Agreement (as defined in Exhibit B).

Maturity: All Secured Bridge Loans will have an initial maturity date that is the one-year anniversary of the Closing Date (the "***Initial Secured Bridge Loan Maturity Date***"), which shall be extended as provided below. If any of the Secured Bridge Loans have not been previously repaid in full on or prior to the Initial Secured Bridge Loan Maturity Date, unless a bankruptcy event of default with respect to the Borrower shall have occurred and be continuing, such Secured Bridge Loans will be automatically converted into a senior Secured term loan (each an "***Secured Extended Term Loan***") due on the date that is seven years after the Closing Date (the "***Secured Extended Maturity Date***") and having terms set forth on Annex I to this Exhibit C. The date on which Secured Bridge Loans are converted into Secured Extended Term Loans is referred to as the "***Secured Conversion Date***". On the Secured Conversion Date, and on the 15th calendar day of each month thereafter (or the immediately succeeding business day if such calendar day is not a business day) at the option of the applicable Secured Bridge Lender, the Secured Extended Term Loans may be exchanged in whole or in part for senior Secured Exchange Notes (the "***Secured Exchange Notes***") having an equal principal amount and having the terms set forth in Annex II hereto; *provided* that (i) no Secured Exchange Notes shall be issued until the Borrower shall have received requests to issue at least $250 million in aggregate principal amount of Secured Exchange Notes and (ii) no subsequent Secured Exchange Notes shall be issued until the Borrower shall have received additional requests to issue at least $250 million in aggregate principal amount of additional Secured Exchange Notes or if less, the remaining amount of Secured Extended Term Loans.

The Secured Extended Term Loans will be governed by the provisions of the Secured Bridge Facility Documentation (as hereinafter defined) and will have the same terms as the Secured Bridge Loans except as set forth on Annex I hereto. The Secured Exchange Notes will be issued pursuant to an indenture that will have the terms set forth on Annex II hereto.

The Secured Extended Term Loans and the Secured Exchange Notes shall rank equal in right of payment for all purposes.

Interest Rates: Interest on the Secured Bridge Loans for the first three-month period commencing on the Closing Date shall be payable at Term SOFR (for interest periods of 1, 3 or 6 months, as selected by the Borrower and, for purposes of the Secured Bridge Facility, with a 0.00% "floor") plus 675 basis points (the "***Secured Bridge Initial Margin***"). Thereafter, subject to the Secured Total Cap (as defined in the Fee Letter), interest shall be payable at prevailing Term SOFR for the interest period selected by the Borrower plus the Secured Bridge Applicable Margin (as defined below) and shall increase by an additional 50 basis points at the beginning of each three-month period subsequent to the initial three-month period for so long as the Secured Bridge Loans are outstanding (except on the Secured Conversion Date) (the Secured Bridge Initial Margin together with each 50 basis point increase therein described above, the "***Secured Bridge Applicable Margin***").

Notwithstanding anything to the contrary set forth above, at no time, other than as provided under the heading "Default Rate" below, shall the per annum yield on the Secured Bridge Loans exceed the amount specified in the Fee Letter in respect of the Secured Bridge Facility as the "***Secured Total Cap***".

Following the Initial Secured Bridge Loan Maturity Date, all outstanding Secured Extended Term Loans will accrue interest at a rate equal to the Secured Total Cap.

Interest Payments: Interest on the Secured Bridge Loans will be payable in arrears at the end of each interest period and, for interest periods of greater than 3 months, every three months, and on the Initial Secured Bridge Loan Maturity Date. Calculation of interest shall be on the basis of actual days elapsed in a year of 360 days.

Default Rate: During the continuance of any event of default under the Secured Bridge Facility Documentation, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.

Notwithstanding anything to the contrary set forth herein, in no event shall any cap or limit on the yield or interest rate payable with respect to the Secured Bridge Loans, Secured Extended Term Loans or Secured Exchange Notes affect the payment of any default rate of interest in respect of any Secured Bridge Loan, Secured Extended Term Loans or Secured Exchange Notes.

Mandatory Prepayment: The Borrower will be required to prepay the Secured Bridge Loans on a pro rata basis at 100% of the outstanding principal amount thereof with (i) the net cash proceeds from the issuance of the Secured Notes; provided that in the event any Secured Bridge Lender or affiliate of a Secured Bridge Lender purchases debt securities from the Borrower pursuant to a permitted securities demand at an issue price above the price at which such Secured Bridge Lender or affiliate has reasonably determined such debt securities can be resold by such Bridge Lender or affiliate to a bona fide third party at the time of such purchase (and notifies the Borrower thereof), the net cash proceeds received by the Borrower in respect of such debt securities may, at the option of such Secured Bridge Lender or affiliate, be applied first to prepay the Secured Bridge Loans of such Secured Bridge Lender or affiliate (provided that if there is more than one such Secured Bridge Lender or affiliate then such net cash proceeds will be applied pro rata to prepay

the Secured Bridge Loans of all such Secured Bridge Lenders or affiliates in proportion to such Secured Bridge Lenders' or affiliates' principal amount of debt securities purchased from the Borrower) prior to being applied to prepay the Secured Bridge Loans held by other Secured Bridge Lenders; (ii) the net cash proceeds from the issuance of any Refinancing Debt (to be defined in a manner consistent with the Secured Bridge Documentation Principles) by the Borrower or any of its restricted subsidiaries; and (iii) the net cash proceeds from any non-ordinary course asset sales by the Borrower or any of its restricted subsidiaries in excess of amounts reinvested which shall be shared on a ratable basis with the lenders under the Bank Facilities and the holder of certain other indebtedness secured on a pari passu basis therewith, in the case of any such prepayments pursuant to the foregoing clauses (i), (ii) and (iii) above with exceptions and baskets consistent with the Secured Bridge Documentation Principles. The Borrower will also be required to offer to prepay the Secured Bridge Loans following the occurrence of a change of control (to be defined in a manner consistent with the Secured Bridge Documentation Principles) at 100% of the outstanding principal amount thereof, subject to the Secured Bridge Documentation Principles. These mandatory prepayment provisions will not apply to the Secured Extended Term Loans.

Optional Prepayment: The Secured Bridge Loans may be prepaid, in whole or in part, at par plus accrued and unpaid interest upon not less than three days' prior written notice, at the option of the Borrower at any time.

Documentation: The definitive documentation for the Secured Bridge Facility (the "***Secured Bridge Facility Documentation***") shall contain the terms set forth in this Exhibit C and shall otherwise be negotiated in good faith within a reasonable time period to be determined based on the expected Closing Date and substantially consistent with a market precedent for leading private equity sponsors to be agreed between MSSF and the Borrower with changes as are consistent with provisions customarily found in high yield indentures of comparable issuers and as modified to reflect the operational and strategic requirements of the Borrower and its subsidiaries in light of their size, industries, businesses and business practices, operations, financial accounting and Projections set forth in the Acquisition Model and administrative and operational changes as reasonably requested by the Secured Bridge Administrative Agent and modifications to reflect the reasonable administrative, agency and operational requirements of the Administrative Agents (including, without limitation, customary EU/UK Bail-In provisions, erroneous payment provisions, benchmark adjustment provisions and QFC stay provisions) and to account for the nature of the Secured Bridge Loans as being secured on a pari passu basis with the Bank Facilities (such precedent, provisions and requirements, the "***Secured Bridge Documentation Principles***"). Notwithstanding the foregoing, the only conditions to the availability of the Secured Bridge Facility on the Closing Date shall be the applicable conditions set forth in Exhibit E to the Commitment Letter. The Secured Bridge Facility Documentation shall contain only those representations, events of default and covenants as set forth in this Exhibit C.

Conditions to Borrowing: The availability of the Secured Bridge Facility on the Closing Date will be subject solely to the applicable conditions set forth in Exhibit E to the Commitment Letter.

Representations and Warranties: The Secured Bridge Facility Documentation will contain representations and warranties as are substantially similar to those for the Bank Facilities, but in any event are no less

favorable to the Borrower and the Investors than those in the Bank Facilities, including as to exceptions and qualifications.

Covenants: The Secured Bridge Facility Documentation will contain such affirmative and negative covenants with respect to the Borrower and its restricted subsidiaries as are usual and customary for Secured Bridge Loan financings of this type consistent with the Secured Bridge Documentation Principles and in any event no more restrictive than the Term Loan Facility, it being understood and agreed that (a) the covenants of the Secured Bridge Loans (and the Secured Extended Term Loans and the Secured Exchange Notes) will be incurrence-based covenants consistent provisions customarily found in high yield indentures of comparable issuers (and consistent with the Secured Bridge Documentation Principles) and (b) the debt incurrence ratio in the "credit facilities basket" and otherwise governing the incurrence of secured debt in the Secured Bridge Facility Documentation will be a "Consolidated Secured Debt Ratio" set at the Closing Date First Lien Leverage Ratio. Prior to the Initial Maturity Date, the debt and lien incurrence and the restricted payment covenants of the Secured Bridge Loans will be more restrictive than those of the Secured Extended Term Loans, the Secured Exchange Notes and the Bank Facilities, as reasonably agreed by the Lead Arrangers and the Borrower.

Financial Maintenance Covenants: None.

Events of Default: Limited to nonpayment of principal, interest or other amounts; violation of covenants; incorrectness of representations and warranties in any material respect; cross acceleration to material indebtedness; bankruptcy or insolvency of the Borrower or its significant restricted subsidiaries; material monetary judgments; ERISA events; actual or asserted invalidity of guarantees; and actual or asserted invalidity of the liens over a material portion of the Collateral, consistent in each case with the Secured Bridge Documentation Principles.

Cost and Yield Protection: The Secured Bridge Documentation will include customary tax gross-up, cost and yield protection provisions substantially consistent with those set forth in the Bank Facilities Documentation.

Assignment and Participation: The Secured Bridge Lenders will have the right to assign Secured Bridge Loans after the Closing Date without the consent of the Borrower; *provided, however*, that prior to the date that is one year after the Closing Date and so long as a Demand Failure Event (as defined in the Fee Letter) has not occurred and no payment or bankruptcy event of default shall have occurred and be continuing, the consent of the Borrower shall be required with respect to any assignment (such consent not to be unreasonably withheld or delayed) if, subsequent thereto, the Initial Secured Bridge Lenders (together with their affiliates) would hold, in the aggregate, less than 51% of the outstanding Secured Bridge Loans.

The Secured Bridge Lenders will have the right to participate their Secured Bridge Loans, before or after the Closing Date, to other financial institutions without restriction, other than customary voting limitations. Participants will have the same benefits as the

selling Lenders would have (and will be limited to the amount of such benefits) with regard to yield protection and increased costs, subject to customary limitations and restrictions.

The Secured Bridge Facility Documentation shall provide that (a) Secured Bridge Loans may be purchased by the Borrower and assigned on a non-pro rata basis through customary loan buy-back procedures and (b) the Investors and their affiliates (other than the Borrower and its subsidiaries) (other than any such affiliate that is a bona fide debt fund or entity that extends credit or buys loans in the ordinary course of business ("***Affiliated Debt Fund***")) (each an "***Affiliated Lender***") shall be eligible assignees; provided that (i) any such Secured Bridge Loans acquired by the Borrower or any of its subsidiaries shall be retired and cancelled promptly upon acquisition thereof (or contribution thereto) and (ii) any such Secured Bridge Loans acquired by the Investors, Holdings or any of their affiliates may, with the consent of the Borrower, be contributed to the Borrower (whether through any of its direct or indirect parent entities or otherwise) and exchanged for debt or equity securities of such parent entity or the Borrower that are otherwise permitted to be issued by such entity at such time; provided that assignments to Affiliated Lenders shall be subject to the following limitations:

(i) Affiliated Lenders will not receive information provided solely to Secured Bridge Lenders and will not be permitted to attend/participate in Secured Bridge Lender meetings;

(ii) the Affiliated Lenders shall have no right to vote any of its interest under the Secured Bridge Facility (such interest will be deemed voted in the same proportion as non-affiliated Secured Bridge Lenders voting on such matter) except that each Affiliated Lender shall have the right to vote on any amendment, modification, waiver or consent that would require the vote of all Secured Bridge Lenders or the vote of all affected Secured Bridge Lenders (as set forth in "Voting" below) and no amendment, modification, waiver or consent shall affect any Affiliated Lender (in its capacity as a Secured Bridge Lender) in a manner that is disproportionate to the effect on any Secured Bridge Lender of the same class or that would deprive such Affiliated Lender of its pro rata share of any payments to which Secured Bridge Lenders are entitled; and

(iii) the amount of Secured Bridge Loans and Secured Extended Term Loans purchased by Affiliated Lenders shall not exceed 30% of the aggregate outstanding amount of Secured Bridge Loans and Secured Extended Term Loans at any time.

Voting: Amendments and waivers of the Secured Bridge Facility Documentation will require the approval of Lenders holding more than 50% of the outstanding Secured Bridge Loans, except that (a) the consent of each affected Lender will be required for (i) reductions of principal, interest rates or the Secured Bridge Applicable Margin, (ii) extensions of the Initial Secured Bridge Loan Maturity Date (except as provided under "Maturity" above) or the Secured Extended Maturity Date or the scheduled date of payment of any interest or fees, (iii) additional restrictions on the right to exchange Secured Extended Term Loans for Secured Exchange Notes or any amendment of the rate of such exchange, (iv) any amendment to the Secured Exchange Notes that requires (or would, if any Secured Exchange Notes were outstanding, require) the approval of all holders of Secured Exchange Notes and (v) subject to certain exceptions consistent

with the Secured Bridge Documentation Principles, releases of all or substantially all of the value of the Guarantees (other than in connection with any release or sale of the relevant Guarantor permitted by the Secured Bridge Facility Documentation or Bank Facilities Documentation) or all or substantially all of the Collateral and (b) the consent of 100% of the Secured Bridge Lenders will be required with respect to modifications to any of the voting percentages.

Expenses and Indemnification: The Secured Bridge Facility Documentation will include expenses and indemnification provisions substantially consistent with those set forth in the Bank Facilities Documentation.

Governing Law: New York; *provided* that (a) to the extent the Acquisition is consummated pursuant to the Acquisition Agreement, the laws of the State set forth in the Acquisition Agreement shall govern in determining (i) whether a material adverse effect under the Acquisition Agreement has occurred, (ii) the accuracy of any Company Representation and whether you (or any of your subsidiaries or affiliates) have the right to terminate your (or their) obligations under the Acquisition Agreement or decline to consummate the Acquisition as a result of a breach of such representations in the Acquisition Agreement and (iii) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement and (b) to the extent the Acquisition is consummated pursuant to the Tender Offer, the federal securities laws of the United States shall govern in determining whether the Initial Offer to Purchase has been consummated in accordance with the terms and conditions thereof.

Counsel to the Secured Bridge Administrative Agent and Secured Bridge Lead Arrangers: Davis Polk & Wardwell LLP.

Secured Extended Term Loans

Maturity:	The Secured Extended Term Loans will mature on the date that is seven years after the Closing Date.
Interest Rate:	The Secured Extended Term Loans will bear interest at an interest rate per annum (the "***Secured Extended Term Loan Interest Rate***") equal to the Secured Total Cap. Interest shall be payable on the last day of each fiscal quarter of the Borrower and on the Secured Extended Maturity Date, in each case payable in arrears and computed on the basis of a 360 day year.
Default Rate:	During the continuance of any event of default under the Secured Extended Term Loans, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.
Ranking:	Same as the Secured Bridge Loans.
Guarantees:	Same as the Secured Bridge Loans.
Security:	Same as the Secured Bridge Loans and subject to the Intercreditor Agreement.
Covenants, Defaults and Mandatory Prepayments:	Upon and after the Secured Conversion Date, the covenants, mandatory prepayments (other than with respect to a change of control, with respect to which the provisions of the Secured Bridge Loans will apply) and defaults which would be applicable to the Secured Exchange Notes, if issued, will also be applicable to the Secured Extended Term Loans in lieu of the corresponding provisions of the Secured Bridge Facility Documentation.
Optional Prepayment:	The Secured Extended Term Loans may be prepaid, in whole or in part, at par, plus accrued and unpaid interest upon not less than three days' prior written notice, at the option of the Borrower at any time.
Governing Law:	New York.

Secured Exchange Notes

Issuer:	The Borrower will issue the Secured Exchange Notes under an indenture. The Borrower, in its capacity as the issuer of the Secured Exchange Notes, is referred to as the "Issuer". In addition, if the Issuer is not a corporation, there shall at all times be a joint and several co-issuer of the Secured Exchange Notes that is a corporation and is wholly owned restricted subsidiary of the Issuer.
Principal Amount:	The Secured Exchange Notes will be available only in exchange for the Secured Extended Term Loans on or after the Secured Conversion Date. The principal amount of any Secured Exchange Note will equal 100% of the aggregate principal amount of the Secured Extended Term Loan for which it is exchanged. In the case of a partial exchange, the minimum amount of Secured Extended Term Loans to be exchanged for Secured Exchange Notes will be $250 million.
Maturity:	The Secured Exchange Notes will mature on the date that is seven years after the Closing Date.
Interest Rate:	The Secured Exchange Notes will bear interest payable semi-annually, in arrears, at a rate equal to the Secured Total Cap.
Default Rate:	During the continuance of any event of default under the Secured Exchange Notes, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.
Ranking:	Same as the Secured Bridge Loans and Secured Extended Term Loans.
Guarantees:	Same as the Secured Bridge Loans and Secured Extended Term Loans.
Security:	Same as the Secured Bridge Loans and subject to the Intercreditor Agreement.
Offer to Purchase from Asset Sale Proceeds:	The Issuer will be required to make an offer to repurchase the Secured Exchange Notes (and, if outstanding, prepay the Secured Extended Term Loans) on a pro rata basis, which offer shall be at 100% of the principal amount thereof with a portion of the net cash proceeds of all non-ordinary course asset sales by the Issuer and its restricted subsidiaries in excess of amounts either reinvested or required to be paid to the lenders under the Bank Facilities or to holders of certain other indebtedness, with such proceeds being applied to the Secured Extended Term Loans, the Secured Exchange Notes, and the Secured Notes in a manner to be agreed, subject to other exceptions and baskets consistent with the Secured Bridge Documentation Principles.
Offer to Purchase upon Change of Control:	The Issuer will be required to make an offer to repurchase the Secured Exchange Notes following the occurrence of a change of control (to be defined in a manner consistent with the Secured Bridge Documentation Principles) at a price in cash equal to 101% (or 100% in the case of Secured Exchange Notes held by the Commitment Parties or their respective affiliates other than asset management affiliates purchasing securities in the ordinary course of their business as part of a regular distribution of the securities ("***Asset Management Affiliates***")), and excluding Secured Exchange Notes acquired pursuant to bona fide open market purchases from third parties or market activities ("***Repurchased Securities***"), of the outstanding principal amount thereof, plus accrued

and unpaid interest to the date of repurchase unless the Issuer shall redeem such Secured Exchange Notes pursuant to the "Optional Redemption" section below.

Optional Redemption: Except as set forth in the next two succeeding paragraphs, the Secured Exchange Notes will be non-callable until the third anniversary of the Closing Date. Thereafter, each such Secured Exchange Note will be callable at par plus accrued interest plus a premium equal to 50% of the coupon on such Secured Exchange Note during the fourth year after the Closing Date, which call premium shall ratably decline to zero on the fifth anniversary of the Closing Date.

Prior to the third anniversary of the Closing Date, the Issuer may redeem such Secured Exchange Notes at a make-whole price based on U.S. Treasury notes with a maturity closest to the second anniversary of the Closing Date plus 50 basis points.

Prior to the third anniversary of the Closing Date, the Issuer may redeem up to 40% of such Secured Exchange Notes with an amount equal to proceeds from any equity offering at a price equal to par plus the coupon plus accrued interest on such Secured Exchange Notes on terms consistent with the Secured Bridge Documentation Principles.

The optional redemption provisions will be otherwise customary for high yield transactions and consistent with the Secured Bridge Documentation Principles. Prior to a Demand Failure Event, any Secured Exchange Notes held by the Commitment Parties or their respective affiliates (other than Asset Management Affiliates) and excluding Repurchased Securities, shall be redeemable at any time and from time to time at the option of the Borrower at a redemption price equal to par plus accrued and unpaid interest to the redemption date.

Defeasance and Discharge Provisions: Consistent with the Secured Bridge Documentation Principles.

Modification: Consistent with the Secured Bridge Documentation Principles.

Registration Rights: None.

Right to Transfer Secured Exchange Notes: The holders of the Secured Exchange Notes shall have the absolute and unconditional right to transfer such Secured Exchange Notes in compliance with applicable law to any third parties pursuant to Rule 144A and Regulation S (or any successor provisions thereto).

Covenants: Such affirmative and negative covenants with respect to the Borrower and its restricted subsidiaries as are usual and customary for high yield financings of this type consistent with the Secured Bridge Documentation Principles, it being understood and agreed that the covenants of the Secured Exchange Notes will be incurrence-based covenants consistent with provisions customarily found in high yield indentures of comparable U.S.-based issuers (and consistent with the Secured Bridge Documentation Principles).

Events of Default: Consistent with the Secured Bridge Documentation Principles.

Governing Law:	New York.

EXHIBIT D

Project X
$3,000.0 million Senior Unsecured Increasing Rate Unsecured Bridge Loans
Summary of Principal Terms and Conditions

All capitalized terms used but not defined herein shall have the meanings given to them in the Commitment Letter to which this term sheet is attached, including Exhibit A thereto.

Borrower:	The Borrower under the Bank Facilities (the "***Borrower***").
Transactions:	As set forth in Exhibit A to the Commitment Letter.
Unsecured Bridge Administrative Agent:	MSSF or an affiliate thereof will act as the sole and exclusive administrative agent (in such capacity, the "***Unsecured Bridge Administrative Agent***") for a syndicate of banks, financial institutions and other institutional lenders and investors reasonably acceptable to the Unsecured Bridge Lead Arrangers (as defined below) and the Borrower, excluding any Disqualified Lender (together with the Initial Unsecured Bridge Lenders, the "***Unsecured Bridge Lenders***"), and will perform the duties customarily associated with such role.
Unsecured Bridge Lead Arrangers:	Each of MSSF, BofA Securities, Barclays, MUFG, BNPP Securities, Mizuho and SocGen will act as a lead arranger and joint bookrunner (together with any additional joint bookrunner appointed pursuant to the Commitment Letter, each in such capacity, an "***Unsecured Bridge Lead Arranger***") and will perform the duties customarily associated with such roles.
Syndication Agent, Documentation Agent or Co-Documentation Agents:	The Borrower may designate additional financial institutions reasonably acceptable to the Majority Lead Arrangers (such consent not to be unreasonably withheld, delayed or conditioned) to act as syndication agent, documentation agent or co-documentation agent as provided in the Commitment Letter.
Senior Unsecured Bridge Loans:	The Unsecured Bridge Lenders will make senior unsecured increasing rate loans (the "***Unsecured Bridge Loans***") to the Borrower on the Closing Date in an aggregate principal amount of up to $3,000.0 million plus, at the Borrower's election, an amount sufficient to fund any OID or upfront fees required to be funded on the Closing Date in connection with the issuance of the Unsecured Notes or any other Securities (as defined in the Fee Letter) on the Closing Date (which amounts shall be automatically added to the Commitment Parties' commitments under the Commitment Letter) minus the amount of gross proceeds from Unsecured Notes on the Closing Date.
Availability:	The Unsecured Bridge Lenders will make the Unsecured Bridge Loans on the Closing Date simultaneously with (a) the consummation of the Acquisition and (b) the initial funding under the Term Loan Facility. Amounts borrowed under the Unsecured Bridge Facility that are repaid or prepaid may not be reborrowed.
Use of Proceeds:	The proceeds of the Unsecured Bridge Loans will be used by the Borrower on the Closing Date, together with the proceeds of borrowings under the Bank Facilities, the

proceeds from the issuance of the Notes, the proceeds from the Equity Contribution and cash on hand at the Borrower, to provide Acquisition Funds.

Ranking: The Unsecured Bridge Loans will rank equal in right of payment with the Senior Secured Facilities and other senior indebtedness of the Borrower and will not be secured.

Guarantees: All obligations of the Borrower under the Unsecured Bridge Facility will be jointly and severally guaranteed by each Subsidiary Guarantor (as defined in Exhibit B to the Commitment Letter), on a senior basis (such guarantees, the "***Unsecured Bridge Guarantees***"). The Unsecured Bridge Guarantees will automatically be released upon the release of the corresponding guarantees of the Senior Secured Facilities (other than in connection with a refinancing or repayment in full of the Senior Secured Facilities). The Unsecured Bridge Guarantees will rank equal in right of payment with the guarantees of the Senior Secured Facilities.

Security: None.

Maturity: All Unsecured Bridge Loans will have an initial maturity date that is the one-year anniversary of the Closing Date (the "***Initial Unsecured Bridge Loan Maturity Date***"), which shall be extended as provided below. If any of the Unsecured Bridge Loans have not been previously repaid in full on or prior to the Initial Unsecured Bridge Loan Maturity Date, unless a bankruptcy event of default with respect to the Borrower shall have occurred and be continuing, such Unsecured Bridge Loans will be automatically converted into a senior unsecured term loan (each an "***Unsecured Extended Term Loan***") due on the date that is eight years after the Closing Date (the "***Unsecured Extended Maturity Date***") and having terms set forth on Annex I to this Exhibit D. The date on which Unsecured Bridge Loans are converted into Unsecured Extended Term Loans is referred to as the "***Unsecured Conversion Date***". On the Unsecured Conversion Date, and on the 15th calendar day of each month thereafter (or the immediately succeeding business day if such calendar day is not a business day) at the option of the applicable Bridge Lender, the Unsecured Extended Term Loans may be exchanged in whole or in part for senior unsecured exchange notes (the "***Unsecured Exchange Notes***") having an equal principal amount and having the terms set forth in Annex II hereto; *provided* that (i) no Unsecured Exchange Notes shall be issued until the Borrower shall have received requests to issue at least $250 million in aggregate principal amount of Unsecured Exchange Notes and (ii) no subsequent Unsecured Exchange Notes shall be issued until the Borrower shall have received additional requests to issue at least $250 million in aggregate principal amount of additional Unsecured Exchange Notes or if less, the remaining amount of Unsecured Extended Term Loans.

The Unsecured Extended Term Loans will be governed by the provisions of the Unsecured Bridge Facility Documentation (as hereinafter defined) and will have the same terms as the Unsecured Bridge Loans except as set forth on Annex I hereto. The Unsecured Exchange Notes will be issued pursuant to an indenture that will have the terms set forth on Annex II hereto.

The Unsecured Extended Term Loans and the Unsecured Exchange Notes shall rank equal in right of payment for all purposes.

Interest Rates: Interest on the Unsecured Bridge Loans for the first three-month period commencing on the Closing Date shall be payable at Term SOFR (for interest periods of 1, 3 or 6 months, as selected by the Borrower and, for purposes of the Unsecured Bridge Facility, with a 0.00% "floor") plus 1000 basis points (the "***Unsecured Bridge Initial Margin***"). Thereafter, subject to the Unsecured Total Cap (as defined in the Fee Letter), interest shall be payable at prevailing Term SOFR for the interest period selected by the Borrower plus the Unsecured Bridge Applicable Margin (as defined below) and shall increase by an additional 50 basis points at the beginning of each three-month period subsequent to the initial three-month period for so long as the Unsecured Bridge Loans are outstanding (except on the Unsecured Conversion Date) (the Unsecured Bridge Initial Margin together with each 50 basis point increase therein described above, the "***Unsecured Bridge Applicable Margin***").

Notwithstanding anything to the contrary set forth above, at no time, other than as provided under the heading "Default Rate" below, shall the per annum yield on the Unsecured Bridge Loans exceed the amount specified in the Fee Letter in respect of the Unsecured Bridge Facility as the "***Unsecured Total Cap***".

Following the Initial Unsecured Bridge Loan Maturity Date, all outstanding Unsecured Extended Term Loans will accrue interest at a rate equal to the Unsecured Total Cap.

Interest Payments: Interest on the Unsecured Bridge Loans will be payable in arrears at the end of each interest period and, for interest periods of greater than 3 months, every three months, and on the Initial Unsecured Bridge Loan Maturity Date. Calculation of interest shall be on the basis of actual days elapsed in a year of 360 days.

Default Rate: During the continuance of any event of default under the Unsecured Bridge Facility Documentation, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.

Notwithstanding anything to the contrary set forth herein, in no event shall any cap or limit on the yield or interest rate payable with respect to the Unsecured Bridge Loans, Unsecured Extended Term Loans or Unsecured Exchange Notes affect the payment of any default rate of interest in respect of any Unsecured Bridge Loan, Unsecured Extended Term Loans or Unsecured Exchange Notes.

Mandatory Prepayment: The Borrower will be required to prepay the Unsecured Bridge Loans on a pro rata basis at 100% of the outstanding principal amount thereof with (i) the net cash proceeds from the issuance of the Unsecured Notes; provided that in the event any Bridge Lender or affiliate of a Bridge Lender purchases debt securities from the Borrower pursuant to a permitted securities demand at an issue price above the price at which such Bridge Lender or affiliate has reasonably determined such debt securities can be resold by such Bridge Lender or affiliate to a bona fide third party at the time of such purchase (and notifies the Borrower thereof), the net cash proceeds received by the Borrower in respect of such debt securities may, at the option of such Bridge Lender or affiliate, be applied first to prepay the Unsecured Bridge Loans of such Bridge Lender or affiliate (provided that if there is more than one such Bridge Lender or affiliate then such net cash proceeds will be applied pro rata to prepay the Unsecured Bridge Loans of all such Unsecured Bridge Lenders or affiliates in proportion to such Unsecured Bridge Lenders' or affiliates' principal amount of debt securities purchased from the Borrower) prior to being applied to prepay the Unsecured Bridge Loans held by other Unsecured

Bridge Lenders; (ii) the net cash proceeds from the issuance of any Refinancing Debt (to be defined in a manner consistent with the Unsecured Bridge Documentation Principles) by the Borrower or any of its restricted subsidiaries; and (iii) the net cash proceeds from any non-ordinary course asset sales by the Borrower or any of its restricted subsidiaries in excess of amounts either reinvested or required to be paid to the lenders under the Bank Facilities, the Secured Bridge Facility and/or the Senior Secured Notes or the holder of certain other indebtedness, in the case of any such prepayments pursuant to the foregoing clauses (i), (ii) and (iii) above with exceptions and baskets consistent with the Unsecured Bridge Documentation Principles. The Borrower will also be required to offer to prepay the Unsecured Bridge Loans following the occurrence of a change of control (to be defined in a manner consistent with the Unsecured Bridge Documentation Principles) at 100% of the outstanding principal amount thereof, subject to the Unsecured Bridge Documentation Principles. These mandatory prepayment provisions will not apply to the Unsecured Extended Term Loans.

Optional Prepayment: The Unsecured Bridge Loans may be prepaid, in whole or in part, at par plus accrued and unpaid interest upon not less than three days' prior written notice, at the option of the Borrower at any time.

Documentation: The definitive documentation for the Unsecured Bridge Facility (the "***Unsecured Bridge Facility Documentation***") shall contain the terms set forth in this Exhibit D and shall otherwise be negotiated in good faith within a reasonable time period to be determined based on the expected Closing Date and substantially consistent with a market precedent for leading private equity sponsors to be agreed between MSSF and the Borrower with changes as are consistent with provisions customarily found in high yield indentures of comparable issuers and as modified to reflect the operational and strategic requirements of the Borrower and its subsidiaries in light of their size, industries, businesses and business practices, operations, financial accounting and Projections set forth in the Acquisition Model and administrative and operational changes as reasonably requested by the Unsecured Bridge Administrative Agent and modifications to reflect the reasonable administrative, agency and operational requirements of the Administrative Agents (including, without limitation, customary EU/UK Bail-In provisions, erroneous payment provisions, benchmark adjustment provisions and QFC stay provisions) (such precedent, provisions and requirements, the "***Unsecured Bridge Documentation Principles***"). Notwithstanding the foregoing, the only conditions to the availability of the Unsecured Bridge Facility on the Closing Date shall be the applicable conditions set forth in Exhibit E to the Commitment Letter. The Unsecured Bridge Facility Documentation shall contain only those representations, events of default and covenants as set forth in this Exhibit D.

Conditions to Borrowing: The availability of the Unsecured Bridge Facility on the Closing Date will be subject solely to the applicable conditions set forth in Exhibit E to the Commitment Letter.

Representations and Warranties: The Unsecured Bridge Facility Documentation will contain representations and warranties as are substantially similar to those for the Bank Facilities, but in any event are no less favorable to the Borrower and the Investors than those in the Bank Facilities, including as to exceptions and qualifications.

Covenants: The Unsecured Bridge Facility Documentation will contain such affirmative and negative covenants with respect to the Borrower and its restricted subsidiaries as are

usual and customary for Unsecured Bridge Loan financings of this type consistent with the Unsecured Bridge Documentation Principles and in any event no more restrictive than the Term Loan Facility, it being understood and agreed that (a) the covenants of the Unsecured Bridge Loans (and the Unsecured Extended Term Loans and the Unsecured Exchange Notes) will be incurrence-based covenants consistent provisions customarily found in high yield indentures of comparable issuers (and consistent with the Unsecured Bridge Documentation Principles) and (b) the debt incurrence ratio in the "credit facilities basket" and otherwise governing the incurrence of secured debt in the Unsecured Bridge Facility Documentation will be a "Consolidated Secured Debt Ratio" set at the Closing Date First Lien Leverage Ratio. Prior to the Initial Maturity Date, the debt and lien incurrence and the restricted payment covenants of the Unsecured Bridge Loans will be more restrictive than those of the Unsecured Extended Term Loans, the Unsecured Exchange Notes and the Bank Facilities, as reasonably agreed by the Lead Arrangers and the Borrower.

Financial Maintenance Covenants: None.

Events of Default: Limited to nonpayment of principal, interest or other amounts; violation of covenants; incorrectness of representations and warranties in any material respect; cross acceleration to material indebtedness; bankruptcy or insolvency of the Borrower or its significant restricted subsidiaries; material monetary judgments; ERISA events; and actual or asserted invalidity of guarantees, consistent in each case with the Unsecured Bridge Documentation Principles.

Cost and Yield Protection: The Unsecured Bridge Documentation will include customary tax gross-up, cost and yield protection provisions substantially consistent with those set forth in the Bank Facilities Documentation.

Assignment and Participation: The Unsecured Bridge Lenders will have the right to assign Unsecured Bridge Loans after the Closing Date without the consent of the Borrower; *provided*, *however*, that prior to the date that is one year after the Closing Date and so long as a Demand Failure Event (as defined in the Fee Letter) has not occurred and no payment or bankruptcy event of default shall have occurred and be continuing, the consent of the Borrower shall be required with respect to any assignment (such consent not to be unreasonably withheld or delayed) if, subsequent thereto, the Initial Unsecured Bridge Lenders (together with their affiliates) would hold, in the aggregate, less than 51% of the outstanding Unsecured Bridge Loans.

The Unsecured Bridge Lenders will have the right to participate their Unsecured Bridge Loans, before or after the Closing Date, to other financial institutions without restriction, other than customary voting limitations. Participants will have the same benefits as the selling Lenders would have (and will be limited to the amount of such benefits) with regard to yield protection and increased costs, subject to customary limitations and restrictions.

The Unsecured Bridge Facility Documentation shall provide that (a) Unsecured Bridge Loans may be purchased by the Borrower and assigned on a non-pro rata basis through customary loan buy-back procedures and (b) the Investors and their affiliates (other than the Borrower and its subsidiaries) (other than any such affiliate that is a bona fide debt

fund or entity that extends credit or buys loans in the ordinary course of business ("***Affiliated Debt Fund***")) (each an "***Affiliated Lender***") shall be eligible assignees; provided that (i) any such Unsecured Bridge Loans acquired by the Borrower or any of its subsidiaries shall be retired and cancelled promptly upon acquisition thereof (or contribution thereto) and (ii) any such Unsecured Bridge Loans acquired by the Investors, Holdings or any of their affiliates may, with the consent of the Borrower, be contributed to the Borrower (whether through any of its direct or indirect parent entities or otherwise) and exchanged for debt or equity securities of such parent entity or the Borrower that are otherwise permitted to be issued by such entity at such time; provided that assignments to Affiliated Lenders shall be subject to the following limitations:

(i) Affiliated Lenders will not receive information provided solely to Unsecured Bridge Lenders and will not be permitted to attend/participate in Bridge Lender meetings;

(ii) the Affiliated Lenders shall have no right to vote any of its interest under the Unsecured Bridge Facility (such interest will be deemed voted in the same proportion as non-affiliated Unsecured Bridge Lenders voting on such matter) except that each Affiliated Lender shall have the right to vote on any amendment, modification, waiver or consent that would require the vote of all Unsecured Bridge Lenders or the vote of all affected Unsecured Bridge Lenders (as set forth in "Voting" below) and no amendment, modification, waiver or consent shall affect any Affiliated Lender (in its capacity as a Bridge Lender) in a manner that is disproportionate to the effect on any Bridge Lender of the same class or that would deprive such Affiliated Lender of its pro rata share of any payments to which Unsecured Bridge Lenders are entitled; and

(iii) the amount of Unsecured Bridge Loans and Unsecured Extended Term Loans purchased by Affiliated Lenders shall not exceed 30% of the aggregate outstanding amount of Unsecured Bridge Loans and Unsecured Extended Term Loans at any time.

Voting: Amendments and waivers of the Unsecured Bridge Facility Documentation will require the approval of Lenders holding more than 50% of the outstanding Unsecured Bridge Loans, except that (a) the consent of each affected Lender will be required for (i) reductions of principal, interest rates or the Unsecured Bridge Applicable Margin, (ii) extensions of the Initial Unsecured Bridge Loan Maturity Date (except as provided under "Maturity" above) or the Unsecured Extended Maturity Date or the scheduled date of payment of any interest or fees, (iii) additional restrictions on the right to exchange Unsecured Extended Term Loans for Unsecured Exchange Notes or any amendment of the rate of such exchange, (iv) any amendment to the Unsecured Exchange Notes that requires (or would, if any Unsecured Exchange Notes were outstanding, require) the approval of all holders of Unsecured Exchange Notes and (v) subject to certain exceptions consistent with the Unsecured Bridge Documentation Principles, releases of all or substantially all of the value of the Guarantees (other than in connection with any release or sale of the relevant Guarantor permitted by the Unsecured Bridge Facility Documentation or Bank Facilities Documentation) and (b) the consent of 100% of the Unsecured Bridge Lenders will be required with respect to modifications to any of the voting percentages.

Expenses and Indemnification:	The Unsecured Bridge Facility Documentation will include expenses and indemnification provisions substantially consistent with those set forth in the Bank Facilities Documentation.
Governing Law:	New York; *provided* that (a) to the extent the Acquisition is consummated pursuant to the Acquisition Agreement, the laws of the State set forth in the Acquisition Agreement shall govern in determining (i) whether a material adverse effect under the Acquisition Agreement has occurred, (ii) the accuracy of any Company Representation and whether you (or any of your subsidiaries or affiliates) have the right to terminate your (or their) obligations under the Acquisition Agreement or decline to consummate the Acquisition as a result of a breach of such representations in the Acquisition Agreement and (iii) whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement and (b) to the extent the Acquisition is consummated pursuant to the Tender Offer, the federal securities laws of the United States shall govern in determining whether the Initial Offer to Purchase has been consummated in accordance with the terms and conditions thereof.
Counsel to the Unsecured Bridge Administrative Agent and Unsecured Bridge Lead Arrangers:	Davis Polk & Wardwell LLP.

Unsecured Extended Term Loans

Maturity:	The Unsecured Extended Term Loans will mature on the date that is eight years after the Closing Date.
Interest Rate:	The Unsecured Extended Term Loans will bear interest at an interest rate per annum (the "***Unsecured Extended Term Loan Interest Rate***") equal to the Unsecured Total Cap. Interest shall be payable on the last day of each fiscal quarter of the Borrower and on the Unsecured Extended Maturity Date, in each case payable in arrears and computed on the basis of a 360 day year.
Default Rate:	During the continuance of any event of default under the Unsecured Extended Term Loans, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.
Ranking:	Same as the Unsecured Bridge Loans.
Guarantees:	Same as the Unsecured Bridge Loans.
Security:	None.
Covenants, Defaults and Mandatory Prepayments:	Upon and after the Unsecured Conversion Date, the covenants, mandatory prepayments (other than with respect to a change of control, with respect to which the provisions of the Unsecured Bridge Loans will apply) and defaults which would be applicable to the Unsecured Exchange Notes, if issued, will also be applicable to the Unsecured Extended Term Loans in lieu of the corresponding provisions of the Unsecured Bridge Facility Documentation.
Optional Prepayment:	The Unsecured Extended Term Loans may be prepaid, in whole or in part, at par, plus accrued and unpaid interest upon not less than three days' prior written notice, at the option of the Borrower at any time.
Governing Law:	New York.

Unsecured Exchange Notes

Issuer:	The Borrower will issue the Unsecured Exchange Notes under an indenture. The Borrower, in its capacity as the issuer of the Unsecured Exchange Notes, is referred to as the "Issuer". In addition, if the Issuer is not a corporation, there shall at all times be a joint and several co-issuer of the Unsecured Exchange Notes that is a corporation and is wholly owned restricted subsidiary of the Issuer.
Principal Amount:	The Unsecured Exchange Notes will be available only in exchange for the Unsecured Extended Term Loans on or after the Unsecured Conversion Date. The principal amount of any Unsecured Exchange Note will equal 100% of the aggregate principal amount of the Unsecured Extended Term Loan for which it is exchanged. In the case of a partial exchange, the minimum amount of Unsecured Extended Term Loans to be exchanged for Unsecured Exchange Notes will be $250 million.
Maturity:	The Unsecured Exchange Notes will mature on the date that is eight years after the Closing Date.
Interest Rate:	The Unsecured Exchange Notes will bear interest payable semi-annually, in arrears, at a rate equal to the Unsecured Total Cap.
Default Rate:	During the continuance of any event of default under the Unsecured Exchange Notes, overdue principal, interest, fees and other amounts shall bear interest at the applicable interest rate plus 2.00% per annum.
Ranking:	Same as the Unsecured Bridge Loans and Unsecured Extended Term Loans.
Guarantees:	Same as the Unsecured Bridge Loans and Unsecured Extended Term Loans.
Security:	None.
Offer to Purchase from Asset Sale Proceeds:	The Issuer will be required to make an offer to repurchase the Unsecured Exchange Notes (and, if outstanding, prepay the Unsecured Extended Term Loans) on a pro rata basis, which offer shall be at 100% of the principal amount thereof with a portion of the net cash proceeds of all non-ordinary course asset sales by the Issuer and its restricted subsidiaries in excess of amounts either reinvested or required to be paid to the lenders under the Senior Secured Facilities or to holders of certain other indebtedness, with such proceeds being applied to the Unsecured Extended Term Loans, the Unsecured Exchange Notes, and the Unsecured Notes in a manner to be agreed, subject to other exceptions and baskets consistent with the Unsecured Bridge Documentation Principles.
Offer to Purchase upon Change of Control:	The Issuer will be required to make an offer to repurchase the Unsecured Exchange Notes following the occurrence of a change of control (to be defined in a manner consistent with the Unsecured Bridge Documentation Principles) at a price in cash equal to 101% (or 100% in the case of Unsecured Exchange Notes held by the Commitment Parties or their respective affiliates other than asset management affiliates purchasing securities in the ordinary course of their business as part of a regular distribution of the securities ("***Asset Management Affiliates***")), and excluding Unsecured Exchange Notes acquired pursuant to bona fide open market purchases from third parties or market activities ("***Repurchased Securities***"), of the outstanding principal amount thereof, plus

accrued and unpaid interest to the date of repurchase unless the Issuer shall redeem such Unsecured Exchange Notes pursuant to the "Optional Redemption" section below.

Optional Redemption: Except as set forth in the next two succeeding paragraphs, the Unsecured Exchange Notes will be non-callable until the third anniversary of the Closing Date. Thereafter, each such Unsecured Exchange Note will be callable at par plus accrued interest plus a premium equal to 50% of the coupon on such Unsecured Exchange Note during the fourth year after the Closing Date, which call premium shall ratably decline to zero on the sixth anniversary of the Closing Date.

Prior to the third anniversary of the Closing Date, the Issuer may redeem such Unsecured Exchange Notes at a make-whole price based on U.S. Treasury notes with a maturity closest to the third anniversary of the Closing Date plus 50 basis points.

Prior to the third anniversary of the Closing Date, the Issuer may redeem up to 40% of such Unsecured Exchange Notes with an amount equal to proceeds from any equity offering at a price equal to par plus the coupon plus accrued interest on such Unsecured Exchange Notes on terms consistent with the Unsecured Bridge Documentation Principles.

The optional redemption provisions will be otherwise customary for high yield transactions and consistent with the Unsecured Bridge Documentation Principles. Prior to a Demand Failure Event, any Unsecured Exchange Notes held by the Commitment Parties or their respective affiliates (other than Asset Management Affiliates) and excluding Repurchased Securities, shall be redeemable at any time and from time to time at the option of the Borrower at a redemption price equal to par plus accrued and unpaid interest to the redemption date.

Defeasance and Discharge Provisions: Consistent with the Unsecured Bridge Documentation Principles.

Modification: Consistent with the Unsecured Bridge Documentation Principles.

Registration Rights: None.

Right to Transfer Unsecured Exchange Notes: The holders of the Unsecured Exchange Notes shall have the absolute and unconditional right to transfer such Unsecured Exchange Notes in compliance with applicable law to any third parties pursuant to Rule 144A and Regulation S (or any successor provisions thereto).

Covenants: Such affirmative and negative covenants with respect to the Borrower and its restricted subsidiaries as are usual and customary for high yield financings of this type consistent with the Unsecured Bridge Documentation Principles, it being understood and agreed that the covenants of the Unsecured Exchange Notes will be incurrence-based covenants consistent with provisions customarily found in high yield indentures of comparable U.S.-based issuers (and consistent with the Unsecured Bridge Documentation Principles).

Events of Default:	Consistent with the Unsecured Bridge Documentation Principles.
Governing Law:	New York.

Project X
Summary of Conditions

Except as otherwise set forth below, the availability and initial funding on the Closing Date of each of the Facilities shall be subject to the satisfaction (or waiver by the Commitment Parties) of the following conditions:

1. In the case of the Tender Offer, the Tender Offer shall have been immediately prior to or, substantially concurrently with, the initial borrowing under the Facilities, consummated in all material respects in accordance with the terms of the Initial Offer to Purchase, without giving effect to any modifications, amendments or express waivers or consents by you (or one of your affiliates) thereto that are materially adverse to the Initial Lenders in their capacities as such without the written consent of the Majority Lead Arrangers (not to be unreasonably withheld, conditioned or delayed); provided that any modification, amendment, waiver or consent by you (or one of your affiliates) with respect to the Poison Pill Condition (as defined in the Tender Offer as of the date hereof), the Minimum Tender Condition (as defined in the Tender Offer as of the date hereof) or the Merger Agreement Condition (as defined in the Tender Offer as in effect on the date hereof) shall be deemed materially adverse to the Initial Lenders in their capacities as such without the express written consent of the Lead Arrangers who (together with their respective affiliates) hold at least 66.67% of the aggregate commitments in respect of the Facilities. In the case of a Merger Transaction (i) the Acquisition Agreement shall be reasonably acceptable to the Majority Lead Arrangers (it being understood that any such agreement shall be deemed to be reasonable to the Majority Lead Arrangers if (x) the terms of the Acquisition set forth therein are generally consistent with the Initial Offer to Purchase without material modifications that are materially adverse to the Initial Lenders and (y) contain customary "Xerox" lender protection provisions) and (ii) the Acquisition shall have been immediately prior to or, substantially concurrently with the initial borrowing under the Facilities, consummated in all material respects in accordance with the terms of the Acquisition Agreement, without giving effect to any modifications, amendments or express waivers or consents by you (or one of your affiliates (other than the Company to the extent the Company would be considered an affiliate)) thereto that are materially adverse to the Initial Lenders in their capacities as such without the consent of the Majority Lead Arrangers (not to be unreasonably withheld, conditioned or delayed). It being understood that for purposes of the condition set forth in this paragraph 1, (x) any increase in consideration payable with respect to the Acquisition shall not be materially adverse to the Initial Lenders so long as such increase is not funded with additional indebtedness (other than amounts available to be drawn on the Closing Date from the Facilities) and (y) notwithstanding the proviso above any modification, amendment, waiver or consent by you (or one of your affiliates) with respect to the Minimum Tender Condition shall not be deemed to be materially adverse to the Initial Lenders in their capacities as such if you (or one of your affiliates) acquire at least ninety percent (90)% of the outstanding shares of the Company pursuant to the Tender Offer and consummate the Acquisition as a "short form" second-step merger pursuant to Section 253 of the DGCL as described in the Initial Offer to Purchase.

2. The Equity Contribution shall have been made, or substantially concurrently with the borrowings under the Term Loan Facility, the Bridge Facilities and/or the issuance of Notes shall be made, in at least the amount set forth in Exhibit A to the Commitment Letter.

3. To the extent the Acquisition is consummated pursuant to a Merger Transaction, since the date of the Acquisition Agreement, there shall not have been any "company material adverse effect" (or defined term of similar effect in the Acquisition Agreement).

4. Substantially simultaneously with the initial borrowing under the Facilities, the Refinancing shall be consummated.

5. All fees required to be paid on the Closing Date pursuant to the Fee Letter and reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, to the extent invoiced at least three business days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), shall, upon the initial borrowings under the Facilities, have been, or will be substantially simultaneously, paid (which amounts may, at your option, be offset against the proceeds of the Facilities).

6. To the extent publicly filed by the Company, the Lead Arrangers shall have received (a) the audited consolidated balance sheets as of the three most recently completed fiscal years ended at least 90 days prior to the Closing Date and the related audited consolidated statements of operations and comprehensive income and cash flows of the Company and its subsidiaries for the three most recently completed fiscal years ended at least 90 days before the Closing Date; and (b) the unaudited consolidated balance sheets and the related unaudited consolidated statements of operations and comprehensive income and cash flows of the Company and its subsidiaries as of and for each subsequent fiscal quarter (other than the fourth fiscal quarter of the Company's fiscal year) ended at least 45 days before the Closing Date (and the same period in the prior fiscal year). The Lead Arrangers hereby acknowledge that (x) the public filing by the Company with the Securities and Exchange Commission of any required audited financial statements on Form 10-K or required unaudited financial statements on Form 10-Q, in each case, will satisfy the requirements under clause (a) or (b), as applicable, of this paragraph and (y) they have received of the audited financial statements referred to in clause (a) above for the 2019, 2020 and 2021 fiscal years.

7. Investment banks (the "***Investment Banks***") reasonably satisfactory to the Lead Arrangers shall have been engaged to privately place the Notes.

8. The Administrative Agent and the Lead Arrangers shall have received at least three business days prior to the Closing Date all documentation and other information about the Borrower (and, to the extent the Acquisition is consummated pursuant to a Merger Transaction, the other Guarantors) as shall have been reasonably requested in writing by the Administrative Agent or the Lead Arrangers at least ten calendar days prior to the Closing Date and as required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act and (b) if the Borrower qualifies as a "legal entity" customer under 31 C.F.R. § 1010.230 and the Administrative Agent has provided the Borrower the name of each requesting Lender and its electronic delivery requirements at least 10 calendar days prior to the Closing Date, the Administrative Agent and each such Lender requesting a Beneficial Ownership Certification (which request is made through the Administrative Agent) will have received, at least three business days prior to the Closing Date, the Beneficial Ownership Certification in relation to the Borrower.

9. Subject in all respects to the Funding Conditions Provisions, (a) the Intercreditor Agreement and Guarantees shall have been executed and be in full force and effect or substantially simultaneously with the initial borrowing under the Term Loan Facility, shall be executed and become in full force and effect, (b) with respect to the Term Loan Facility, all documents and instruments required to create or perfect the Bank Administrative Agent's security interest in the Collateral shall have been executed and delivered by each Credit Party party thereto and, if applicable, be in proper form for filing and (c) with respect to the Secured Bridge Facility, all documents and instruments required to create or perfect the Secured Bridge Administrative Agent's security interest in the Collateral shall have been executed and delivered by each Credit Party party thereto and, if applicable, be in proper form for filing.

10. Subject in all respects to the Funding Conditions Provisions, (a) the Bank Facilities Documentation and, if applicable, the Secured Bridge Facility Documentation and the Unsecured Bridge Facility Documentation (collectively, the "***Facilities Documentation***") (which shall, in each case, be in accordance with the terms of the Commitment Letter and the Term Sheets and the Documentation

Principles, the Secured Bridge Documentation Principles or the Unsecured Bridge Documentation Principles, as applicable) shall have been executed and delivered by the Credit Parties and (b) customary legal opinions, customary officer's closing certificates (including incumbency certificates of officers), organizational documents, customary evidence of authorization and good standing certificates in jurisdictions of formation/organization, in each case with respect to the Borrower and the Guarantors (to the extent applicable), customary requests for borrowing and a solvency certificate (as of the Closing Date after giving effect to the Transactions and substantially in the form of Annex E-I attached hereto, certified by a senior authorized financial officer of the Borrower) shall have been delivered to the Lead Arrangers.

***

Form of Solvency Certificate

Date: _____

Reference is made to Credit Agreement, dated as of [●] (the "***Credit Agreement***"), among [●] (the "***Borrower***"), the lending institutions from time to time parties thereto (the "***Lenders***"), and [●], as Administrative Agent and Collateral Agent.

Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. This certificate is furnished pursuant to Section [●] of the Credit Agreement.

Solely in my capacity as a financial executive officer of the Borrower and not individually (and without personal liability), I hereby certify, that as of the date hereof, after giving effect to the consummation of the Transactions:

1. The sum of the liabilities (including contingent liabilities) of the Borrower and its restricted subsidiaries, on a consolidated basis, does not exceed the present fair saleable value of the present assets of the Borrower and its restricted subsidiaries, on a consolidated basis.

2. The fair value of the property of the Borrower and its restricted subsidiaries, on a consolidated basis, is greater than the total amount of liabilities (including contingent liabilities) of the Borrower and its restricted subsidiaries, on a consolidated basis as such liabilities become absolute and mature.

3. The capital of the Borrower and its restricted subsidiaries, on a consolidated basis, is not unreasonably small in relation to their business as contemplated on the date hereof.

4. The Borrower and its restricted subsidiaries, on a consolidated basis, have not incurred and do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debts as they become due (whether at maturity or otherwise).

For purposes of this Certificate, the amount of any contingent liability has been computed as the amount that, in light of all of the facts and circumstances existing as of the date hereof, represents the amount that would reasonably be expected to become an actual or matured liability.

IN WITNESS WHEREOF, I have executed this Certificate this as of the date first written above.

[BORROWER]

By: _____

Name:
Title:

EXHIBIT 3

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301

TEL: (650) 470-4500
FAX: (650) 470-4570
www.skadden.com

July 8, 2022

Twitter, Inc.
1355 Market Street, Suite 900
San Francisco, CA 94103
Attn: Vijaya Gadde, Chief Legal Officer

Dear Ms. Gadde:

We refer to (i) the Agreement and Plan of Merger by and among X Holdings I, Inc., X Holdings II, Inc. and Twitter, Inc. dated as of April 25, 2022 (the "Merger Agreement") and (ii) our letter to you dated as of June 6, 2022 (the "June 6 Letter"). As further described below, Mr. Musk is terminating the Merger Agreement because Twitter is in material breach of multiple provisions of that Agreement, appears to have made false and misleading representations upon which Mr. Musk relied when entering into the Merger Agreement, and is likely to suffer a Company Material Adverse Effect (as that term is defined in the Merger Agreement).

While Section 6.4 of the Merger Agreement requires Twitter to provide Mr. Musk and his advisors all data and information that Mr. Musk requests "for any reasonable business purpose related to the consummation of the transaction," Twitter has not complied with its contractual obligations. For nearly two months, Mr. Musk has sought the data and information necessary to "make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform" (our letter to you dated May 25, 2022 (the "May 25 Letter")). This information is fundamental to Twitter's business and financial performance and is necessary to consummate the transactions contemplated by the Merger Agreement because it is needed to ensure Twitter's satisfaction of the conditions to closing, to facilitate Mr.

Musk's financing and financial planning for the transaction, and to engage in transition planning for the business. Twitter has failed or refused to provide this information. Sometimes Twitter has ignored Mr. Musk's requests, sometimes it has rejected them for reasons that appear to be unjustified, and sometimes it has claimed to comply while giving Mr. Musk incomplete or unusable information.

Mr. Musk and his financial advisors at Morgan Stanley have been requesting critical information from Twitter as far back as May 9, 2022—and repeatedly since then—on the relationship between Twitter's disclosed mDAU figures and the prevalence of false or spam accounts on the platform. If there were ever any doubt as to the nature of these information requests, the May 25 Letter made clear that Mr. Musk's goal was to understand how many of Twitter's claimed mDAUs were, in fact, fake or spam accounts. That letter noted that "Items 1.03 to 1.13 of the diligence request list contain high-priority requests for enterprise data and other information intended to enable Mr. Musk and his advisors to make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform…" The letter then provided Twitter with a detailed list of requests to this effect.

Since then, Mr. Musk has provided numerous additional follow-up requests, all aimed at filling the gaps in the incomplete information that Twitter provided in response to his broad requests for information relating to Twitter's reported mDAU counts and reported estimates of false and spam accounts.[1] For example, in our letter to you dated June 29, 2022 (the "June 29 Letter"), we referenced Mr. Musk's request in the May 25 Letter for "information that would allow him 'to make an independent assessment of the prevalence of fake or spam accounts on Twitter's platform.'" Because Twitter, by its own admission, provided only incomplete data that was not sufficient to perform such an independent assessment,[2] the June 29 Letter "endeavored to be *even more* specific, and to reduce the burden of the

[1] Mr. Musk sought the same information in letters dated June 6, 2022, June 17, 2022, and June 29, 2022. In each of these letters, Mr. Musk referenced his information rights under Section 6.4 of the Merger Agreement. Twitter has thus been on notice of the information sought by Mr. Musk—and the contractual bases for these requests—for two months. For the past month, Mr. Musk has been clear that he views Twitter's non-responsiveness as a material breach of the Merger Agreement giving him the right to terminate the Merger Agreement if uncured. *See* June 6, 2022 (explaining that Twitter was "refusing to comply with its obligations under the Merger Agreement"). Thus, Mr. Musk has been clear about his requests, his right to seek such information, and his view regarding Twitter's material breach of the Merger Agreement.

[2] *See* your letter to us dated June 20, 2022 (noting that the information Twitter was agreeing to provide was "insufficient to perform the spam analysis that [Mr. Musk] purport[s] to wish to do.").

[original] request," by identifying a specific subset of high priority information, responsive to Mr. Musk's prior requests, for Twitter to immediately make available.

Notwithstanding these repeated requests over the past two months, Twitter has still failed to provide much of the data and information responsive to Mr. Musk's repeated requests, including, but not limited to:

1. *Information related to Twitter's process for auditing the inclusion of spam and fake accounts in mDAU*. Twitter has still not provided much of the information specifically requested by Mr. Musk in Sections 1.01-1.03 of the May 19 diligence request list that is necessary for him to make an assessment of the prevalence of false or spam accounts on its website. As recently as the June 29 Letter, Mr. Musk reiterated this long-standing request for information related to Twitter's sampling process for detecting fake accounts. The June 29 Letter identified specific data necessary to enable Mr. Musk to independently verify Twitter's representations regarding the number of mDAU on its platform—including, but not limited to (1) daily global mDAU data since October 1, 2020; (2) information regarding the sampling population for mDAU, including whether the mDAU population used for auditing spam and false accounts is the same mDAU population used for quarterly reporting; (3) outputs of each step of the sampling process for each day during the weeks of January 30, 2022 and June 19, 2022; (4) documentation or other guidance provided to contractor agents used for auditing mDAU samples; (5) information regarding the user interface of Twitter's ADAP tool and any internal tools used by the contractor agents; and (6) mDAU audit sampling information, including anonymized information identifying the contractor agents and Quality Analyst that reviewed each sampled account, the designation given by each contractor agent and Quality Analyst, and the current status of any accounts labelled "compromised." A subsequent request along these lines should not have been necessary, as this information should have been provided in response to Mr. Musk's original diligence request. Yet, to date, Twitter has not provided any of this information.

2. *Information related to Twitter's process for identifying and suspending spam and fake accounts*. In addition to information regarding Twitter's mDAU audits, the June 29 Letter also reiterated requests for data specifically identified in Sections 1.04-1.05 of the May 19 diligence request list regarding Twitter's methodology and performance data relating to identification and suspension of spam and false accounts,

including, but not limited to, information regarding account suspensions, including information sufficient to identify daily numbers of account suspensions since October 2020 and numbers of account suspensions for each of Twitter's internal reasons for suspension. In addition, during the June 30, 2022 call, Twitter's representatives indicated for the first time that the workflow and processes for detecting spam and false accounts in the mDAU population is different and separate from the workflow and processes for identifying and suspending accounts in violation of Twitter's policies. On that call, Twitter indicated that it would not be willing to provide information regarding the methodologies employed to identify and suspend such accounts.

3. *Daily measures of mDAU for the past eight (8) quarters*. On June 17, 2022 (the "June 17 Letter") Mr. Musk reiterated his request for "access to the sample set used and calculations performed, as well as any related reports or analysis, to support Twitter's representation that fewer than 5% of its mDAUs are false or spam account." To that end, Mr. Musk requested that Twitter provide "daily measures of mDAU for the previous eight quarters, and through the present." This information is derivative of the information Mr. Musk first sought in Sections 1.01-1.03 of the May 19 diligence request list. Although Twitter has provided certain summary data regarding the mDAU calculations, Twitter has not provided the complete daily measures as requested.

4. *Board materials related to Twitter's mDAU calculations*. In the June 17 Letter, Mr. Musk requested a variety of board materials and communications related to Twitter's mDAU metric, its calculation of the number of spam and false accounts, its disclosure of the mDAU metric, and the company's disclosure of the number of spam accounts on the platform. Twitter has provided an incomplete data set in response to this request, and has not provided information sufficient to enable Mr. Musk to make an independent assessment of Twitter's board and management's understanding of its mDAU metric.

5. *Materials related to Twitter's financial condition*. Mr. Musk is entitled, under Section 6.4 of the Merger Agreement to "all information concerning the business … of the Company … for any reasonable business purpose related to the consummation of the transactions" and under Section 6.11 of the Merger Agreement, to information "reasonably requested" in connection with his efforts to secure the debt

> financing necessary to consummate the transaction. To that end, Mr. Musk requested on June 17 a variety of board materials, including a working, bottoms-up financial model for 2022, a budget for 2022, an updated draft plan or budget, and a *working* copy of Goldman Sachs' valuation model underlying its fairness opinion. Twitter has provided only a pdf copy of Goldman Sachs' final Board presentation.

In short, Twitter has not provided information that Mr. Musk has requested for nearly two months notwithstanding his repeated, detailed clarifications intended to simplify Twitter's identification, collection, and disclosure of the most relevant information sought in Mr. Musk's original requests.

While Twitter has provided some information, that information has come with strings attached, use limitations or other artificial formatting features, which has rendered some of the information minimally useful to Mr. Musk and his advisors. For example, when Twitter finally provided access to the eight developer "APIs" first explicitly requested by Mr. Musk in the May 25 Letter, those APIs contained a rate limit lower than what Twitter provides to its largest enterprise customers. Twitter only offered to provide Mr. Musk with the same level of access as some of its *customers* after we explained that throttling the rate limit prevented Mr. Musk and his advisors from performing the analysis that he wished to conduct in any reasonable period of time.

Additionally, those APIs contained an artificial "cap" on the number of queries that Mr. Musk and his team can run regardless of the rate limit—an issue that initially prevented Mr. Musk and his advisors from completing an analysis of the data in any reasonable period of time. Mr. Musk raised this issue as soon as he became aware of it, in the first paragraph of the June 29 Letter: "we have just been informed by our data experts that Twitter has placed an artificial cap on the number of searches our experts can perform with this data, which is now preventing Mr. Musk and his team from doing their analysis." That cap was not removed until July 6, after Mr. Musk demanded its removal for a second time.

Based on the foregoing refusal to provide information that Mr. Musk has been requesting since May 9, 2022, Twitter is in breach of Sections 6.4 and 6.11 of the Merger Agreement.

Despite public speculation on this point, Mr. Musk did not waive his right to review Twitter's data and information simply because he chose not to seek this data and information before entering into the Merger Agreement. In fact, he negotiated access and information rights within the Merger Agreement precisely so

that he could review data and information that is important to Twitter's business before financing and completing the transaction.

As Twitter has been on notice of its breach since at least June 6, 2022, any cure period afforded to Twitter under the Merger Agreement has now lapsed. Accordingly, Mr. Musk hereby exercises X Holdings I, Inc.'s right to terminate the Merger Agreement and abandon the transaction contemplated thereby, and this letter constitutes formal notice of X Holding I, Inc.'s termination of the Merger Agreement pursuant to Section 8.1(d)(i) thereof.

In addition to the foregoing, Twitter is in breach of the Merger Agreement because the Merger Agreement appears to contain materially inaccurate representations. Specifically, in the Merger Agreement, Twitter represented that no documents that Twitter filed with the U.S. Securities and Exchange Commission since January 1, 2022, included any "untrue statement of a material fact" (Section 4.6(a)). Twitter has repeatedly made statements in such filings regarding the portion of its mDAUs that are false or spam, including statements that: "We have performed an internal review of a sample of accounts and estimate that the average of false or spam accounts during the first quarter of 2022 represented fewer than 5% of our mDAU during the quarter," and "After we determine an account is spam, malicious automation, or fake, we stop counting it in our mDAU, or other related metrics." Mr. Musk relied on this representation in the Merger Agreement (and Twitter's numerous public statements regarding false and spam accounts in its publicly filed SEC documents) when agreeing to enter into the Merger Agreement. Mr. Musk has the right to seek rescission of the Merger Agreement in the event these material representations are determined to be false.

Although Twitter has not yet provided complete information to Mr. Musk that would enable him to do a complete and comprehensive review of spam and fake accounts on Twitter's platform, he has been able to partially and preliminarily analyze the accuracy of Twitter's disclosure regarding its mDAU. While this analysis remains ongoing, all indications suggest that several of Twitter's public disclosures regarding its mDAUs are either false or materially misleading. *First*, although Twitter has consistently represented in securities filings that "fewer than 5%" of its mDAU are false or spam accounts, based on the information provided by Twitter to date, it appears that Twitter is dramatically understating the proportion of spam and false accounts represented in its mDAU count. Preliminary analysis by Mr. Musk's advisors of the information provided by Twitter to date causes Mr. Musk to strongly believe that the proportion of false and spam accounts included in the reported mDAU count is wildly higher than 5%. *Second*, Twitter's disclosure that it ceases to count fake or spam users in its mDAU when it determines that those

users are fake appears to be false. Instead, we understand, based on Twitter's representations during a June 30, 2022 call with us, that Twitter includes accounts that have been suspended—and thus are known to be fake or spam—in its quarterly mDAU count even when it is aware that the suspended accounts were included in mDAU for that quarter. *Last*, Twitter has represented that it is "continually seeking to improve our ability to estimate the total number of spam accounts and eliminate them from the calculation of our mDAU…" But, Twitter's process for calculating its mDAU, and the percentage of mDAU comprised of non-monetizable spam accounts, appears to be arbitrary and ad hoc. Disclosing that Twitter has a reasoned process for calculating mDAU when the opposite is true would be false and misleading.

Twitter's representation in the Merger Agreement regarding the accuracy of its SEC disclosures relating to false and spam accounts may have also caused, or is reasonably likely to result in, a Company Material Adverse Effect, which may form an additional basis for terminating the Merger Agreement. While Mr. Musk and his advisors continue to investigate the exact nature and extent of this event, Mr. Musk has reason to believe that the true number of false or spam accounts on Twitter's platform is substantially higher than the amount of less than 5% represented by Twitter in its SEC filings. Twitter's true mDAU count is a key component of the company's business, given that approximately 90% of its revenue comes from advertisements. For this reason, to the extent that Twitter has underrepresented the number of false or spam accounts on its platform, that may constitute a Company Material Adverse Effect under Section 7.2(b)(i) of the Merger Agreement. Mr. Musk is also examining the company's recent financial performance and revised outlook, and is considering whether the company's declining business prospects and financial outlook constitute a Company Material Adverse Effect giving Mr. Musk a separate and distinct basis for terminating the Merger Agreement.

Finally, Twitter also did not comply with its obligations under Section 6.1 of the Merger Agreement to seek and obtain consent before deviating from its obligation to conduct its business in the ordinary course and "preserve substantially intact the material components of its current business organization." Twitter's conduct in firing two key, high-ranking employees, its Revenue Product Lead and the General Manager of Consumer, as well as announcing on July 7 that it was laying off a third of its talent acquisition team, implicates the ordinary course provision. Twitter has also instituted a general hiring freeze which extends even to reconsideration of outstanding job offers. Moreover, three executives have resigned from Twitter since the Merger Agreement was signed: the Head of Data Science, the Vice President of Twitter Service, and a Vice President of Product

Management for Health, Conversation, and Growth. The Company has not received Parent's consent for changes in the conduct of its business, including for the specific changes listed above. The Company's actions therefore constitute a material breach of Section 6.1 of the Merger Agreement.

Accordingly, for all of these reasons, Mr. Musk hereby exercises X Holdings I, Inc.'s right to terminate the Merger Agreement and abandon the transaction contemplated thereby, and this letter constitutes formal notice of X Holding I, Inc.'s termination of the Merger Agreement pursuant to Section 8.1(d)(i) thereof.

Sincerely,

/s/ Mike Ringler
Mike Ringler
Skadden, Arps, Slate, Meagher & Flom LLP

cc:
Katherine A. Martin, Wilson Sonsini Goodrich & Rosati, Professional Corporation
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