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

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **July 25, 2018**

**JAKKS PACIFIC, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-28104**  
(Commission  
File Number)

**95-4527222**  
(IRS Employer  
Identification No.)

**2951 28<sup>th</sup> Street, Santa Monica, California**  
(Address of principal executive offices)

**90405**  
(Zip Code)

Registrant's telephone number, including area code: **(424) 268-9444**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

Emerging growth company

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

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

On July 25, 2018 we and Oasis Investments II Master Fund Ltd. (“Oasis”), entered into an Exchange Agreement (the “Exchange Agreement”) which provides for the exchange of \$8,000,000 of our existing 4.25% Convertible Senior Notes due 2018 owned by Oasis for a Convertible Note due November 1, 2020 with an equal face value (the “Note”). Interest on the Note, payable on each November 1 and May 1 until maturity, is at an annual rate of 3.25% if paid in cash and 5% if paid in stock.

The Note provides, among other things, that the initial conversion price is \$3.103. The conversion price will be reset on November 1, 2018 and November 1, 2019 (each, a “reset date”) to a price equal to 105% above the 5-day VWAP preceding the reset date; provided, however, that if the conversion price resulting from such reset is lower than 90 percent of the average VWAP during the 90 calendar days preceding the reset date, then the reset price shall be the 30-day VWAP preceding the reset date. Under no circumstances shall the reset result in a conversion price below the greater of the closing price on the reset date or 30% of the stock price at the date of the initial closing and will not be greater than the conversion price in effect immediately before such reset. In the event the reset price is less than 90% of the initial conversion price, Oasis may only convert the Note if the closing market price of our common stock is above 110% of the reset price. We may trigger a mandatory conversion of the Note if the market price exceeds 150% of the then conversion price for 20 consecutive days, and Oasis may require repayment of the Note upon the occurrence of certain fundamental changes, as such term is defined in the Note.

The Note also provides that (i) it is nontransferable for 12 months, (ii) until November 1, 2018 we may not issue any convertible securities unless our stock price exceeds \$6.00 for 20 consecutive trading days, and (iii) in the event we repurchase our outstanding convertible notes due in 2018 and 2020 for cash and/or stock, the stock component is limited to the amount of stock equal to the noteholder’s short position.

Until shareholder approval is obtained (which approval we are obligated to seek), limitations in place will prevent us from issuing to Oasis more than 19.9% of our pre-closing number of issued and outstanding shares. Another limitation will limit Oasis’ ability to submit for conversion any part of the Note if the potential number of shares of our stock issuable upon such conversion of the Note which, when added to all other shares of our stock deemed to be beneficially owned by Oasis, would result in their ownership of more than 9.99% of our issued and outstanding stock. We have the discretion to repay the Note and accrued interest thereon in stock, in cash and/or in a combination thereof, provided that any payment in stock is contingent upon the satisfaction of certain equity conditions.

Pursuant to the terms of a Registration Rights Agreement with Oasis entered into concurrently with the Purchase Agreement and the Note, we also agreed to provide Oasis with customary registration rights with respect to any potential shares we determine to issue pursuant to the terms of the Note.

Alexander Shoghi, one of our directors, is a portfolio manager at a fund related to Oasis.

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The foregoing description of the Exchange Agreement, Note and Registration Rights Agreement are qualified in their entirety by reference to the agreements, copies of which are filed as exhibits to this Form 8-K and are incorporated by reference in this Item 1.01.

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

As disclosed above, on July 26, 2018 we issued \$8,000,000 principal amount of new convertible notes to Oasis in exchange for \$8,000,000 principal amount of existing convertible notes.

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

As disclosed above, on July 26, 2018 we consummated the exchange of \$8,000,000 principal amount of our convertible notes with Oasis. The exchange was exempt from registration pursuant to Section 3(a)(9) of the Securities Act of 1933.

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

<b>Exhibit</b>	<b>Description</b>
<a href="#">10.1</a>	<a href="#">Exchange Agreement dated July 25, 2018 between Registrant and Oasis Investments II Master Fund Ltd.</a>
<a href="#">10.2</a>	<a href="#">Convertible Senior Note due November 1, 2020</a>
<a href="#">10.3</a>	<a href="#">Registration Rights Agreement dated as of July 25, 2018 between Registrant and Oasis Investments II Master Fund Ltd.</a>

**SIGNATURES**

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

JAKKS PACIFIC, INC.

Dated: July 26, 2018

By:           /s/ BRENT NOVAK            
Brent Novak, CFO

## EXCHANGE AGREEMENT

Oasis Investments II Master Fund Ltd. (the "**Holder**") enters into this Exchange Agreement (the "**Agreement**") with JAKKS Pacific, Inc. (the "**Company**") on July 25, 2018 whereby the Holder will exchange (the "**Exchange**") the Company's existing 4.25% Convertible Senior Notes due 2018 (the "**Existing Notes**") for the Company's new Convertible Senior Notes in the form attached hereto as Exhibit A (the "**2018 Exchange Notes**").

On and subject to the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

**Article I: Exchange of the Existing Notes for 2018 Exchange Notes**

On the Closing Date (as defined below), the Holder hereby agrees to exchange and deliver to the Company the following principal amount of Existing Notes, and in exchange therefor the Company hereby agrees to (x) issue to the Holder the same principal amount of 2018 Exchange Notes and (y) pay to the Holder accrued interest through the Closing Date with respect to such Existing Notes in cash by wire transfer of immediately available funds pursuant to the Holder's wire instructions set forth on the Holder's signature page attached hereto:

Aggregate Principal Amount of Existing Notes (the "**Exchanged Notes**") to be Exchanged for 2018 Exchange Notes (the "**Holder's 2018 Exchange Notes**"): \$8,000,000

Aggregate accrued but unpaid interest on such Exchanged Notes through the Closing Date to be paid on the Closing Date in cash ("**Interest**"): \$166,222.22

The consummation of the foregoing transactions is herein referred to as the "**Closing**". The date and time of the Closing (the "**Closing Date**") shall be 10:00 a.m., New York City time, on the date hereof (or such other date and time as is mutually agreed to by the Company and the Holder) after notification of satisfaction (or waiver) of the conditions to the Closing set forth in Article IV below, at the offices of Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022. At the Closing, (a) the Holder shall deliver or cause to be delivered to the Company all right, title and interest in and to its Exchanged Notes (and no other consideration) free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, "**Liens**"), and (b) the Company shall deliver to the Holder's 2018 Exchange Notes in the same principal amount of the principal amount of the Exchanged Notes. The Holder shall electronically deliver to the Company's balance account with The Depository Trust Company ("**DTC**") through its Deposit / Withdrawal at Custodian ("**DWAC**") system pursuant to the DWAC instructions set forth on the Company's signature page attached hereto and the Company shall deliver to the Holder at its address set forth on its signature page attached hereto a certificate representing the Holder's 2018 Exchange Notes.

Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement, substantially in the form attached hereto as Exhibit B (the "**Registration Rights Agreement**" and together with this Agreement and the 2018 Exchange Notes, the "**Transaction Documents**"), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement) under the Securities Act of 1933, as amended (the "**Securities Act**") and the rules and regulations promulgated thereunder, and applicable state securities laws.

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## **Article II: Covenants, Representations and Warranties of the Holder**

The Holder hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and on the Closing Date, to the Company, and all such covenants, representations and warranties shall survive the Closing.

**Section 2.1 Power and Authorization.** The Holder is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and the Holder has the power, authority and capacity to execute and deliver this Agreement and the Registration Rights Agreement, to perform its obligations hereunder and thereunder, and to consummate the Exchange contemplated hereby.

**Section 2.2 Valid and Enforceable Agreements; No Violations.** This Agreement and the Registration Rights Agreement have been duly executed and delivered by the Holder and constitute (assuming due authorization, execution and delivery hereof and thereof by the Company) legal, valid and binding obligations of the Holder, enforceable against the Holder in accordance with their respective terms, except that such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, and (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the "**Enforceability Exceptions**"). This Agreement and the Registration Rights Agreement and the consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the Holder's organizational documents, (ii) any agreement or instrument to which the Holder is a party or by which the Holder or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Holder, except in the case of clause (ii) or (iii) above only, where such violations, conflicts, breaches or defaults would not affect the Holder's ability to consummate the transactions contemplated hereby in any material respect.

**Section 2.3 Title to the Exchanged Notes.** The Holder is the beneficial owner of the Exchanged Notes. The Holder has good, valid and marketable title to its Exchanged Notes, free and clear of any Liens (other than pledges or security interests (x) arising by operation of applicable securities laws and (y) that the Holder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker). The Holder has not, in whole or in part, except as described in the preceding sentence and in Article I, (a) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its rights, title or interest in or to its Exchanged Notes or its rights in its Exchanged Notes, or (b) given any person or entity any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Exchanged Notes. Upon the Holder's delivery of its Exchanged Notes to the Company pursuant to the Exchange, such Exchanged Notes shall be free and clear of all Liens created by the Holder.

**Section 2.4 Accredited Investor; Ordinary Course of Business.** The Holder is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act. The Holder is acquiring the Holder's 2018 Exchange Notes hereunder in the ordinary course of its business.

**Section 2.5 Adequate Information; No Reliance.** The Holder acknowledges and agrees that (a) the Holder has been furnished with all materials it considers relevant to making an investment decision to enter into the Exchange and has had the opportunity to review the Company's filings and submissions with the Securities and Exchange Commission (the "SEC"), including, without limitation, all information filed or furnished pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (b) the Holder has had the opportunity to ask questions of the Company concerning the Company, its business, operations, financial performance, financial condition and prospects, and the terms and conditions of the Exchange, (c) the Holder has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Exchange and to make an informed investment decision with respect to such Exchange, (d) the Company is not acting as a fiduciary or financial or investment adviser to the Holder and (e) the Holder is not relying, and has not relied, upon any statement, advice (whether accounting, tax, financial, legal or other), representation or warranty made by the Company or any of its affiliates or representatives, except for (A) the SEC Documents (as defined below) and (B) the representations and warranties made by the Company in this Agreement.

**Section 2.6 No Litigation.** There is no action, lawsuit, arbitration, claim or proceeding pending or, to the knowledge of the Holder, threatened, against the Holder that would reasonably be expected to impede the consummation of the transactions contemplated hereby.

**Section 2.7 Holdings.** As of the date hereof, the Holder holds the following securities of the Company: (i) 1,097,906 shares of the Company's common stock, \$0.001 par value (the "Common Stock"), (ii) the Exchanged Notes, (iii) \$10,250,000 principal amount of the Company's 4.875% Convertible Senior Notes due 2020 and (iv) \$21,550,000 principal amount of the Company's Convertible Senior Notes issued to the Holder pursuant to that certain Exchange Agreement dated as of November 7, 2017 by and between the Company and the Holder.

**Section 2.8 Recusal.** While the Holder or any of its affiliates holds 2018 Exchange Notes, any employee of the Holder or any of its affiliates serving as director on the Company's Board of Directors shall recuse himself (or herself) from any discussion or vote relating to the terms of the 2018 Exchange Notes.

### **Article III: Covenants, Representations and Warranties of the Company**

The Company hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and on the Closing Date, to the Holder, and all such covenants, representations and warranties shall survive the Closing.

**Section 3.1 Power and Authorization.** The Company is duly incorporated, validly existing and in good standing under the laws of its state of incorporation, and the Company has the power, authority and capacity to execute and deliver this Agreement and the other Transaction Documents, to perform its obligations hereunder and thereunder, and to consummate the Exchange contemplated hereby. Except as expressly set forth in this Agreement and except as will be obtained by the Company prior to the Closing Date, no material consent, approval, order or authorization of, or material registration, declaration or filing with any governmental entity is required on the part of the Company in connection with the execution, delivery and performance by it of this Agreement and the other Transaction Documents and the consummation by the Company of the transactions contemplated hereby and thereby.

**Section 3.2 Valid and Enforceable Agreements; No Violations.** This Agreement and the other Transaction Documents have been duly executed and delivered by the Company and constitute (assuming, with respect to this Agreement and the Registration Rights Agreement, due authorization, execution and delivery hereof and thereof by the Holder) legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except that such enforcement may be subject to the Enforceability Exceptions. This Agreement and the other Transaction Documents, the issuance of the 2018 Exchange Notes, the reservation for issuance and issuance of the shares of Common Stock pursuant to the terms of the 2018 Exchange Notes (the "**2018 Exchange Conversion Shares**") and the consummation of the Exchange will not violate, conflict with or result in a breach of or default under (i) the charter, bylaws or other organizational documents of the Company, (ii) any agreement or instrument to which the Company is a party or by which the Company or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to the Company, except in the case of clauses (ii) or (iii) above only, where such violations, conflicts, breaches or defaults would not result in a Material Adverse Effect (as defined below).

**Section 3.3 Validity of the Holder's 2018 Exchange Notes.** The Holder's 2018 Exchange Notes have been duly authorized by the Company and, when executed and delivered to the Holder pursuant to the Exchange against delivery of the Exchanged Notes in accordance with the terms of this Agreement, the Holder's 2018 Exchange Notes will be legal, valid and binding obligations of the Company, enforceable in accordance with their terms, except that such enforcement may be subject to the Enforceability Exceptions, and the Holder's 2018 Exchange Notes will not be subject to any preemptive, participation, rights of first refusal or other similar rights. The Holder's 2018 Exchange Notes (a) will be issued in the Exchange exempt from the registration requirements of the Securities Act pursuant to Section 3(a)(9) of the Securities Act, (b) will, at the Closing, be free of any restrictions on resale by the Holder pursuant to Rule 144 promulgated under the Securities Act other than such restrictions imposed on the Holder by virtue of its affiliate status with the Company and free of any restrictive legend, and (c) will be issued in compliance with all applicable state and federal laws concerning the issuance of the Holder's 2018 Exchange Notes. For the purposes of Rule 144 promulgated under the Securities Act, the Company acknowledges that the holding period of the 2018 Exchange Notes and of any other securities that may be issued to the Holder pursuant to terms of the 2018 Exchange Notes may be tacked onto the holding period of the Exchanged Notes and the Company agrees not to take a position contrary thereto.

**Section 3.4 Validity of 2018 Exchange Conversion Shares.** The 2018 Exchange Conversion Shares have been duly authorized and reserved by the Company for issuance pursuant to the terms of the Holder's 2018 Exchange Notes and, when issued upon conversion of the Holder's 2018 Exchange Notes in accordance with the terms of the Holder's 2018 Exchange Notes, will be validly issued, fully paid and non-assessable, and the issuance of the 2018 Exchange Conversion Shares will not be subject to any preemptive, participation, rights of first refusal or other similar rights.

**Section 3.5 Listing Approval.** At the Closing, the 2018 Exchange Conversion Shares shall be approved for listing on The NASDAQ Global Select Market.

**Section 3.6 SEC Filings.** As of their respective filing dates, the Company's filings with the SEC under the Exchange Act during the two (2) years prior to the date hereof (the "**SEC Documents**"), complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company represents that, as of the date hereof, no material event or circumstance has occurred which would be required to be publicly disclosed or announced on a Current Report on Form 8-K, either as of the date hereof or solely with the passage of time by the Company but which has not been so publicly announced or disclosed.

**Section 3.7 No MAE.** No Material Adverse Effect currently exists or is reasonably expected to occur. As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on: (i) the business, properties, assets, operations, results of operations, condition (financial or otherwise) or prospects of the Company or its subsidiaries, individually or taken as a whole, or (ii) the legality, validity, binding effect or enforceability of any of the Transaction Documents, or (iii) on the authority or ability of the Company to perform its obligations hereunder and the other Transaction Documents.

**Section 3.8 Disclosure.** On or before 8:30 a.m. New York time on the first business day following the date of this Agreement, the Company shall file with the SEC a Current Report on Form 8-K reasonably acceptable to the Holder, describing the terms of the transactions contemplated by the Transaction Documents and attaching each of the Transaction Documents as exhibits to such filing.

**Section 3.9 No Litigation.** There is no action, lawsuit, arbitration, claim or proceeding pending or, to the knowledge of the Company, threatened, against the Company that would reasonably be expected to impede the consummation of the transactions contemplated hereby.

**Section 3.10 No Event of Default.** No Event of Default or comparable term (as defined in the Indenture and in the 2018 Exchange Notes) has occurred that is continuing as of the date hereof.

**Section 3.11 Stockholder Approval.** The Company shall provide each stockholder entitled to vote at the next special or annual meeting of stockholders of the Company (the "**Stockholder Meeting**"), which shall be promptly called and held not later than December 31, 2018 (the "**Stockholder Meeting Deadline**"), a proxy statement, substantially in the form which has been previously reviewed by the Holder and Schulte Roth & Zabel LLP soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions providing for the Company's issuance of all of the shares of Common Stock issuable pursuant to the terms of the 2018 Exchange Notes in accordance with applicable law and the rules and regulations of the Principal Market without giving effect to the Exchange Cap provisions set forth in the 2018 Exchange Notes (such affirmative approval being referred to herein as the "**Stockholder Approval**"), and the Company shall use its reasonable best efforts to solicit its stockholders' approval of such resolutions and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such resolutions. The Company shall be obligated to use its reasonable best efforts to obtain the Stockholder Approval by the Stockholder Meeting Deadline. If, despite the Company's reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Meeting Deadline, the Company shall cause an additional Stockholder Meeting to be held every six (6) months thereafter until such Stockholder Approval is obtained.

**Section 3.12 Application of Takeover Protections; Rights Agreement.** The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, interested shareholder, business combination, poison pill (including, without limitation, any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, Bylaws or other organizational documents or the laws of the jurisdiction of its formation (including, without limitation, Section 203 of the Delaware General Corporation Law) which is or could become applicable to the Holder as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the 2018 Exchange Notes and the 2018 Exchange Conversion Shares and the Holder's ownership of such securities. The Company has not adopted a shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company or any of its subsidiaries.



#### **Article IV: Closing Conditions**

**Section 4.1 Conditions of the Holder's Obligations at the Closing.** The obligation of the Holder to consummate the transactions contemplated hereby is subject to the satisfaction as of the Closing of the following conditions:

(a) **Representations and Warranties True.** The Company's representations and warranties contained in Article III hereof shall be true and correct at and as of the Closing as though made as of the Closing Date (except for representations and warranties that speak as of a specific date which shall be true and correct as of such specified date). The Company shall have performed and complied in all material respects with all of the covenants, agreements and conditions contained in this Agreement required to be performed, satisfied or complied with by the Company at or prior to the Closing Date. In the event the Closing Date occurs after the date of this Agreement, the Holder shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the Closing Date, to the foregoing effect in the form attached hereto as Exhibit C.

(b) **Legal Opinion.** The Holder shall have received the opinion of Feder Kaszovitz LLP, the Company's outside counsel, dated as of the Closing Date, in substantially the form of Exhibit D attached hereto.

(c) **Litigation.** No suit, action or other proceeding shall be pending before any court or governmental or regulatory official, body or authority or threatened in writing seeking to restrain or prohibit (or seeking damages in connection with) the transactions contemplated hereby, and no injunction, judgment, order, decree or ruling with respect thereto shall be in effect.

(d) **Listing.** As of the Closing Date (i) the Common Stock (I) shall be listed on The NASDAQ Global Select Market and (II) shall not have been suspended, as of the Closing Date, by the SEC) or The NASDAQ Global Select Market from trading on The NASDAQ Global Select Market and (ii) the 2018 Exchange Conversion Shares shall have been approved for listing on The NASDAQ Global Select Market.

**Section 4.2 Conditions of the Company's Obligations at the Closing.** The obligation of the Company to consummate the transactions contemplated hereby is subject to the satisfaction as of the Closing of the following conditions:

(a) **Representations and Warranties True.** The Holder's representations and warranties contained in Article II hereof shall be true and correct at and as of the Closing as though made as of the Closing Date. The Holder shall have performed and complied in all material respects with all of its covenants and other obligations contained in this Agreement required to be performed or complied with by the Holder at or prior to the Closing Date.

(b) **Litigation.** No suit, action or other proceeding shall be pending before any court or governmental or regulatory official, body or authority or threatened in writing seeking to restrain or prohibit (or seeking damages in connection with) the transactions contemplated hereby, and no injunction, judgment, order, decree or ruling with respect thereto shall be in effect.

#### **Article V: Miscellaneous**

**Section 5.1 Entire Agreement.** This Agreement and any documents and agreements executed in connection with the Exchange embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written agreements, representations, warranties, contracts, correspondence, conversations, memoranda and understandings between or among the parties or any of their agents, representatives or affiliates relative to such subject matter, including, without limitation, any term sheets, emails or draft documents.

**Section 5.2 Construction.** References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party.

**Section 5.3 Costs and Expenses.** The Holder and the Company shall each pay their own respective costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the other Transaction Documents, including, but not limited to, attorneys' fees.

**Section 5.4 Governing Law; Jurisdiction; Jury Trial.** This Agreement and the other Transaction Documents shall be construed and enforced in accordance with, and all questions concerning the construction, validity, enforcement and interpretation of this Agreement and the other Transaction Documents shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder, under any of the other Transaction Documents or in connection herewith or therewith or with any transaction contemplated hereby or thereby or discussed herein or therein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OF THE OTHER TRANSACTION DOCUMENTS OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION DOCUMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.**

**Section 5.5 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereon delivered by facsimile or any standard form of telecommunication or e-mail shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

**Section 5.6 No Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

**Section 5.7 Expiration Date.** Notwithstanding any other provision hereof to the contrary, if the Closing has not occurred by 5:00 p.m. (New York time) on the tenth (10th) business day following the date hereof, unless otherwise mutually agreed to by the parties to this Agreement, the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date by delivering a written notice to that effect to each other party to this Agreement and without liability of any party to any other party.

**Section 5.8 Amendment.** This Agreement may not be changed, amended, terminated, augmented, rescinded or discharged (other than in accordance with its terms), in whole or in part, except by a writing executed by the parties hereto.

**Section 5.9 Notices.** All notices and other communications to any party hereto provided for herein shall be in writing and shall be deemed to have been duly given if delivered personally, by electronic mail, or sent by registered or certified mail, return receipt requested, postage prepaid, to the contact information provided on the signature page attached hereto (or such other address as any party shall have specified by notice in writing to the other parties).

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

**"HOLDER":**

**OASIS INVESTMENTS II MASTER FUND LTD.**

By: /s/ Phillip Meyer  
Name: Phillip Meyer  
Title: Director

Contact Information:

c/o Oasis Legal  
Oasis Management (Hong Kong) LLC  
21st Floor, Man Yee Building, 68 Des Voeux Road, Central, Hong Kong  
Telephone: (852) 2847 7708  
Attention: General Counsel  
E-mail: OasisLegal@oasiscm.com & ashoghi@us.oasiscm.com

with a mandatory copy (for informational purposes only) to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955  
Attention: Eleazer N. Klein, Esq.  
E-mail: eleazer.klein@srz.com

Wire Instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**"COMPANY":**

**JAKKS PACIFIC, INC.**

By: /s/ Stephen Berman  
Name: Stephen Berman  
Title: CEO

Contact Information:

JAKKS Pacific, Inc.  
2951 28th Street  
Santa Monica, California  
Telephone: (424) 268-9444  
Facsimile: (424) 268-9655  
Attention: Brent Novak  
Email: bnovak@jakks.net.com

with a copy (for informational purposes only) to:

Feder Kaszovitz LLP  
845 Third Avenue, 11th Floor  
New York, New York 10022  
Telephone: (212) 888-8200  
Facsimile: (212) 888-7776  
Attention: Geoffrey A. Bass, Esq.  
Email: GBass@fedkas.com

DWAC Instructions:

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*[Signature Page to Exchange Agreement]*

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**EXHIBITS**

Exhibit A	Form of 2018 Exchange Notes
Exhibit B	Form of Registration Rights Agreement
Exhibit C	Form of Officer's Certificate
Exhibit D	Form of Legal Opinion of Company Counsel

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## FORM OF CONVERTIBLE SENIOR NOTE

ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 5(c)(iv) AND 12(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 5(c)(iv) OF THIS NOTE.

## JAKKS PACIFIC, INC.

## CONVERTIBLE SENIOR NOTE

Issuance Date: July 26, 2018  
Certificate No.: [•]

Original Principal Amount: U.S. \$8,000,000

**FOR VALUE RECEIVED**, JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"), hereby promises to pay to OASIS INVESTMENTS II MASTER FUND LTD. or registered assigns (the "**Holder**") in cash and/or in shares of Common Stock (as defined below) the amount set out above as the Original Principal Amount (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the "**Principal**") when due, whether upon the Maturity Date (as defined below), acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate from the date set out above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon an Interest Date (as defined below), the Maturity Date, acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Convertible Senior Note, including any Convertible Senior Note issued in exchange, transfer or replacement hereof, is referred to as this "**Note**" and is issued pursuant to the Exchange Agreement on the Issuance Date. If multiple Convertible Senior Notes are issued in exchange, transfer or replacement hereof, such other notes are referred to herein as the "**Other Notes**" and, together with the Note, the "**Notes**." Certain capitalized terms used herein are defined in Section 25.

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(1) PAYMENTS OF PRINCIPAL; PREPAYMENT.

(a) On the Maturity Date, the Company shall pay to the Holder an amount representing all outstanding Principal, accrued and unpaid Interest on such Principal and Interest (the "**Maturity Amount**"). The "**Maturity Date**" shall be November 1, 2020. Other than as specifically permitted by this Note, the Company may not prepay any portion of the outstanding Principal, accrued and unpaid Interest, if any. The Maturity Amount shall be payable to the record holder of this Note on the Maturity Date in cash; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay the Maturity Amount in shares of Common Stock ("**Maturity Shares**") so long as there has been no Equity Conditions Failure during the period from the Maturity Notice Date (as defined below) preceding the Maturity Date through the Maturity Date or in a combination of cash and Maturity Shares. The Company shall deliver a written notice (the "**Maturity Notice**") to the Holder and each holder of Other Notes on or prior to the Maturity Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Maturity Notice Date**") which notice (i) either (a) confirms that the Maturity Amount shall be paid entirely in cash, or (b) elects to pay the Maturity Amount as Maturity Shares or a combination of cash and Maturity Shares and specifies the portion of the Maturity Amount, if any, that shall be paid in cash and the portion, if any, that shall be paid in Maturity Shares which amounts, when added together, must equal the Maturity Amount due on the Maturity Date, and (ii) if the Maturity Amount is to be paid, in whole or in part, in Maturity Shares, certifies that there has been no Equity Conditions Failure as of the Maturity Notice Date. If there is an Equity Conditions Failure as of the Maturity Notice Date, then unless the Company has elected to pay the Maturity Amount in cash, the Maturity Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If the Company confirmed (or is deemed to have confirmed by operation of this Section 1) the payment of the Maturity Amount in Maturity Shares, in whole or in part, and if there was no Equity Conditions Failure as of the Maturity Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure in connection with the Maturity Amount payment in Maturity Shares by operation of this Section 1) but an Equity Conditions Failure occurred between the Maturity Notice Date and any time prior to the Maturity Date (the "**Maturity Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Maturity Amount shall be paid in cash. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during the Maturity Interim Period, then at the option of the Holder, the Holder may require the Company to pay the Maturity Amount in cash. If any portion of Maturity Amount shall be paid in Maturity Shares, then on the Maturity Date, the Company shall issue to the Holder, in accordance with Section 1(b), such number of shares of Common Stock equal to (a) the Maturity Amount payable in Maturity Shares divided by (b) the Maturity Share Price with any fractional share amounts rounded up to the nearest whole number of shares. All Maturity Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver a Maturity Election Notice in accordance with this Section 1(a), then the Company shall be deemed to have delivered an irrevocable Maturity Election Notice confirming the payment of cash. Except as expressly provided in this Section 1, the Company shall pay the Maturity Amount in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 1 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Maturity Shares and/or cash hereunder.

(b) When any Maturity Shares are to be issued, the Company shall (a) provided that the Company's transfer agent (the "**Transfer Agent**"), if any, is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Maturity Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the Maturity Date, to the address set forth in the register maintained by the Company for such purpose pursuant to the Exchange Agreement or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the Maturity Date, a certificate, registered in the name of the Holder or its designee, for the number of Maturity Shares to which the Holder shall be entitled. When any cash is to be paid on the Maturity Date, the Company shall pay such cash to the Holder by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock pursuant to this Section 1; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(2) INTEREST.

(a) Interest on this Note shall commence accruing on the Issuance Date at the Interest Rate on any outstanding Principal and shall be computed on the basis of a 360-day year comprised of twelve 30-day months and shall be payable in arrears on each May 1 and November 1 (each, an "**Interest Date**"), with the first Interest Date being November 1, 2018. Interest shall be payable on each Interest Date, to the record holder of this Note on the applicable Interest Date in shares of Common Stock ("**Interest Shares**") so long as there has been no Equity Conditions Failure during the period from the applicable Interest Notice Date (as defined below) through the applicable Interest Date; provided, however, that the Company may, at its option following written notice to the Holder and each holder of Other Notes pay Interest on any Interest Date in cash ("**Cash Interest**") or in a combination of Cash Interest and Interest Shares. The Company shall deliver a written notice (each, an "**Interest Election Notice**") to the Holder and each holder of Other Notes on or prior to the applicable Interest Notice Due Date (the date such notice is delivered to the Holder and all holders of Other Notes, the "**Interest Notice Date**") which notice (i) either (a) confirms that Interest to be paid on such Interest Date shall be paid entirely in Interest Shares, or (b) elects to pay Interest on such Interest Date as Cash Interest or a combination of Cash Interest and Interest Shares and specifies the amount of Interest that shall be paid as Cash Interest and the amount of Interest, if any, that shall be paid in Interest Shares which amounts, when added together, must equal the applicable Interest due on such Interest Date, and (ii) if Interest is to be paid, in whole or in part, in Interest Shares, certifies that there has been no Equity Conditions Failure as of such Interest Notice Date. Any Interest Election Notice shall apply to the immediately following Interest Date and will, absent a contrary statement therein, apply to all future Interest Dates, unless the Company delivers with respect to any subsequent Interest Date an Election Notice on or prior to the applicable Interest Notice Date. If there is an Equity Conditions Failure as of the Interest Notice Date, then unless the Company has elected to pay such Interest as Cash Interest, the applicable Interest Election Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Interest shall be paid as Cash Interest. If the Company confirmed (or is deemed to have confirmed by operation of this Section 2) the payment of the applicable Interest in Interest Shares, in whole or in part, and if there was no Equity Conditions Failure as of the applicable Interest Notice Date (or is deemed to have certified that there has been no Equity Conditions Failure in connection with such Interest payment in Interest Shares by operation of this Section 2) but an Equity Conditions Failure occurred between the applicable Interest Notice Date and any time prior to the applicable Interest Date (an "**Interest Interim Period**"), the Company shall provide the Holder a subsequent written notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Interest shall be paid as Cash Interest. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Interest Interim Period, then at the option of the Holder, the Holder may require the Company to pay the amount of Interest payable on the applicable Interest Date as Cash Interest. If any portion of Interest for a particular Interest Date shall be paid in Interest Shares, then on the Interest Date, the Company shall issue to the Holder, in accordance with Section 2(b), such number of shares of Common Stock equal to (a) the amount of Interest payable on the applicable Interest Date in Interest Shares divided by (b) the Interest Share Price with respect to such Interest Date with any fractional share amounts rounded up to the nearest whole number of shares. All Interest Shares shall be fully paid and nonassessable shares of Common Stock. If the Company does not timely deliver an Interest Election Notice in accordance with this Section 2(a), then the Company shall be deemed to have delivered an irrevocable Interest Election Notice confirming the payment of Interest in Interest Shares and shall be deemed to have certified that in connection with the delivery of Interest Shares on the applicable Interest Date no Equity Conditions Failure has occurred. Except as expressly provided in this Section 2, the Company shall pay the applicable Interest in Common Stock and/or cash to the Holder and all holders of Other Notes pursuant to this Section 2 and pursuant to the corresponding provisions of the Other Notes in the same ratio of the Interest Shares and/or Cash Interest hereunder.



(b) When any Interest Shares are to be issued on an Interest Date, the Company shall (a) provided that the Transfer Agent, if any, is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of Interest Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (b) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if the Company does not have a transfer agent, issue and deliver on the applicable Interest Date, to the address set forth in the register maintained by the Company for such purpose pursuant to the Exchange Agreement or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Interest Date, a certificate, registered in the name of the Holder or its designee, for the number of Interest Shares to which the Holder shall be entitled. When any Cash Interest is to be paid on an Interest Date, the Company shall pay such Cash Interest to the Holder, in cash by wire transfer of immediately available funds as provided in Section 18(b).

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer tax or duty due on the issue of shares of Common Stock as Interest pursuant to this Section 2; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(3) PURCHASE.

(a) Repurchase at Option of Holder upon a Fundamental Change.

If there shall occur a Fundamental Change at any time prior to the Maturity Date, then the Holder shall have the right, at the Holder's option, to require the Company to repurchase for cash all or any portion of this Note that is an integral multiple of \$1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days and not more than 35 Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price, in cash, equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon at the cash interest rate to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"). Repurchases under this Section 3(a) shall be made, at the option of the Holder, upon:

(A) delivery to the Company by the Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form attached as Exhibit II hereto on or prior to the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date; and

(B) delivery of this Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements, if any), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; provided that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3(a) only if the Note so delivered to the Company shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

- (I) the certificate number of this Note to be delivered for repurchase;
- (II) the portion of the principal amount of this Note to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (III) that this Note is to be repurchased by the Company pursuant to the applicable provisions of this Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3(a) shall be consummated by the payment of the Fundamental Change Repurchase Price pursuant to Section 3(c).

Notwithstanding anything herein to the contrary, if the Holder delivers to the Company the Fundamental Change Repurchase Notice contemplated by this Section 3(a), the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3(b).

On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide notice (the "**Fundamental Change Company Notice**") to the Holder and all holders of the Other Notes of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:

- (A) the events causing the Fundamental Change;

(B) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Fundamental Change, in which case, the effective date of the Make-Whole Fundamental Change;

(C) the last date on which the Holder may exercise the repurchase right pursuant to this Section 3;

(D) the Fundamental Change Repurchase Price;

(E) the Fundamental Change Repurchase Date;

(F) the applicable Conversion Rate, and, if applicable, any adjustments to the applicable Conversion Rate;

(G) that the portion of this Note with respect to which a Fundamental Change Repurchase Notice has been delivered by the Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Note;

(H) that the Holder must exercise the repurchase right on or prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date (the "**Fundamental Change Expiration Time**");

(I) that the Holder shall have the right to withdraw any portion of this Note surrendered prior to the Fundamental Change Expiration Time; and

(J) the procedures that the Holder must follow to require the Company to repurchase all or any portion of its Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of this Note pursuant to this Section 3(a).

Notwithstanding the foregoing the Company shall not be required to repurchase this Note in accordance with this Section 3 if a third party or any Subsidiary of the Company makes an offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 3 and purchases this Note and all Other Notes validly tendered and not withdrawn under such purchase offer.

(b) Withdrawal of Fundamental Change Repurchase Notice.

(i) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Company in accordance with this Section 3(b) at any time prior to the close of business on the Scheduled Trading Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(A) the principal amount of this Note with respect to which such notice of withdrawal is being submitted,

(B) the certificate number of this Note, and

(C) the principal amount, if any, of this Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000.

(c) Payment of Fundamental Change Repurchase Price.

(i) The Company shall make payment for this Note surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) on the later of (x) the Fundamental Change Repurchase Date with respect to this Note (provided the Holder has satisfied the conditions in Section 3(a)) and (y) the time of the delivery of this Note to the Company by the Holder in the manner required by Section 3(a) as provided in Section 18(b).

(ii) If the Company makes the required payment of the Fundamental Change Repurchase Price by 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, then (x) such portion of this Note will cease to be outstanding, (y) interest will cease to accrue on such portion of this Note, and (z) all other rights of the Holder will terminate with respect to such portion of this Note with respect to which payment has been received by the Holder (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, upon delivery of this Note), whether or not this Note has been delivered to the Company.

(iii) Upon any surrender of this Note that is to be repurchased in part pursuant to Section 3(a), the Company shall execute and deliver to the Holder a new Note equal in principal amount to the unreurchased portion of this Note surrendered in accordance with Section 12.

(4) INTENTIONALLY OMITTED.

(5) CONVERSION. At any time or times after the Issuance Date, this Note shall be convertible into shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**"), on the terms and conditions set forth in this Section 5.

(a) Conversion Right. Subject to the provisions of Section 5(d) and Section 5(e), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount into Conversion Consideration (as defined in Section 5(c)(ii)(A)) in accordance with Section 5(c), at the Conversion Rate (as defined below); provided that the Holder shall not be entitled to elect any conversion unless the Company would be permitted to settle the related Conversion Amount in the form of a Physical Settlement in accordance with Section 5(d)(i). The Company shall pay any and all transfer, stamp and similar taxes that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount; provided, however, that if any tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder.

(b) Conversion Rate. The conversion rate with respect to a conversion of any Conversion Amount pursuant to this Section 5 shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the "**Conversion Rate**").

(i) "**Conversion Amount**" means the portion of the Principal to be converted.

(ii) "**Conversion Price**" means, as of any Conversion Date or other date of determination, \$3.103 per share, subject to adjustment as provided herein.

(c) Mechanics of Conversion.

(i) Settlement Method. Upon any conversion of this Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this Section 5(c)(i), either (x) subject to Section 5(d), shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Physical Settlement**"); (y) solely cash (a "**Cash Settlement**"); or (z) subject to Section 5(d), a combination of cash and shares of Common Stock with any fractional share amounts rounded up to the nearest whole number of shares (a "**Combination Settlement**") (each, a "**Settlement Method**").

The Company will have the right to elect the Settlement Method applicable to any conversion of this Note; provided, however, that:

(A) subject to clause (B) below, if the Company elects a Settlement Method, then the Company will provide written notice of such Settlement Method to the Holder no later than the Close of Business on the Business Day immediately after such Conversion Date (as defined in Section 5(c)(iii));

(B) if the Company does not timely elect a Settlement Method with respect to a conversion of this Note, then the Company will be deemed to have elected the Default Settlement Method (and, for the avoidance of doubt, the failure to timely make such election will not constitute a default or an Event of Default); and

(C) if the Company timely elects Combination Settlement with respect to the conversion of a Note but does not timely notify the Holder of such Note of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely make such notification will not constitute a default or Event of Default).

(ii) Conversion Consideration.

(A) Subject to clause (B) below, the type and amount of consideration (the "**Conversion Consideration**") due in respect of each \$1,000 principal amount of Conversion Amount to be converted will be as follows:

(x) if Physical Settlement applies to such conversion, subject to clause (B) below and subject to Section 5(d), a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(y) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each Trading Day in the Observation Period for such conversion; or

(z) if Combination Settlement applies to such conversion, consideration consisting, subject to clause (B) below and subject to Section 5(d), of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each Trading Day in such Observation Period.

(B) If Physical Settlement or Combination Settlement applies to any conversion and the number of shares of Common Stock deliverable pursuant to clause (A) above upon such conversion is not a whole number, then such number will be rounded up to the nearest whole number.

(C) Blocker Notice. Notwithstanding the foregoing, if (i) the Company has elected a Physical Settlement or a Combination Settlement pursuant to the provisions set forth in this Section 5(c) and (ii) the Company is permitted to elect such Settlement Method if not for Section 5(d)(i), the Company may request that the Holder provide written notice to the Company confirming that such settlement will not conflict with Section 5(d)(i), and the Holder shall promptly respond to such request. If the Holder provides such written notice to the Company, the Company shall be permitted to rely on such notice.

(iii) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a "**Conversion Date**"), the Holder shall (A) transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (the "**Conversion Notice**") to the Company and (B) if required by Section 5(c)(iv) but without delaying the Company's requirement to deliver Conversion Consideration on the Delivery Date (as defined below), surrender this Note to a common carrier for delivery to the Company as soon as practicable on or following such date (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction). On or before the first (1st) Business Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile or electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Transfer Agent. In the case of a Physical Settlement or a Combination Settlement, on or before the second (2nd) Trading Day following the date of receipt of a Conversion Notice (the "**Delivery Date**"), the Company shall (x) provided that the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal At Custodian system or (y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock included in the Conversion Consideration to which the Holder shall be entitled. In the case of a Cash Settlement or a Combination Settlement, the Company shall deliver to the Holder any cash included in the Conversion Consideration on the Delivery Date as provided in Section 18(b). If this Note is physically surrendered for conversion as required by Section 5(c)(iv) and the outstanding Principal of this Note is greater than the Principal portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than three (3) Business Days after receipt of this Note and at its own expense, issue and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal not converted. The Person or Persons entitled to receive any shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date, irrespective of the date such Conversion Shares are credited to the Holder's account with DTC or the date of delivery of the certificates evidencing such Conversion Shares, as the case may be.

(iv) Registration; Book-Entry. The Company shall maintain a register (the "**Register**") for the recordation of the names and addresses of the holders of each Note and the Principal amount of the Notes (and stated interest thereon) held by such holders (the "**Registered Notes**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes, including, without limitation, the right to receive payments of Principal and Interest, if any, hereunder, notwithstanding notice to the contrary. A Registered Note may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a request to assign or sell all or part of any Registered Note by a Holder, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate Principal amount as the Principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 11 to the extent such transfer is not prohibited by Section 11. Notwithstanding anything to the contrary in this Section 5(c)(iv) or the limitations of Section 11, a Holder may assign any Note or any portion thereof to an Affiliate of such Holder or a Related Fund of such Holder without delivering a request to assign or sell such Note to the Company and the recordation of such assignment or sale in the Register (a "**Related Party Assignment**"); provided, that (x) the Company may continue to deal solely with such assigning or selling Holder unless and until such Holder has delivered a request to assign or sell such Note or portion thereof to the Company for recordation in the Register; (y) the failure of such assigning or selling Holder to deliver a request to assign or sell such Note or portion thereof to the Company shall not affect the legality, validity, or binding effect of such assignment or sale and (z) such assigning or selling Holder shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register (the "**Related Party Register**") comparable to the Register on behalf of the Company, and any such assignment or sale shall be effective upon recordation of such assignment or sale in the Related Party Register. Notwithstanding anything to the contrary set forth herein, upon conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal and Interest converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion.

(v) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice with respect to this Note and one or more holder of Other Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of this Note and the Other Notes submitted for conversion, the Company, subject to Section 5(d), shall convert from the Holder and each holder of Other Notes electing to have this Note or the Other Notes converted on such date a pro rata amount of such holder's portion of this Note and its Other Notes submitted for conversion based on the Principal amount of this Note and the Other Notes submitted for conversion on such date by such holder relative to the aggregate Principal amount of this Note and all Other Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable or the amount of cash payable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock and pay to the Holder the amount of cash not in dispute and resolve such dispute in accordance with Section 17.

(vi) Mandatory Conversion. If at any time from and after November 7, 2018, (i) the arithmetic average of the Last Reported Sale Price of the Common Stock for any twenty (20) consecutive Trading Days (the "**Mandatory Conversion Measuring Period**") equals or exceeds 150% of the Conversion Price on the Issuance Date (subject to appropriate adjustments for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Issuance Date) and (ii) no Equity Conditions Failure has occurred, the Company shall have the right to require the Holder and all, but not less than all, holders of Other Notes to convert all or any portion of the Conversion Amount then remaining under this Note and the Other Notes, as designated in the Mandatory Conversion Notice on the Mandatory Conversion Date (each as defined below) in accordance with Section 5(c) hereof at the Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "**Mandatory Conversion**") pursuant to the Settlement Method elected in accordance with Section 5(c)(i). The Company may exercise its right to require conversion under this Section 5(c)(vi) by delivering within not more than three (3) Trading Days following the end of such Mandatory Conversion Measuring Period a written notice thereof by facsimile and overnight courier to all, but not less than all, of the holders of Notes and the Transfer Agent (the "**Mandatory Conversion Notice**" and the date the Holder and all the holders of the Other Notes received such notice is referred to as the "**Mandatory Conversion Notice Date**"). The Mandatory Conversion Notice shall be irrevocable. The Mandatory Conversion Notice shall (i) state (a) the Trading Day on which the Mandatory Conversion shall occur, which Trading Day shall not be less than ten (10) Trading Days nor more than twelve (12) Trading Days following the Mandatory Conversion Notice Date (the "**Mandatory Conversion Date**"), (b) the aggregate Conversion Amount of the Notes which the Company has elected to be subject to Mandatory Conversion from the Holder and all of the holders of the Other Notes pursuant to this Section 5(c)(vi) (and analogous provisions under the Other Notes) and (c) the Settlement Method applicable to such Mandatory Conversion and number of shares of Common Stock to be issued and/or the amount of cash to be delivered to the Holder on the Mandatory Conversion Date and (ii) certify that there has been no Equity Conditions Failure as of the Mandatory Conversion Notice Date. If the Company confirmed that there was no such Equity Conditions Failure as of the Mandatory Conversion Notice Date but an Equity Conditions Failure occurs between the Mandatory Conversion Notice Date and any time through the Mandatory Conversion Date (the "**Mandatory Conversion Interim Period**"), the Company shall provide the Holder and each holder of Other Notes a subsequent notice to that effect. If there is an Equity Conditions Failure (which is not waived in writing by the Holder) during such Mandatory Conversion Interim Period, then the Mandatory Conversion shall be null and void with respect to all or any part designated by the Holder of the unconverted Conversion Amount subject to the Mandatory Conversion and the Holder shall be entitled to all the rights of a holder of this Note with respect to such Conversion Amount. Notwithstanding anything to the contrary in this Section 5(c)(vi), until the Mandatory Conversion has occurred, the Conversion Amount subject to the Mandatory Conversion may be converted, in whole or in part, by the Holder pursuant to Sections 5(c)(i), (ii) and (iii). All Conversion Amounts converted by the Holder after the Mandatory Conversion Notice Date shall reduce the Conversion Amount of this Note required to be converted on the Mandatory Conversion Date. If the Company elects to cause a Mandatory Conversion pursuant to this Section 5(c)(vi), then it must simultaneously take the same action in the same proportion with respect to the Other Notes.



(d) Beneficial Ownership Limitation.

(i) Beneficial Ownership. The Company shall not deliver any shares of Common Stock pursuant to this Note, to effect the conversion of any portion of this Note or otherwise, and the Holder shall not have the right to convert any portion of this Note, to the extent that after giving effect to such delivery, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such delivery other than in connection with (x) the delivery of Maturity Shares pursuant to Section 1 or (y) a Mandatory Conversion pursuant to Section 5(c)(vi). For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable pursuant to this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 5(d)(i). For purposes of this Section 5(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) any other written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 5(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the Exchange Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61<sup>st</sup>) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 5(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 5(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note. In connection with any conversion, for purposes of this Section 5(d)(i), the Company shall be permitted to rely on a notice delivered by the Holder pursuant to Section 5(c)(ii)(C) in connection with such conversion that represents that the settlement of such conversion complies with this Section 5(d)(i).

(ii) Principal Market Regulation. The Company shall not be obligated to issue any shares of Common Stock pursuant to the terms of this Note, and the Holder shall not have the right to receive pursuant to the terms of this Note any shares of Common Stock, if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue pursuant to the terms of the Notes without breaching the Company's obligations under the rules or regulations of the Principal Market (the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of Common Stock in excess of such amount. Until such approval is obtained, no holder that acquires Notes pursuant to the Exchange Agreement (the "**Initial Holders**") shall be issued in the aggregate, pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of the Exchange Cap multiplied by a fraction, the numerator of which is the Principal amount of Notes issued to such Initial Holder pursuant to the Exchange Agreement on the Closing Date and the denominator of which is the aggregate principal amount of all Notes issued to the Initial Holders pursuant to the Exchange Agreement on the Closing Date (with respect to each Initial Holder, the "**Exchange Cap Allocation**"). In the event that any Initial Holder shall sell or otherwise transfer any of such Initial Holder's Notes, the transferee shall be allocated a pro rata portion of such Initial Holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder of Notes shall convert all of such holder's Notes into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the aggregate principal amount of the Notes then held by each such holder.

(e) Limitation on Conversions. The Holder shall not be permitted to convert all or any portion of this Note at any time following a reset of the Conversion Price pursuant to Section 5(m) in which the Conversion Price following such reset is less than 90% of the Conversion Price in effect on the Issuance Date, subject to adjustment as provided herein other than a reset pursuant to Section 5(m), unless the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the applicable Conversion Date is greater than 110% of the Conversion Price in effect on such Conversion Date.

(f) Increased Conversion Rate Applicable to Conversions in Connection with Make-Whole Fundamental Changes.

(i) If the Holder elects to convert this Note at any time from, and including, the Effective Date (as defined below) of a Make-Whole Fundamental Change until, and including, the close of business on the second Scheduled Trading Day immediately preceding the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change, or the 35th Business Day immediately following the Effective Date of such Make-Whole Fundamental Change (in the case of a Make-Whole Fundamental Change that does not constitute a Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"), the applicable Conversion Rate shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described in this Section 5(f). The Company will notify the Holder and the holders of the Other Notes of the anticipated Effective Date of the Make-Whole Fundamental Change and issue a press release as soon as practicable after the Company first determines the anticipated Effective Date of such Make-Whole Fundamental Change, and use commercially reasonable efforts to make such determination in time to deliver written notice 25 Scheduled Trading Days in advance of the anticipated Effective Date; provided, that, the Company will not be required to give written notice or issue a press release more than 25 Scheduled Trading Days in advance of the anticipated Effective Date.

(ii) The number of Additional Shares by which the Conversion Rate will be increased for conversions that occur during the Make-Whole Fundamental Change Period will be determined by reference to the table set forth below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") and the price (the "**Stock Price**") paid (or deemed paid) per share of the Company's Common Stock in the Make-Whole Fundamental Change. If holders of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of Common Stock. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on and including the Trading Day preceding the Effective Date of the Make-Whole Fundamental Change.

(iii) The following table sets forth the number of Additional Shares, if any, by which the Conversion Rate will be increased for each Stock Price and Effective Date set forth in the table below:

**Make-Whole Conversion Rate Adjustment  
(per \$1,000 Conversion Amount)**

Stock Price	Effective Date			
	July 26, 2018	November 1, 2018	November 1, 2019	November 1, 2020
\$ 3.10	28.59	28.59	28.59	28.59
\$ 3.53	22.34	19.87	17.31	14.61
\$ 3.86	19.50	16.82	13.89	10.60
\$ 4.42	16.35	13.75	10.87	7.63
\$ 5.53	12.68	10.58	8.25	5.71
\$ 6.63	10.32	8.62	6.73	4.66
\$ 8.85	7.38	6.1118	4.83	3.35
\$ 11.07	5.62	4.71	3.69	0
\$ 13.27	4.44	3.73	0	0
\$ 17.72	2.7	0	0	0

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

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

(y) If the Stock Price is greater than \$17.72 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(z) If the Stock Price is less than \$3.10 per share (subject to adjustment in the same manner as the Stock Prices set forth in the table above pursuant to Section 5(f)(iv)), no Additional Shares shall be added to the Conversion Rate.

(iv) The Stock Prices set forth in the first column of the table in Section 5(f)(iii) shall be adjusted as of any date on which the Conversion Rate is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 5(g).

(v) As soon as practicable after the Effective Date of any Make-Whole Fundamental Change but in no event later than five Trading Days after such Effective Date, the Company shall mail to the Holder and all holders of the Other Notes written notice of, and shall issue a press release announcing, the Effective Date of such Make-Whole Fundamental Change and make such press release available on the Company's web site. If applicable, such notice and press release shall also specify the amount, if any, by which the Conversion Rate shall be increased in accordance with the provisions of this Section 5(f) and the period in which this Note may be converted at the increased Conversion Rate.

(vi) Nothing in this Section 5(f) shall prevent an adjustment to the Conversion Rate pursuant to Section 5(g).

(vii) If the Holder elects to convert this Note prior to the Effective Date of the Make-Whole Fundamental Change, the Holder shall not be entitled to any adjustment to the Conversion Rate or any Additional Shares under this Section 5(f) in connection with such conversion.

(g) Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company will not make any adjustment to the Conversion Rate if the Holder participates, as a result of holding this Note, in any of the transactions described in this Section 5(g) at the same time as holders of the Common Stock participate, without having to convert this Note as if such Holder held, for each \$1,000 Principal amount of this Note, a number of shares of Common Stock equal to the Conversion Rate in effect at the time any such adjustment would otherwise be required.

(i) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all of the shares of Common Stock, or if the Company effects a share split or share combination of the Common Stock, the applicable Conversion Rate will be adjusted based on the following formula:

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

where,

$CR_0$  = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be;

$CR$  = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date of such share split or share combination, as the case may be;

$OS_0$  = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be; and

$OS$  = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or immediately after the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 5(g)(i) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be increased based on the following formula:

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

where,

$CR_0$  = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

$CR$  = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

$OS_0$  = the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

$X$  = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and

$Y$  = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

For purposes of this Section 5(g)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock for each Trading Day in the applicable ten-consecutive-Trading Day period, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property to all or substantially all holders of its Common Stock other than (x) dividends or distributions (including share splits) or rights, options or warrants covered by Section 5(g)(i) or Section 5(g)(ii), (y) dividends or distributions paid exclusively in cash, and (z) Spin-Offs to which the provisions set forth below in this Section 5(g)(iii) shall apply, then, in each such case the Conversion Rate shall be increased based on the following formula:

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

where,

CR<sub>0</sub> = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution.

SP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution; provided that if "FMV" as set forth above is equal to or greater than "SP<sub>0</sub>" as set forth above, in lieu of the foregoing adjustment, adequate provisions shall be made so that each Holder shall have the right to receive on conversion in respect of each \$1,000 principal amount of Principal outstanding under this Note, in addition to the shares of Common Stock to which such Holder shall be entitled, the amount and kind of shares of the Company's Capital Stock, evidences of the Company's indebtedness or other of the Company's assets or property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate immediately prior to the record date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines "FMV" for purposes of this Section 5(g)(iii) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 5(g)(iii) where there has been a dividend or other distribution on all or substantially all shares of the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company that are or will be when issued listed on a securities exchange (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR<sub>0</sub> = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the "**Valuation Period**"), and

MP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(g)(iii) shall be made immediately after the opening of business on the day after the last day of the Valuation Period, but shall become effective as of the opening of business on the Ex-Dividend Date for the Spin-Off. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Ex-Dividend Date of any Spin-Off, references in the portion of this Section 5(g)(iii) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, but excluding, the Conversion Date for such conversion.



For the purposes of this Section 5(g)(iii) (and subject in all respect to Section 5(l), rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 5(g) (and no adjustment to the Conversion Rate under this Section 5(g) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 5(g)(iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Closing Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 5(g)(iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, upon such final redemption or repurchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 5(g)(iii), Section 5(g)(i), and Section 5(g)(ii), any dividend or distribution to which this Section 5(g)(iii) is applicable that also includes shares of Common Stock to which Section 5(g)(i) applies, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 5(g)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 5(g)(iii) applies (and any Conversion Rate adjustment required by this Section 5(g)(iii) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 5(g)(i) and Section 5(g)(ii) with respect to such dividend or distribution shall then be made), except that if determined by the Company (A) "the Ex-Dividend Date for such distribution" and "the Ex-Dividend Date relating to such distribution of such rights, options or warrants" within the meaning of Section 5(g)(i) and Section 5(g)(ii), as the case may be, shall be deemed to be the Ex-Dividend Date for such dividend or distribution for purposes of Section 5(g)(iii), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as the case may be" within the meaning of Section 5(g)(i) or "outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution" within the meaning of Section 5(g)(ii).

(iv) If the Company makes or pays cash dividends or distributions to all or substantially all holders of its outstanding Common Stock in any fiscal quarter, the applicable Conversion Rate shall be increased based on the following formula:

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

where

CR<sub>0</sub> = the applicable Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

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

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; provided that if "C" as set forth above is equal to or greater than "SP<sub>0</sub>" as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each \$1,000 principal amount of Principal outstanding under this Note, the amount of cash such holder would have received had the Holder owned a number of shares equal to the Conversion Rate on the record date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 5(g)(iv), in the event of any reclassification of the Common Stock, as a result of which this Note becomes convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 5(g)(iv), references in this Section to one share of Common Stock or Last Reported Sale Prices of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which this Note is then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(v) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and if the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the "**Expiration Date**"), the Conversion Rate shall be increased based on the following formula:

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

where

CR<sub>0</sub> = the applicable Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the applicable Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the time (the "**Expiration Time**") such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to such tender offer or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

Such adjustment under this Section 5(g)(v) shall become effective at the opening of business on the Trading Day next succeeding the Expiration Date. For purposes of determining the applicable Conversion Rate, in respect of any conversion during the ten Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5(g)(v) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 5(g)(v).

(vi) For purposes of this Section 5(g), the term "record date" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(vii) In addition to those required by clauses (i), (ii), (iii), (iv) and (v) of this Section 5(g), and to the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Stock Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(viii) The Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder a notice of the increase at least five days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(ix) All calculations and other determinations under this Section 5 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share. The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (x) upon any conversion and (y) on each of the 22 Scheduled Trading Days immediately preceding the Maturity Date.

(x) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly deliver to the Holder and all holders of the Other Notes an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment and issue a press release containing the relevant information (and make such press release available on the Company's web site). Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(xi) For purposes of this Section 5(g), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(xii) Notwithstanding this Section 5(g) or any other provision of this Note, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, the close of business on the third Trading Day immediately following the relevant Conversion Date, the Board of Directors may make adjustments to the Conversion Rate and the number of shares of Common Stock issuable upon conversion of this Note as are necessary or appropriate to effect the intent of this Section 5(g) and the other provisions of this Section 5 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 5(g) (xii) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(xiii) Except as set forth in this Section 5, the Company shall not adjust the Conversion Rate. The applicable Conversion Rate will not be adjusted:

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

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

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (B) of this subsection and outstanding as of the Closing Date;

(D) for a change in the par value of the Common Stock;

(E) for accrued and unpaid interest; or

(F) except as stated herein, for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such convertible or exchangeable securities.

(h) Effect of Reclassification, Consolidation, Merger or Sale.

(i) Upon the occurrence of

(A) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 5(g)(i)),

(B) any consolidation, merger, combination or binding share exchange involving the Company, or

(C) any sale, lease or conveyance of all or substantially all of the property and assets of the Company to any other Person,

(any such event a "**Merger Event**") in each case as a result of which the Common Stock would be converted into cash, securities or other property or assets with respect to or in exchange for such Common Stock, then at the effective time of such transaction, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that at and after the effective time of such transaction, the right to convert this Note will be changed into a right to convert it as set forth in this Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction (the "**Reference Property**"), subject to the provisions of Section 5(h)(ii). The Company shall not become a party to any such transaction unless its terms are consistent with this Section 5(h). Such amendment shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5 in the judgment of the Board of Directors or the board of directors of the successor Person and acceptable to the Holder. If, in the case of any Merger Event the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such amendment shall also be executed by such other Person with respect to the delivery of Reference Property upon conversion. For purposes of the foregoing, if any Merger Event causes the Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which this Note will be convertible as set forth in this Note shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock (or a plurality thereof if holders of Common Stock are entitled to make multiple elections pursuant to the applicable Merger Event) that affirmatively make such an election (the "**Weighted Average Consideration**").

(ii) With respect to each \$1,000 Principal amount of this Note surrendered for conversion after the effective date of any Merger Event, the Company shall pay the Conversion Consideration in units of Reference Property (each consisting of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event shall have received (or shall be deemed to have received) in such Merger Event) in accordance with Section 5(c) subject to the foregoing. The Company shall deliver to the converting Holder a number of units of Reference Property equal to (1) the aggregate Conversion Amount, divided by \$1,000, multiplied by (2) the then-applicable Conversion Rate.

(iii) In the event that this Note becomes convertible into Reference Property pursuant to this Section 5(h), the Company shall notify Holder in writing. If applicable, the Company shall notify the Holder in writing of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(iv) Notwithstanding any of the provisions of Section 5(g), if this Section 5(h) applies to any event or occurrence, Section 5(g) shall not apply.

(v) The above provisions of this Section shall similarly apply to successive Merger Events.

(i) Taxes on Shares Issued.

If a Holder submits this Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the Holder shall pay any such tax that is due because the Holder requests any shares of Common Stock to be issued in a name other than the Holder's name. The Company may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Company receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude, subject to Section 24, any tax withholding required by law or regulations.

(j) Reservation of Shares; Shares to be Fully Paid; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion.

The Company covenants that all shares of Common Stock that may be issued upon conversion of this Note shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Note on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

(k) Notice to Holder Prior to Certain Actions.

In case:

- (i) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 5(g); or
- (ii) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or
- (iii) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (iv) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall deliver, by electronic transmission, to the Holder, as promptly as practicable but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

(l) Stockholder Rights Plans.

To the extent that the Company has a stockholder rights plan or other "poison pill" in effect upon conversion of this Note, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If, however, prior to the time of conversion, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the Holder would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or other assets or property having a fair market value of the rights as provided in Section 5(g)(iii), subject to readjustment in the event of the expiration, termination or redemption of such rights.



(m) Conversion Rate Resets. On each of November 1, 2018 and November 1, 2019 (each, a "**Reset Date**"), the Conversion Rate shall be reset such that the Conversion Price on and after each such Reset Date shall equal 105% of the arithmetic average of the Daily VWAPs for the five (5) consecutive Trading Days immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period) (the "**Five Day VWAP**"); provided, that if such Five Day VWAP is less than 90% of the arithmetic average of the Daily VWAPs for all of the Trading Days in the 90 calendar day period immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period), the price shall then be equal to the arithmetic average of the Daily VWAPs for the thirty (30) consecutive Trading Days immediately preceding such Reset Date (with all such prices to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during such period); provided, further, that the minimum Conversion Price upon any such reset shall be the greater of (i) the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding such Reset Date and (ii) 30% of the Last Reported Sale Price of the Common Stock on the Subscription Date (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction occurring after the Subscription Date, but, for the avoidance of doubt, without giving effect to any adjustment pursuant to this Section 5(m)); provided, further, that the Conversion Price upon any such reset shall not be greater than the Conversion Price in effect immediately prior to such Reset Date.

(6) DEFAULTS AND REMEDIES.

(a) Event of Default. An "**Event of Default**" wherever used herein means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) a default in the payment in respect of the principal amount of this Note when the same becomes due and payable whether on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(ii) a default in the payment of any interest upon this Note when it becomes due and payable, and continuance of such default for a period of 30 days; and

(iii) the failure to comply with the obligation to convert Note upon exercise of the Holder's conversion right and such failure continues for 30 days;

(iv) failure by the Company to provide a Fundamental Change Repurchase Notice within the time required to provide such notice as set forth in Section 3(a) hereof within the time required to provide such notice as forth in the relevant Section and such failure continues for five days;

(v) default in the performance, or breach, of any covenant or agreement by the Company in this Note (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (iv) of this Section 6(a)), and continuance of such default or breach for a period of 60 consecutive days after written notice thereof has been given to the Company by the Holder;

(vi) an event of default (or comparable default) under any bonds, debentures or other instruments under which there may be issued evidences of indebtedness (other than this Note) by the Company or any of its Subsidiaries that is a Significant Subsidiary having, individually or in the aggregate, a principal or similar amount outstanding of at least \$25 million, whether such indebtedness now exists or shall hereafter be created, which event of default (or comparable default) shall have resulted in the acceleration of the maturity of at least \$25 million of such indebtedness prior to its express maturity or shall constitute a failure to pay at least \$25 million of such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto and such event of default (or comparable default) shall not have been rescinded or annulled or such indebtedness shall not have been discharged and such event of default (or comparable default) continues for a period of 60 consecutive days after written notice to the Company by the Holder;

(vii) the entry against the Company or any of its Subsidiaries that is a Significant Subsidiary of a final judgment or final judgments for the payment of money in an aggregate amount in excess of \$25 million (excluding any amounts covered by insurance), by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 days after (x) the date on which the right to appeal or petition for review thereof has expired if no such appeal or review has commenced, or (y) the date on which all rights to appeal or petition for review have been extinguished;

(viii) the Company or any Subsidiary of the Company that is a Significant Subsidiary pursuant to or within the meaning of the Bankruptcy Law:

- (A) commences a voluntary case;
- (B) consents to the entry of an order for relief against it in an involuntary case;
- (C) consents to the appointment of a custodian of it or for all or substantially all of its property; or
- (D) makes a general assignment for the benefit of its creditors; or

(ix) a court of competent jurisdiction enters an order or decree under the Bankruptcy Law that:

(A) is for relief against the Company or any Subsidiary of the Company that is a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any Subsidiary of the Company that is a Significant Subsidiary or for all or substantially all of the property and assets of the Company or any such Subsidiary; or

(C) orders the liquidation of the Company or any Subsidiary of the Company that is a Significant Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) Acceleration.

(i) In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company)), unless the Principal amount of this Note shall have already become due and payable, the Holder of this Note by notice in writing to the Company may declare 100% of the principal of and accrued and unpaid interest on this Note to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Note contained to the contrary notwithstanding. If an Event of Default specified in clause (viii) or clause (ix) of Section 6(a) with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, the principal of this Note and accrued and unpaid interest shall be immediately due and payable.

After a declaration of acceleration with respect to this Note, but before a judgment or decree for payment of the money due has been obtained by the Holder as hereinafter in this Section 6 provided, the Holder, by written notice to the Company, may rescind and annul such declaration and its consequences if:

(A) the Company has paid or deposited with the Holder a sum sufficient to pay

(1) all sums paid or advanced by the Holder under this Note and the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel,

(2) all overdue interest on this Note,

(3) the Principal amount of this Note which has become due otherwise than by such declaration of acceleration and interest thereon at the cash interest rate borne by this Note, and

(4) to the extent that payment of such interest is lawful, interest upon overdue interest at the cash interest rate borne by this Note;

(B) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and

(C) all defaults or Events of Default, other than the non-payment of principal of and interest on this Note which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6(i).

No such rescission shall affect any subsequent default or impair any right consequent thereon.

(ii) Notwithstanding the foregoing and notwithstanding anything in this Note to the contrary, if the Company so elects, the sole remedy of Holder for an Event of Default relating to the Company's failure to comply with its reporting obligations as required under Section 9(b) of this Note shall, for the first 180 days after the occurrence of such an Event of Default (which will be the 60th day after written notice is provided to the Company in accordance with Section 6(b)(i), consist exclusively of the right to receive Additional Interest on this Note at an annual rate equal to (x) 0.25% of the outstanding principal amount of this Note for the first 90 days an Event of Default is continuing in such 180-day period, and (y) 0.50% of the outstanding principal amount of this Note for the remaining 90 days an Event of Default is continuing in such 180-day period. Additional Interest shall be payable in arrears on each Interest Date following the occurrence of such Event of Default in the same manner as regular interest on this Note. On the 181st day after such Event of Default (if such violation is not cured or waived prior to such 181st day), this Note will be subject to acceleration as provided in Section 6(b)(i). The provisions set forth in this Section 6(b)(ii) shall not affect the rights of the Holder in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest upon an Event of Default in accordance with the provisions of this paragraph, this Note will be subject to acceleration as provided in Section 6(b)(i).

The Company may elect to pay Additional Interest as the sole remedy under this Section 6(b)(ii) by giving written notice to the Holder of such election on or before the close of business on the 5th Business Day after the date on which such Event of Default otherwise would occur. If the Company fails to timely give such notice or pay Additional Interest, this Note will be immediately subject to acceleration as provided in Section 6(b)(i).

Whenever in this Note there is mentioned, in any context, the payment of interest on, or in respect of, this Note, such mention shall be deemed to include mention of the payment of "Additional Interest" provided for in this Section 6(b)(ii) to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of such sections, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

(c) Collection of Indebtedness and Suits for Enforcement.

The Company covenants that if (x) default is made in the payment of any interest on this Note when such interest becomes due and payable and such default continues for a period of 30 days, or (y) default is made in the payment of the principal of this Note on the Maturity Date thereof, the Company will, upon demand of the Holder, pay to the Holder the whole amount then due and payable on this Note for principal and interest, with interest upon the overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest, at the rate borne by this Note; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Holder may institute a judicial proceeding for the collection of the sums so due and unpaid and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Holder may in its discretion proceed to protect and enforce its rights under this Note by such appropriate private or judicial proceedings as the Holder shall deem most effectual to protect and enforce such rights, whether for the specific enforcement of any covenant or agreement in this Note or in aid of the exercise of any power granted herein, or to enforce any other proper remedy. No recovery of any such judgment upon any property of the Company shall affect or impair any rights, powers or remedies of the Holder.

(d) Holder May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company, the Holder (irrespective of whether the principal of the this Note shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Holder shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of this Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Holder (including any claim for the reasonable compensation, expenses, disbursements and advances of the Holder, its agents and counsel) allowed in such judicial proceeding.

(e) Unconditional Right of Holder to Receive Payment and to Convert.

Notwithstanding any other provision of this Note, the right of the Holder to receive payment of the principal amount, interest, Fundamental Change Repurchase Price, if any, or Additional Interest, if any, in respect of this Note, on or after the respective due dates expressed in this Note (whether upon repurchase or otherwise), and to convert this Note in accordance with Section 5, and to bring suit for the enforcement of any such payment on or after such respective due dates or for the right to convert in accordance with Section 5, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

(f) Restoration of Rights and Remedies.

If the Holder has instituted any proceeding to enforce any right or remedy under this Note and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Holder, then and in every such case the Company and the Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Holder shall continue as though no such proceeding had been instituted.

(g) Rights and Remedies Cumulative.

No right or remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(h) Delay or Omission Not Waiver.

No delay or omission of the Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Section 6 or by law to the Holder may be exercised from time to time, and as often as may be deemed expedient, by the Holder, as the case may be.

(i) Waiver of Past Defaults.

Subject to Section 6(e), the Holder may waive an existing or past Default or Event of Default and its consequences and rescind any acceleration with respect to this Note and its consequences, except a default or Event of Default and any related acceleration with respect to the payment of the principal of or any accrued but unpaid interest on any Security, the failure to repurchase this Note in accordance with the provisions of Section 3 or the failure by the Company to deliver, upon conversion of this Note, the Conversion Consideration. When a default or Event of Default is waived, it is cured and ceases to exist.

(j) Undertaking for Costs.

The Company and the Holder agree that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Note, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant, but the provisions of this Section 6(j) shall not apply to any suit instituted by the Holder.

(k) Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Section 6 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Note are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Note invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(7) NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Articles of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

(8) RESERVATION OF AUTHORIZED SHARES.

(a) Reservation. The Company shall initially reserve out of its authorized and unissued shares of Common Stock a number of shares of Common Stock for each of this Note, the Other Notes equal to 100% of the Conversion Rate with respect to the Conversion Amount of each such Note as of the Issuance Date. So long as any of this Note or the Other Notes are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of this Note and the Other Notes, the number of shares of Common Stock specified above in this Section 8(a) as shall from time to time be necessary to effect the conversion of all of the Notes then outstanding; provided, that at no time shall the number of shares of Common Stock so reserved be less than the number of shares required to be reserved pursuant hereto (in each case, without regard to any limitations on conversions) (the "**Required Reserve Amount**"). The initial number of shares of Common Stock reserved for conversions of this Note and the Other Notes and each increase in the number of shares so reserved shall be allocated pro rata among the Holder and the holders of the Other Notes based on the Principal amount of this Note and the Other Notes held by each holder at the Closing (as defined in the Exchange Agreement) or increase in the number of reserved shares, as the case may be (the "**Authorized Share Allocation**"). In the event that a holder shall sell or otherwise transfer this Note or any of such holder's Other Notes, each transferee shall be allocated a pro rata portion of such holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Notes shall be allocated to the Holder and the remaining holders of Other Notes a, pro rata based on the Principal amount of this Note and the Other Notes then held by such holders.

(b) Insufficient Authorized Shares. If at any time while any of the Notes remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Notes at least a number of shares of Common Stock equal to the Required Reserve Amount (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall either (x) obtain the written consent of its shareholders for the approval of an increase in the number of authorized shares of Common Stock and provide each shareholder with an information statement with respect thereto or (y) hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each shareholder with a proxy statement and shall use its best efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock and to cause its Board of Directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if during any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C. If, upon any conversion of this Note, the Company does not have sufficient authorized shares to deliver in satisfaction of such conversion, then unless the Holder elects to rescind such attempted conversion, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable attempted conversion, cash in an amount equal to the product of (i) the number of Conversion Shares that the Company is unable to deliver pursuant to this Section 8, and (ii) the highest trading price of the Common Stock in effect at any time during the period beginning on the applicable Conversion Date and ending on the date the Company makes the payment provided for in this sentence.

(9) COVENANTS.

(a) Payment on this Note.

(i) The Company shall promptly make all payments in respect of this Note on the dates and in the manner provided in this Note. Accrued and unpaid interest on this Note that is payable (whether or not punctually paid or duly provided for) on any Interest Date shall be paid to the Holder. The Company shall, to the fullest extent permitted by law, pay interest in immediately available funds on overdue principal and interest at the annual rate borne by this Note compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the day preceding the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.



(b) Reports by Company.

(A) The Company shall deliver to the Holder, within 15 days after it is required to file the same with the SEC, copies of all annual reports, quarterly reports and other documents that it files with the SEC pursuant to Sections 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). The Holder agrees that any such information, documents or reports filed with the SEC pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall constitute delivery of the same to the Holder; provided, however, that the Company shall promptly notify the Holder in writing of any such filing.

(B) During any period in which the Company is not subject to Section 13 or 15(d) under the Exchange Act, the Company will make available to the holders or beneficial holders of this Note or the Common Stock issued upon conversion and prospective purchasers, upon their request, the information, if any, required under Rule 144A(d)(4) under the Securities Act.

(C) If, at any time during the six-month period beginning on, and including, the date which is six months after the Closing Date and ending on the date which is the one year anniversary of the Closing Date, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), the Company shall pay a one-time Additional Interest payment in respect of this Note at the rate of 0.50% per annum of the principal amount of this Note outstanding for each day during such period for which the Company's failure to file has occurred and is continuing. The Company shall pay any Additional Interest pursuant to this Section 9(b)(C) on the next Interest Date to the record holder.

(c) Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.

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

(e) Subsequent Placements. Prior to November 1, 2018, the Company shall not, in any manner, issue or sell Common Stock or Common Stock Equivalents, unless (i) the arithmetic average of the Daily VWAPs for the twenty (20) consecutive Trading Days immediately preceding such issuance is greater than \$6.00 (as adjusted for any adjustment pursuant to Section 5(g)) and (ii) the maturity date or expiration date of such securities is after the Maturity Date.

(f) Redemptions and Exchanges of 2018 Notes and 2020 Notes. The Company shall not issue any shares of Common Stock or Common Stock Equivalents in connection with the acquisition of any of its outstanding 2018 Notes or 2020 Notes unless the amount of such Common Stock issued or issuable pursuant to the terms of such Common Stock Equivalents does not exceed the number of shares of Common Stock for which the holder of such 2018 Notes or 2020 Notes has open short sales (as defined in Regulation SHO) at the time of such acquisition.

(g) Consolidation; Merger; Sale of Assets.

(i) Company May Consolidate, Etc., Only on Certain Terms.

(A) The Company shall not consolidate with or merge with or into, or convey, transfer, or lease all or substantially all of the Company's property or assets to, another Person, unless:

(I) the resulting, surviving or transferee Person (if other than the Company) shall be a corporation organized and validly existing under the laws of the United States of America or any State thereof or the District of Columbia, and such Person shall expressly assume, the due and punctual payment of the principal of and interest on this Note and the performance and observance of every covenant of this Note to be performed or observed on the part of the Company;

(II) immediately after giving effect to the transaction, no default or Event of Default shall have occurred and be continuing; and

(III) if the Company will not be the resulting or surviving Person, the Company shall have, at or prior to the effective date of such consolidation or merger or conveyance, transfer or lease, delivered to the Holder an Officer's Certificate and an opinion of counsel, each stating that such consolidation, merger, conveyance, transfer or lease complies with this Section 9(g) and, if an amendment to this Note is required in connection with such transaction, such amendment complies with this Section 9(g), and that all conditions precedent herein provided for relating to such transaction have been complied with.

(ii) Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any transfer or lease of all or substantially all of the Company's assets in accordance with Section 9(g)(i), the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Note with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Note.

(10) VOTE TO ISSUE, OR CHANGE THE TERMS OF, NOTES. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders shall be required for any change or amendment or waiver of any provision to this Note or any of the Other Notes. Any change, amendment or waiver by the Company and the Required Holders shall be binding on the Holder of this Note and all holders of the Other Notes.

(11) TRANSFER. Prior to November 7, 2018, this Note may not be offered, sold, assigned or transferred by the Holder without the consent of the Company; except for Related Party Assignments pursuant to Section 5(c)(iv), which shall not require the consent of the Company. At any time on or after November 7, 2018, this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, and any shares of Common Stock issued pursuant to this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company at any time.

(12) REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 12(d) and subject to Section 5(c)(iv)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 12(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 5(c)(iv) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 12(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 12(d) and in Principal amounts of at least \$1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 12(a) or Section 12(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal and Interest of this Note, from the Issuance Date.

(13) REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

(14) PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, attorneys' fees and disbursements.

(15) CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note.

(16) FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder within the time limits set forth herein shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

(17) DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Last Reported Sale Price or the Daily VWAP or the arithmetic calculation of the Conversion Rate, the Conversion Price or any Redemption Price, the Company shall submit the disputed determinations or arithmetic calculations via facsimile or electronic mail within one (1) Business Day of receipt, or deemed receipt, of the Conversion Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation within one (1) Business Day of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within one (1) Business Day submit via facsimile or electronic mail (a) the disputed determination of the Last Reported Sale Price or the Daily VWAP to an independent, reputable investment bank selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed, or (b) the disputed arithmetic calculation of the Conversion Rate, Conversion Price or any Redemption Price to an independent, outside accountant, selected by the Holder and approved by the Company, such approval not to be unreasonably withheld or delayed. The Company shall cause the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. Absent bad faith by the Holder, the Company shall pay the expenses of such investment bank or accountant.

(18) NOTICES; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 5.9 of the Exchange Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least twenty (20) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any pro rata subscription offer to holders of Common Stock or (C) for determining rights to vote with respect to any Fundamental Change, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, such payment shall be made in lawful money of the United States of America by a check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Holder, shall initially be as set forth in the Exchange Agreement); provided, that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions, which wire transfer instructions shall be provided to the Company at least two (2) Business Days prior to any applicable payment date. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

(19) CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

(20) WAIVER OF NOTICE. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Exchange Agreement.

(21) GOVERNING LAW; JURISDICTION; JURY TRIAL. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation, enforcement and performance of this Note shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under the Exchange Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

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

(23) DISCLOSURE. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to the Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

(24) TAXES.

(i) Any and all payments by the Company hereunder, including any amounts received in cash or in kind, including the delivery of shares of Common Stock, on a conversion, repayment or redemption of this Note and any amounts on account of interest or deemed interest, shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, imposed under any applicable law (collectively referred to as "**Taxes**") unless the Company is required to withhold or deduct any amounts for, or on account of Taxes pursuant to any applicable law. If the Company shall be required to withhold or deduct any Taxes from or in respect of any sum payable hereunder to the Holder in cash or in kind, (i) the sum payable shall be increased by the amount necessary to ensure that after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section 24) the Holder actually receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (ii) the Company shall make such withholdings or deductions and (iii) the Company shall pay the full amount withheld or deducted to the relevant governmental authority within the time required by applicable laws.

(ii) In addition, the Company agrees to pay to the relevant governmental authority in accordance with applicable law any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration, enforcement or performance of, or otherwise with respect to, this Note if any such tax or duty is due because the Holder requested such shares to be issued in a name other than the Holder's name, then the Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Company may refuse to deliver any such shares to be issued in a name other than that of the Holder ("**Other Taxes**").

(iii) The Company shall deliver to the Holder official receipts, if any, in respect of any Taxes and Other Taxes payable hereunder promptly after payment of such Taxes and Other Taxes, or such other evidence of payment reasonably acceptable to the Holder.

(iv) The Company shall indemnify the Holder within ten (10) calendar days after written demand therefor, for the full amount of any Taxes or Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 24), plus any related additions to tax, interest or penalties, that are paid by the Holder to, or imposed on the Holder by, the relevant governmental authorities, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant governmental authorities.

(v) The obligations of the Company under this Section 24 shall survive the termination of this Note and the payment of this Note and all other amounts payable hereunder.

(25) CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) "**2018 Notes**" means the Company's 4.25% Convertible Senior Notes due 2018.

(b) "**2020 Notes**" means the Company's 4.875% Convertible Senior Notes due 2020.

(c) "**Additional Interest**" means all amounts, if any, payable pursuant to Sections 6(b)(ii) and 9(b)(C) hereof.

(d) "**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

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

(f) "**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

(g) "**Bloomberg**" means Bloomberg Financial Markets.



(h) **"Board of Directors"** means the board of directors of the Company or any duly authorized committee of such board, or any equivalent body in a limited partnership, limited liability company or other entity serving substantially the same function as a board of directors of a corporation.

(i) **"Business Day"** means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the Corporate Trust Office or banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

(j) **"Capital Stock"** means, for any entity, any and all shares, equity interests, equity participations or other equity equivalents of or equity interests in (however designated) the equity of that entity, but excluding debt securities convertible into such equity.

(k) **"Close of Business "** means 5:00 p.m., New York City time.

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

(m) **"Common Stock Equivalents"** means, collectively, Options and Convertible Securities.

(n) **"Conversion Shares"** means shares of Common Stock issuable by the Company pursuant to the terms of any of the Notes, including, without limitation, any related Interest Shares and any Interest converted or redeemed.

(o) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(p) **"Daily Cash Amount"** means, with respect to any Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such Trading Day.

(q) **"Daily Conversion Value"** means, with respect to any Trading Day, one-fifth (1/5th) of the product of (A) the Conversion Rate on such Trading Day; and (B) the Daily VWAP per share of Common Stock on such Trading Day.

(r) **"Daily Maximum Cash Amount"** means, with respect to a conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) five (5).

(s) **"Daily Share Amount"** means, with respect to any Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

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

(u) **"Default Settlement Method"** means Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes; *provided, however*, that the Company may, from time to time, change the Default Settlement Method by sending written notice of the new Default Settlement Method to the Holder.

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

(w) **"Equity Conditions"** means each of the following conditions: (i) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, either (x) all Registration Statements filed and required to be filed pursuant to the Registration Rights Agreement shall be effective and available for the resale of all remaining Registrable Securities including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement and there shall not have been any Grace Periods (as defined in the Registration Rights Agreement) or (y) all Conversion Shares issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, shall be eligible for sale without restriction pursuant to Rule 144 and without the need for registration under any applicable federal or state securities laws; (ii) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, the Common Stock is designated for quotation on the Principal Market or any other Eligible Market and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by such exchange or market been threatened, commenced or pending either (A) in writing by such exchange or market or (B) by falling below the then effective minimum listing maintenance requirements of such exchange or market; (iii) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions may be issued in full without violating Section 5(d)(ii) hereof and, in the case of such Interest Shares, Section 5(d)(i) hereof (and analogous provisions under the Other Notes) and the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) on each day during the period commencing ten (10) Trading Days prior to the applicable date of determination through the applicable date of determination, there shall not have occurred either (A) the public announcement of a pending, proposed or intended Fundamental Change which has not been abandoned, terminated or consummated, (B) an Event of Default or (C) an event that with the passage of time or giving of notice would constitute an Event of Default; (v) the Company shall have no knowledge of any fact that would cause (x) the Registration Statements required pursuant to the Registration Rights Agreement not to be effective and available for the resale of all remaining Registrable Securities, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, in accordance with the terms of the Registration Rights Agreement or (y) any shares of Common Stock issuable pursuant to the terms of this Note and the Other Notes, including the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions, not to be eligible for sale without restriction pursuant to Rule 144 promulgated under the Securities Act (subject to solely to any restrictions imposed on the Holder due to the Holder's affiliate status with respect to the Company) and any applicable state securities laws; and (vi) the Maturity Shares issuable on the Maturity Date, the Interest Shares issuable on the applicable Interest Date or the or shares issuable upon the Mandatory Conversion, as applicable, requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(x) **"Equity Conditions Failure"** means that on the applicable date of determination, the Equity Conditions have not each been satisfied (or waived in writing by the Holder).

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

(z) **"Exchange Agreement"** means that certain exchange agreement dated as of the Subscription Date, by and between the Company and the initial Holder of this Note pursuant to which the Company issued this Note.

(aa) **"Ex-Dividend Date"** means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date upon which the shares of Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

(bb) **"Fundamental Change"** means the occurrence after the Subscription Date of any of the following events:

(1) any "person" or "group" (within the meaning of Section 13(d) of the Exchange Act) other than the Company or its Subsidiaries or any of their respective employee benefit plans files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(2) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries; (any such exchange, offer, consolidation, merger, sale, lease or other transfer transaction or series of transactions being referred to herein as an "event"); provided, however, that any such event where the holders of more than 50% of the Company's shares of Common Stock immediately prior to such event, own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving person or transferee or the parent thereof immediately after such event shall not be a Fundamental Change;

(3) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(4) the Common Stock (or other common stock into which this Note is then convertible) ceases to be listed on at least one U.S. national securities exchange, or approved for trading on an established automated over-the-counter trading market in the U.S.,

provided, however, no transaction or event described in clause (b) above shall constitute a Fundamental Change if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or event that would otherwise have constituted a Fundamental Change consists of shares of Publicly Traded Securities, and as a result of the transaction or event, this Note becomes convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 3(c)(ii)(B)).

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

(dd) "**Interest Notice Due Date**" means the tenth (10<sup>th</sup>) Trading Day prior to the applicable Interest Date.

(ee) "**Interest Share Price**" means, with respect to any Interest Date, the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the applicable Interest Date, by (y) ten (10).

(ff) **"Interest Rate"** means, with respect to any payment of Cash Interest, 3.25% per annum and, with respect to any payment of Interest Shares, 5.00% per annum.

(gg) **"Last Reported Sale Price"** of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national securities exchange on the relevant date, then the "Last Reported Sale Price" of the Common Stock will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or similar organization. If the Common Stock is not so quoted, the "Last Reported Sale Price" of the Common Stock will be determined by a U.S. nationally recognized independent investment banking firm selected by the Company for this purpose. The Last Reported Sale Price will be determined without reference to after-hours or extended market trading.

(hh) **"Make-Whole Fundamental Change"** means any transaction or event that constitutes a Fundamental Change under clause (a) or (b) of the definition thereof (in the case of any Fundamental Change described in clause (b) of the definition thereof, determined without regard to the proviso in such clause but after giving effect to the exceptions and exclusions to the definition of Fundamental Change that otherwise apply).

(ii) **"Market Disruption Event"** means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock of an aggregate one-half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

(jj) **"Maturity Notice Due Date"** means the tenth (10<sup>th</sup>) Trading Day prior to the Maturity Date.

(kk) **"Maturity Share Price"** means the quotient obtained by dividing (x) the sum of the Daily VWAPs for each Trading Day during the ten (10) consecutive Trading Day period immediately preceding the Maturity Date, by (y) ten (10).

(ll) **"Observation Period"** means, with respect to any conversion, the five (5) consecutive Trading Days immediately preceding the date on which the Holder delivers to the Company the related Conversion Notice or the date on which the Company delivers the Mandatory Conversion Notice to the Holder.

(mm) **"Options"** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

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

- (oo) "**Publicly Traded Securities**" means shares of common stock that are traded on a U.S. national securities exchange or that will be so traded when issued or exchanged in connection with a transaction or event described in clause (b) of the definition of Fundamental Change.
- (pp) "**Principal Market**" means The NASDAQ Global Select Market.
- (qq) "**Registrable Securities**" shall have the meaning ascribed to such term in the Registration Rights Agreement.
- (rr) "**Registration Rights Agreement**" means that certain registration rights agreement dated as of the Subscription Date by and among the Company and the Purchasers relating to, among other things, the registration of the resale of the shares of Common Stock issuable upon conversion of this Note and the Other Notes.
- (ss) "**Registration Statement**" shall have the meaning ascribed to such term in the Registration Rights Agreement.
- (tt) "**Related Fund**" means, with respect to any Person, a fund or account managed by such Person or an Affiliate of such Person.
- (uu) "**Required Holders**" means the holders of Notes representing at least a majority of the aggregate Principal amount of the Notes then outstanding and shall include the initial Holder of this Note so long as the initial Holder of this Note or any of its Affiliates holds any Notes.
- (vv) "**Scheduled Trading Day**" means any day that is scheduled to be a Trading Day.
- (ww) "**SEC**" means the United States Securities and Exchange Commission.
- (xx) "**Securities Act**" means the Securities Act of 1933, as amended.
- (yy) "**Significant Subsidiary**" means, at any date of determination, any Subsidiary that would constitute a "significant subsidiary" within the meaning of Article 1 of Regulation S-X promulgated under the Securities Act as in effect on the Closing Date.
- (zz) "**Specified Dollar Amount**" means, with respect to a conversion to which Combination Settlement applies, the maximum cash amount deliverable upon such conversion per \$1,000 of Conversion Amount.
- (aaa) "**Subscription Date**" means July 25, 2018.
- (bbb) "**Subsidiary**" means, with respect to any specified Person: (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); or (2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(ccc) "**Trading Day**" means a day during which (i) trading in the Common Stock generally occurs on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, on the principal other United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, in the principal other market on which the Common Stock is then traded, (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market, and (iii) there is no Market Disruption Event. If the Common Stock (or other security for which a Last Reported Sale Price must be determined) is not so listed or traded, "Trading Day" means a "Business Day."

(ddd) "**Transaction Documents**" shall have the meaning ascribed to such term in the Exchange Agreement.

[Signature Page Follows]

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

**JAKKS PACIFIC, INC.**

By: /s/ Stephen Berman

Name: Stephen Berman

Title: CEO

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**EXHIBIT I**

**JAKKS PACIFIC, INC.**

**CONVERSION NOTICE**

Reference is made to the Convertible Senior Note (the "**Note**") issued to the undersigned by JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock par value \$0.001 per share (the "**Common Stock**") of the Company, as of the date specified below. Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Note.

Date of Conversion: \_\_\_\_\_

Aggregate Conversion Amount to be converted: \_\_\_\_\_

Please confirm the following information:

Conversion Price: \_\_\_\_\_

Number of shares of Common Stock to be issued, assuming  
Physical Settlement applies to such conversion : \_\_\_\_\_

Please issue the Common Stock into which the Note is being converted in the following name and to the following address:

Issue to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile Number and Electronic Mail: \_\_\_\_\_

Authorization: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Account Number: \_\_\_\_\_  
(if electronic book entry transfer)

Transaction Code Number: \_\_\_\_\_  
(if electronic book entry transfer)

\_\_\_\_\_

**ACKNOWLEDGMENT**

The Company hereby acknowledges this Conversion Notice and hereby directs [TRANSFER AGENT] to issue the above indicated number of shares of Common Stock.

**JAKKS PACIFIC, INC.**

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

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EXHIBIT II

JAKKS PACIFIC, INC.

FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: JAKKS Pacific, Inc.

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from JAKKS Pacific, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and accrued and unpaid interest at the cash interest rate thereon to, but excluding, such Fundamental Change Repurchase Date.

The certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

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Signature(s)

Social Security or Other Taxpayer Identification Number

principal amount to be repaid (if less than all): \$ \_\_\_\_\_,000

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

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## REGISTRATION RIGHTS AGREEMENT

**REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of July 25, 2018, by and among JAKKS Pacific, Inc., a Delaware corporation, with headquarters located at 2951 28th Street, Santa Monica, California 90405 (the "**Company**"), and the investor listed on Schedule I attached hereto (the "**Holder**").

**WHEREAS:**

A. In connection with the Exchange Agreement by and between the parties hereto of even date herewith (the "**Exchange Agreement**"), the Company has agreed, upon the terms and subject to the conditions of the Exchange Agreement, to issue and sell to the Holder, in exchange for certain of the Company's existing 4.25% Convertible Senior Notes due 2018 held by the Holder, convertible senior notes of the Company (the "**2018 Exchange Notes**"), which will, among other things, be convertible (upon conversion, interest or otherwise) into the Company's common stock, par value \$0.001 per share (the "**Common Stock**") (the shares of Common Stock issuable pursuant to the terms of the 2018 Exchange Notes, including without limitation, the Interest Shares (as defined below), collectively, the "**2018 Exchange Conversion Shares**").

B. The 2018 Exchange Notes bear interest, which at the option of the Company, subject to certain conditions, may be paid in shares of Common Stock (the "**Interest Shares**").

C. In accordance with the terms of the Exchange Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Holder hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Exchange Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Additional Effective Date**" means the date the Additional Registration Statement is declared effective by the SEC.

(b) "**Additional Effectiveness Deadline**" means the date which is the earlier of (x) (i) in the event that the Additional Registration Statement is not subject to a full review by the SEC, thirty (30) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline or (ii) in the event that the Additional Registration Statement is subject to a full review by the SEC, sixty (60) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline and (y) the fifth (5<sup>th</sup>) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Additional Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

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(c) **"Additional Filing Date"** means the date on which the Additional Registration Statement is filed with the SEC.

(d) **"Additional Filing Deadline"** means if Cutback Shares are required to be included in any Additional Registration Statement, the later of (i) the date sixty (60) days after the date substantially all of the Registrable Securities registered under the immediately preceding Registration Statement are sold and (ii) the date six (6) months from the Initial Effective Date or the most recent Additional Effective Date, as applicable.

(e) **"Additional Registrable Securities"** means, (i) any Cutback Shares not previously included on a Registration Statement and (ii) any capital stock of the Company issued or issuable with respect to the 2018 Exchange Notes, the 2018 Exchange Conversion Shares or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, without regard to any limitations on conversion and/or redemption of the 2018 Exchange Notes.

(f) **"Additional Registration Statement"** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of any Additional Registrable Securities.

(g) **"Additional Required Registration Amount"** means any Cutback Shares not previously included on a Registration Statement, subject to adjustment as provided in Section 2(f), without regard to any limitations on conversion and/or redemption of the 2018 Exchange Notes.

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

(i) **"Closing Date"** shall have the meaning ascribed to such term in the Exchange Agreement.

(j) **"Cutback Shares"** means any of the Initial Required Registration Amount or the Additional Required Registration Amount of Registrable Securities not included in all Registration Statements previously declared effective hereunder as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415. The number of Cutback Shares shall be allocated pro rata among the Investors with each Investor entitled to elect the portion of its 2018 Exchange Conversion Shares and/or Interest Shares that are to be considered Cutback Shares. For the purpose of determining the Cutback Shares, in order to determine any applicable Required Registration Amount, unless an Investor gives written notice to the Company to the contrary with respect to the allocation of its Cutback Shares, first the Interest Shares shall be excluded on a pro rata basis until all of the Interest Shares have been excluded and second, the 2018 Exchange Conversion Shares shall be excluded on a pro rata basis until all of the 2018 Exchange Conversion Shares have been excluded.

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(k) **"Effective Date"** means the Initial Effective Date and the Additional Effective Date, as applicable.

(l) **"Effectiveness Deadline"** means the Initial Effectiveness Deadline and the Additional Effectiveness Deadline, as applicable.

(m) **"Eligible Market"** means the Principal Market, The New York Stock Exchange, Inc., the NYSE American LLC, The NASDAQ Capital Market or The NASDAQ Global Market.

(n) **"Filing Deadline"** means the Initial Filing Deadline and the Additional Filing Deadline, as applicable.

(o) **"Initial Effective Date"** means the date that the Initial Registration Statement has been declared effective by the SEC.

(p) **"Initial Effectiveness Deadline"** means the date which is the earlier of (x) (i) in the event that the Initial Registration Statement is not subject to a full review by the SEC, sixty (60) calendar days after the Closing Date or (ii) in the event that the Initial Registration Statement is subject to a full review by the SEC, ninety (90) calendar days after the Closing Date and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(q) **"Initial Filing Date"** means the date on which the Initial Registration Statement is filed with the SEC.

(r) **"Initial Filing Deadline"** means the date which is thirty (30) calendar days after the Closing Date.

(s) **"Initial Registrable Securities"** means (i) the 2018 Exchange Conversion Shares issued or issuable pursuant to the terms of the 2018 Exchange Notes and (ii) any capital stock of the Company issued or issuable with respect to the 2018 Exchange Notes or the 2018 Exchange Conversion Shares as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise, in each case without regard to any limitations on conversion and/or redemption of the 2018 Exchange Notes.

(t) **"Initial Registration Statement"** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of the Initial Registrable Securities.

(u) **"Initial Required Registration Amount"** means 100% of the maximum number of 2018 Exchange Conversion Shares issued and issuable pursuant to the 2018 Exchange Notes as of the Trading Day immediately preceding the applicable date of determination and subject to adjustment as provided in Section 2(f), without regard to any limitations on conversion and/or redemption of the 2018 Exchange Notes.

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(v) "**Investor**" means the Holder or any transferee or assignee thereof to whom the Holder assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

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

(x) "**Principal Market**" means The NASDAQ Global Select Market.

(y) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(z) "**Registrable Securities**" means the Initial Registrable Securities and the Additional Registrable Securities.

(aa) "**Registration Statement**" means the Initial Registration Statement and the Additional Registration Statement, as applicable.

(bb) "**Required Holders**" means the holders of at least a majority of the Registrable Securities and shall include the Holder so long as the Holder or any of its Affiliates holds any Registrable Securities.

(cc) "**Required Registration Amount**" means either the Initial Required Registration Amount or the Additional Required Registration Amount, as applicable.

(dd) "**Rule 415**" means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

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

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

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2. Registration.

(a) Initial Mandatory Registration. The Company shall prepare, and, as soon as practicable but in no event later than the Initial Filing Deadline, file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). The Initial Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B. The Company shall use its reasonable best efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement.

(b) Additional Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on an Additional Registration Statement hereunder. To the extent the staff of the SEC does not permit the Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities until the Additional Required Registration Amount has been registered with the SEC. In the event that Form S-3 is unavailable for such a registration, the Company shall use such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Additional Required Registration Amount determined as of the date such Additional Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). Each Additional Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B. The Company shall use its reasonable best efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Additional Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Additional Registration Statement.

(c) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase or decrease in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase or decrease thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

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(d) Legal Counsel. Subject to Section 5 hereof, the Required Holders shall have the right to select one legal counsel to review and oversee any registration pursuant to this Section 2 ("**Legal Counsel**"), which shall be Schulte Roth & Zabel LLP or such other counsel as thereafter designated by the Required Holders. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company's obligations under this Agreement.

(e) Ineligibility for Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the SEC.

(f) Sufficient Number of Shares Registered. In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a) or Section 2(b) is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(c), the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises. The Company shall use its reasonable best efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the Registration Statement is less than the Required Registration Amount. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on the conversion and/or redemption of the 2018 Exchange Notes and such calculation shall assume (i) that the 2018 Exchange Notes are then convertible in full into shares of Common Stock at the then prevailing Conversion Rate (as defined in the 2018 Exchange Notes), (ii) the maximum number of Interest Shares under the 2018 Exchange Notes are issuable at the then prevailing Interest Share Price (as defined in the 2018 Exchange Notes) and (iii) absent actual conversions and/or redemptions of the 2018 Exchange Notes, the initial outstanding principal amount of the 2018 Exchange Notes remains outstanding through the scheduled Maturity Date (as defined in the 2018 Exchange Notes) and no conversions or redemptions of the 2018 Exchange Notes occur prior to the scheduled Maturity Date.

### 3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(e) or 2(f), the Company will use its reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

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(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its reasonable best efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date as of which the Investors may sell all of the Registrable Securities covered by such Registration Statement without restriction or limitation pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or any successor thereto) promulgated under the 1933 Act or (ii) the date on which the Investors shall have sold all of the Registrable Securities actually issued or issuable upon conversion of the 2018 Exchange Notes or as interest payments (the "**Registration Period**"). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term "reasonable best efforts" shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is promptly sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q, Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

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(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least two (2) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) to the extent that Legal Counsel reasonably objects to disclosure regarding an Investor in any Registration Statement or amendment or supplement thereto, not file such Registration Statement or amendment or supplement thereto. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall furnish to Legal Counsel, without charge, unless the following are filed with the SEC through EDGAR and are available to the public through the EDGAR system promptly after the same is prepared and filed with the SEC (i) copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement, (ii) promptly after the same is prepared and filed with the SEC, one copy of any Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of any Registration Statement, one copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with Legal Counsel in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) promptly after the same is prepared and filed with the SEC, at least one copy of such Registration Statement and any amendment(s) thereto, including financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of any Registration Statement, ten (10) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request) and (iii) such other documents, including copies of any preliminary or final prospectus filed with the SEC, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, and deliver ten (10) copies of such supplement or amendment to Legal Counsel and each Investor (or such other number of copies as Legal Counsel or such Investor may reasonably request). The Company shall also promptly notify Legal Counsel and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel and each Investor by facsimile or email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the date following the date any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

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(g) The Company shall use its reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel and each Investor who holds Registrable Securities being sold of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, at the reasonable request of such Investor, the Company shall furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or an Investor believes that it could reasonably be deemed to be an underwriter of Registrable Securities, the Company shall make available for inspection, unless the Company is legally restricted to do so, by (i) such Investor, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to an Investor, who shall also agree to hold in strict confidence and shall not make any disclosure and who shall indemnify the Company against any loss directly related to such disclosure) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

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(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) The Company shall use its reasonable best efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of the Registrable Securities on the Principal Market or (iii) if, despite the Company's reasonable best efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on another Eligible Market for such Registrable Securities and, without limiting the generality of the foregoing, to use its reasonable best efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("**FINRA**") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(k).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

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(n) The Company shall use its reasonable best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of a Registration Statement.

(p) The Company shall otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed ten (10) consecutive days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of thirty (30) days and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(s) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market without the prior written consent of such Investor; provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the "Plan of Distribution" section attached hereto as Exhibit B in the Registration Statement. The Company shall be relieved of its registration rights obligations set forth in this Agreement if (i) the SEC requires an Investor to be named as an underwriter in a Registration Statement after the Company's reasonable best efforts to persuade the SEC to the contrary and (ii) such Investor refuses to be so named.

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(t) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holder in this Agreement or otherwise conflicts with the provisions hereof. The Company shall not be deemed to have violated this Section 3(t) to the extent that the Company or any of its Subsidiaries enters into an agreement causing it to trigger an Allowable Grace Period.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(g) or the first sentence of 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f) and for which the Investor has not yet settled.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

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5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "**Claims**"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus was timely made available by the Company pursuant to Section 3(d); and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

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(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c), such Investor shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Party or Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

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(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

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(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting requirements of Rule 144, the 1933 Act and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; and (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. To the extent that a transfer requires an amendment or a prospectus supplement to a Registration Statement, such transfer shall not be effective until such amendment or prospectus supplement has been filed with the SEC.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

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(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile or electronic mail (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with a nationally recognized overnight delivery service, in each case properly addressed to the party to receive the same. The addresses, facsimile numbers and email addresses for such communications shall be:

If to the Company:

JAKKS Pacific, Inc.  
2951 28th Street  
Santa Monica, California 90405  
Telephone: 424-268-9444  
Facsimile: 424-268-9655  
Attention: Brent Novak  
Email: [bnovak@jakks.net.com](mailto:bnovak@jakks.net.com)

With a copy (for informational purposes only) to:

Feder Kaszovitz LLP  
845 Third Avenue, 11th Floor  
New York, New York 10022  
Telephone: (212) 888-8200  
Facsimile: (212) 888-7776  
Attention: Geoffrey A. Bass, Esq.  
Email: [gbass@fedkas.com](mailto:gbass@fedkas.com)

If to the Transfer Agent:

Computershare Investor Services, Inc.  
8742 Lucent Blvd, Suite 225  
Highlands Ranch, CO 80129  
Telephone: 303-262-0785  
Facsimile: 303-262-0609  
Attention: Amanda Lewis  
E-mail: [amanda.lewis@computershare.com](mailto:amanda.lewis@computershare.com)

If to Legal Counsel:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 756-2000  
Facsimile: (212) 593-5955  
Attention: Eleazer Klein, Esq.  
Email: [eleazer.klein@srz.com](mailto:eleazer.klein@srz.com)

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If to the Holder, to its address, facsimile number and/or email address set forth on Schedule I attached hereto, with copies to the Holder's representatives as set forth on Schedule I, or to such other address, facsimile number and/or email address to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or email containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

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

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

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(f) This Agreement, the other Transaction Documents and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(g) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile or electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding 2018 Exchange Notes then held by the Investors have been converted for Registrable Securities without regard to any limitations on redemption and/or conversion of the 2018 Exchange Notes.

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

[Signature Page Follows]

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**IN WITNESS WHEREOF**, the Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

**COMPANY:**

**JAKKS PACIFIC, INC.**

By: /s/ Stephen Berman  
Name: Stephen Berman  
Title: CEO

*[Signature Page to Registration Rights Agreement]*

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**IN WITNESS WHEREOF**, the Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

**HOLDER:**

**OASIS INVESTMENTS II MASTER FUND LTD.**

By: /s/ Phillip Meyer  
Name: Phillip Meyer  
Title: Director

*[Signature Page to Registration Rights Agreement]*

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SCHEDULE I

Holder	Holder Address and Facsimile Number	Holder's Representative's Address and Facsimile Number
<b>Oasis Investments II Master Fund Ltd.</b>	c/o Oasis Legal Oasis Management (Hong Kong) LLC 21st Floor, Man Yee Building 68 Des Voeux Road, Central Hong Kong Attention: General Counsel Telephone: +1 (852) 2847 7708 E-mail: OasisLegal@oasiscm.com & ashoghi@us.oasiscm.com	Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022 Attn: Eleazer Klein, Esq. Facsimile: (212) 593-5955 Telephone: (212) 756-2000 Email: eleazer.klein@srz.com

*[Signature Page to Registration Rights Agreement]*

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**FORM OF NOTICE OF EFFECTIVENESS  
OF REGISTRATION STATEMENT**

Computershare Investor Services, Inc.  
8742 Lucent Blvd, Suite 225  
Highlands Ranch, CO 80129  
Attention: Amanda Lewis

Re: JAKKS Pacific, Inc.

Ladies and Gentlemen:

[We are][I am] counsel to JAKKS Pacific, Inc., a Delaware corporation (the "**Company**"), and have represented the Company in connection with that certain Exchange Agreement, dated as of July [·], 2018 (the "**Exchange Agreement**"), entered into by and among the Company and the holder named therein (collectively, the "**Holder**") pursuant to which the Company issued to the Holders senior convertible notes (the "**2018 Exchange Notes**") pursuant to which shares of the Company's common stock, par value \$0.001 per share (the "**Common Stock**") are issuable thereunder. Pursuant to the Exchange Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the "**Registration Rights Agreement**") pursuant to which the Company agreed, among other things, to register the resale of the Registrable Securities (as defined in the Registration Rights Agreement), including the shares of Common Stock issuable upon conversion of the 2018 Exchange Notes and as payment of interest under the Securities Act of 1933, as amended (the "**1933 Act**"). In connection with the Company's obligations under the Registration Rights Agreement, on \_\_\_\_\_, 2018, the Company filed a Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") relating to the Registrable Securities which names each of the Holders as a selling shareholder thereunder.

In connection with the foregoing, [we][I] advise you that a member of the SEC's staff has advised [us][me] by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and [we][I] have no knowledge, after telephonic inquiry of a member of the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

This letter shall serve as our standing instruction to you that the shares of Common Stock are freely transferable by the Holders pursuant to the Registration Statement. You need not require further letters from us to effect any future legend-free issuance or reissuance of shares of Common Stock to the Holders.

Very truly yours,

[ISSUER'S COUNSEL]

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

CC: [LIST NAMES OF HOLDERS]

*[Signature Page to Registration Rights Agreement]*

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**SELLING SHAREHOLDERS**

The shares of common stock being offered by the selling shareholders are those issuable to the selling shareholders pursuant to the terms of the convertible notes. For additional information regarding the issuance of those convertible notes, see "Exchange of Notes" above. We are registering the shares of common stock in order to permit the selling shareholders to offer the shares for resale from time to time. Except for: (i) the ownership of the convertible notes issued pursuant to the November 2017 Exchange Agreement and the July 2018 Exchange Agreement and certain other securities of the Company and (ii) Alex Shoghi, an employee of the investment manager of Oasis Investments II Master Fund Ltd., serving on the board of directors of the Company, the selling shareholders have not had any material relationship with us within the past three years.

The table below lists the selling shareholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling shareholders. The second column lists the number of shares of common stock beneficially owned by each selling shareholder, based on its ownership of the convertible notes, as of \_\_\_\_\_, 2018, assuming conversion of all convertible notes held by the selling shareholders on that date, without regard to any limitations on conversion, redemption or otherwise.

The third column lists the shares of common stock being offered by this prospectus by the selling shareholders.

In accordance with the terms of a registration rights agreement with the selling shareholders, this prospectus generally covers the resale of at least 100% of the maximum number of shares of common stock issued and issuable pursuant to the terms of the convertible notes (including, without limitation, as payment of interest thereunder) as of the Trading Day immediately preceding the date the registration statement is initially filed with the SEC. Because the conversion price of the convertible notes may be adjusted, the number of shares that will actually be issued may be more or less than the number of shares being offered by this prospectus. The fourth column assumes the sale of all of the shares offered by the selling shareholders pursuant to this prospectus.

Under the terms of the convertible notes, a selling shareholder may not convert the convertible notes to the extent such conversion would cause such selling shareholder, together with its affiliates, to beneficially own a number of shares of common stock which would exceed 9.99% of our then outstanding shares of common stock following such conversion, excluding for purposes of such determination shares of common stock issuable upon conversion of the convertible notes which have not been converted. The number of shares in the second column does not reflect this limitation. The selling shareholders may sell all, some or none of their shares in this offering. See "Plan of Distribution."

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Name of Selling Shareholder	Number of Shares of Common Stock Owned Prior to Offering	Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Owned After Offering
<b>Oasis Investments II Master Fund Ltd. (1)</b>	[·]	[·]	[·]

(1) Oasis Management Company Ltd., the investment manager of Oasis Investments II Master Fund Ltd. ("**Oasis II Fund**"), has voting and investment power over the securities held by Oasis II Fund. Seth Fischer is responsible for the supervision and conduct of all investment activities of Oasis Management Company Ltd. Each of Oasis II Fund and Seth Fischer disclaims beneficial ownership over these securities.

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## PLAN OF DISTRIBUTION

We are registering the shares of common stock issuable pursuant to the terms of the convertible notes to permit the resale of these shares of common stock by the holders of the convertible notes from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling shareholders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling shareholders may sell all or a portion of the shares of common stock beneficially owned by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling shareholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions,

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
  - in the over-the-counter market;
  - in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
  - through the writing of options, whether such options are listed on an options exchange or otherwise;
  - ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
  - block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
  - purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
  - an exchange distribution in accordance with the rules of the applicable exchange;
  - privately negotiated transactions;
  - short sales;
  - sales pursuant to Rule 144;
  - broker-dealers may agree with the selling securityholders to sell a specified number of such shares at a stipulated price per share;
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- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

If the selling shareholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling shareholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling shareholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling shareholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling shareholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling shareholders may pledge or grant a security interest in some or all of the convertible notes or shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended, amending, if necessary, the list of selling shareholders to include the pledgee, transferee or other successors in interest as selling shareholders under this prospectus. The selling shareholders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling shareholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be "underwriters" within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling shareholders and any discounts, commissions or concessions allowed or reallowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

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There can be no assurance that any selling shareholder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling shareholders and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling shareholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[·] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or "blue sky" laws; provided, however, that a selling shareholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling shareholders against liabilities, including some liabilities under the Securities Act, in accordance with the registration rights agreements, or the selling shareholders will be entitled to contribution. We may be indemnified by the selling shareholders against civil liabilities, including liabilities under the Securities Act, that may arise from any written information furnished to us by the selling shareholder specifically for use in this prospectus, in accordance with the related registration rights agreement, or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

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