

**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 14, 2020

SunPower Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34166
(Commission
File Number)

94-3008969
(IRS Employer
Identification No.)

51 Rio Robles, San Jose, California
(Address of principal executive offices)

95134
(Zip Code)

Registrant's telephone number, including area code: (408) 240-5500

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (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))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock	SPWR	NASDAQ

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Agreement.

As previously announced, SunPower Corporation (“SunPower” or the “Company”) intends to contribute certain non-U.S. operations and assets of its SunPower Technologies business unit to Maxeon Solar Technologies, Ltd., a company organized under the laws of Singapore (“Maxeon”), and then to spin off (the “Spin-off”) Maxeon into a separate publicly traded company through a pro rata distribution of the Company’s interest in Maxeon to the Company’s stockholders pursuant to the Separation and Distribution Agreement, dated as of November 8, 2019, between the Company and Maxeon. Pursuant to the Investment Agreement, dated as of November 8, 2019 (as amended, the “Investment Agreement”), between the Company, Tianjin Zhonghuan Semiconductor Co., Ltd. (“TZS”) and, for limited purposes set forth therein, Total Solar INTL SAS, an affiliate of Total S.A (collectively, “Total”), TZS will purchase from Maxeon ordinary shares that will represent 28.848% of the outstanding ordinary shares of Maxeon after giving effect to the Spin-off and TZS investment. As a condition precedent to completing the Spin-off under the Investment Agreement, Maxeon must obtain certain debt financing (the “Debt Financing Condition”). The \$125.0 million of borrowing capacity under the Bank Facilities (as defined below) and the \$200.0 million aggregate principal amount of the Notes (as defined below) will satisfy the Debt Financing Condition in the Investment Agreement.

Issuance of 6.50% Green Convertible Senior Notes due 2025

On July 9, 2020 Maxeon announced that it had priced an offering of \$185.0 million aggregate principal amount of its 6.50% green convertible senior notes due 2025 (the “Notes”) in a private offering to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”). Maxeon also granted the initial purchasers of the Notes an option to purchase up to an additional \$15.0 million principal amount of Notes and such option was exercised in full on July 14, 2020.

On July 17, 2020, Maxeon issued \$200.0 million aggregate principal amount of Notes pursuant to an indenture (the “Indenture”), dated July 17, 2020 between Maxeon and Deutsche Bank Trust Company Americas, as trustee.

The Notes are senior, unsecured obligations of Maxeon and will accrue regular interest at a rate of 6.50% per annum, payable semi-annually in arrears on January 15 and July 15 of each year, beginning on January 15, 2021. Additional interest may accrue on the Notes in certain circumstances. The Notes will mature on July 15, 2025, unless earlier repurchased, redeemed or converted, and are subject to the terms and conditions set forth in the Indenture.

The Notes are not initially convertible. If the Spin-off occurs within three months after July 17, 2020, and certain conditions relating to the physical delivery forward transaction described below are satisfied, then noteholders will have the right to convert their Notes into ordinary shares of Maxeon in certain circumstances and during specified periods. The initial conversion price will be established following the Spin-off, if it occurs, and will represent a premium of approximately 15.00% over the average of the volume-weighted average price per ordinary share of Maxeon over the period (the “Note Valuation Period”) of 15 consecutive trading days beginning on, and including, the fifth trading day after the date on which Maxeon’s ordinary shares are distributed to SunPower’s common stockholders in the Spin-off and such ordinary shares begin to trade “regular way”. However, the initial conversion price will not be less than approximately \$4.60 per ordinary share of Maxeon. Maxeon will settle conversions by paying or delivering, as applicable, cash, ordinary shares of Maxeon or a combination of cash and ordinary shares of Maxeon, at Maxeon’s election.

If the Spin-off does not occur within three months after the Notes are first issued, if Maxeon determines on any earlier date that it will not consummate the Spin-off, or if certain conditions relating to the physical delivery forward transaction described below are not satisfied by November 16, 2020, then Maxeon will be required to redeem all outstanding Notes at a cash redemption price equal to 101% of their principal amount, plus accrued and unpaid interest, if any. The Notes will be also redeemable, in whole or in part, at a cash redemption price equal to their principal amount, plus accrued and unpaid interest, if any, at Maxeon’s option at any time, and from time to time, on or after July 17, 2023 and on or before the 60th scheduled trading day immediately before the maturity date, but only if the last reported sale price per ordinary share of Maxeon exceeds 130% of the conversion price for a specified period of time. In addition, the Notes will be redeemable, in whole and not in part, at a cash redemption

price equal to their principal amount, plus accrued and unpaid interest, if any, at Maxeon's option in connection with certain changes in tax law. Upon the occurrence of a fundamental change (as defined in the Indenture), noteholders may require Maxeon to repurchase their Notes for cash. The repurchase price will be equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the applicable repurchase date.

The Indenture sets forth certain events of default after which the Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving Maxeon after which the Notes become automatically due and payable. The Indenture provides that Maxeon shall not consolidate with or merge with or into, or (directly, or indirectly through one or more of its subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the consolidated assets of Maxeon and its subsidiaries, taken as a whole, to another person, unless: (i) the resulting, surviving or transferee person (if not Maxeon) is a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia or Singapore, and such corporation (if not Maxeon) expressly assumes by supplemental indenture all of Maxeon's obligations under the Notes and the Indenture; and (ii) immediately after giving effect to such transaction, no default or event of default has occurred and is continuing under the Indenture.

The foregoing description of the Indenture does not purport to be complete and is qualified in its entirety by reference to the full text of the Indenture, which is filed as Exhibit 4.1 hereto and incorporated herein by reference.

Bank Facilities

On July 14, 2020, Maxeon and/or its subsidiaries (collectively, the "Maxeon Group") entered into the following debt facilities with a syndicate of lenders (the "Bank Facilities"):

- a \$55.0 million term loan facility available to SunPower Philippines Manufacturing Ltd. (the "Philippines Term Loan"), which is a subsidiary of Maxeon;
- a \$50.0 million working capital facility available to Maxeon (the "Singapore Working Capital Facility"); and
- a \$20.0 million term loan facility available to Maxeon (the "Singapore Term Loan" and, together with the Philippines Term Loan, the "Term Loans").

Each of the Bank Facilities mature and are repayable in full on July 14, 2023 (the "Termination Date"). The Singapore Working Capital Facility is available to be drawn during the period from the date on which all conditions under the relevant finance documents are satisfied to and including the date falling one month prior to the Termination Date. The Term Loans are available to be drawn by the relevant borrowers for a period of twelve months after the date on which all conditions under the relevant finance documents are satisfied and will be repayable, in equal quarterly instalments over the 18-month period preceding the applicable maturity date.

The Bank Facilities are guaranteed by each of SunPower Systems International Limited, SunPower Systems Sarl, SunPower Corporation Mexico S. de R.L. de C.V., SunPower Energy Solutions France SAS and, in respect of the Philippines Term Loan, by Maxeon Solar Technologies, Ltd.

The Bank Facilities share first-ranking security over certain assets of members of the Maxeon Group on a pari passu basis. The security package includes:

- an all-asset security granted by each of Maxeon Solar Technologies, Ltd., Maxeon Rooster Holdco Ltd. and SunPower Philippines Manufacturing Ltd;
- security over the shares of SunPower Manufacturing Corporation Limited, SunPower Energy Corporation Limited, SunPower Corporation Limited, SunPower Energy Solutions France SAS, Maxeon Rooster Holdco Ltd. and SunPower Philippines Manufacturing Ltd.;

- debt service reserve accounts, which are required to hold scheduled principal and interest payments for a period of six months (in respect of each of the Philippines Term Loan and the Singapore Term Loan); and
- certain other security as may be required by the lenders of the Bank Facilities, including as conditions subsequent, security over certain land in the Philippines owned or leased by SPML Land, Inc. (a company 39.99% of the issued share capital of which is currently held by SunPower Philippines Manufacturing Ltd.) and, in certain circumstances, second-ranking security over assets the assets of SunPower Malaysia Manufacturing Sdn Bhd.

Interest is payable on any drawn amounts under each Bank Facility at a rate of LIBOR plus an applicable margin (which may be increased until additional security is provided in relation to land in the Philippines owned by SPML Land, Inc.). Various fees and expenses are also payable by the relevant borrower under each Bank Facility, including commitment fees on any undrawn commitments, upfront fees payable when funds are first drawn and fees for the facility agents, security agents and other finance parties.

The Bank Facilities contain representations, undertakings and events of default that Maxeon considers to be usual and customary for similar financing transactions.

Subject to certain negotiated exceptions, the undertakings limit the ability of the Maxeon Group to, among other things:

- incur or guarantee additional indebtedness;
- incur or suffer to exist liens securing indebtedness;
- make or allow to subsist any loans, grant any credit (other than to members of the Maxeon Group);
- pay distributions, redeem or repurchase issued share capital, or repay subordinated debt, in each case to any entity that is not a member of the Maxeon Group;
- acquire any company, business, assets or undertaking or make any investment;
- increase its overall liability under certain agreements that Maxeon is party to as at the time the Bank Facilities are entered into;
- change the profiling of the polysilicon payments under the Back-to-Back Agreement (a form of which is filed as Exhibit 4.5 to Maxeon's Registration Statement on Form 20-F);
- change the proportion of profit margins booked between each of the borrowers under the Bank Facilities and SunPower Malaysia Manufacturing Sdn Bhd from the estimate provided to the lenders in a base case financial model by any more than five percent (5%) from the estimated profit margins required for tax or accounting purposes;
- amend capital expenditure plans for the Maxeon Group without the consent of the lenders; and
- undertake any amalgamation, demerger, merger or corporate reconstruction.

The Bank Facilities also require mandatory prepayment of the Bank Facilities from the receipt of certain insurance and disposal proceeds (if such proceeds are not reinvested within a period of 18 months of their receipt).

The Bank Facilities also include various financial covenants to be maintained on an on-going basis, calculated every financial quarter on a rolling 12-month basis, both on a consolidated basis for the Maxeon Group and, for the purpose of the Philippines Term Loan, on a standalone basis at SunPower Philippines Manufacturing Ltd.

The financial covenants tested on a consolidated basis for the Maxeon Group include the following:

- the ratio of Consolidated Total Net Debt (as defined in the relevant finance documents) to Consolidated Tangible Net Worth (as defined in the relevant finance documents) shall not exceed 0.5;
- the Consolidated Tangible Net Worth shall at all times be greater than \$275.0 million;
- the Consolidated Debt Service Coverage Ratio (as defined in the relevant finance documents) shall at all times be greater than 1.25x; and
- the ratio of Consolidated Total Net Debt to Consolidated EBITDA (as defined in the relevant finance documents) shall not exceed:
 - (i) 3.5x for the test date falling on September 30, 2021;
 - (ii) 3.0x for the test date falling on December 31, 2021;
 - (iii) 2.5x for the test date falling on June 30, 2022; and
 - (iv) 2.25x for each test date thereafter; and
- in respect of the Singapore Working Capital Facility, a minimum liquidity requirement.

If at any time prior to the maturity of the Bank Facilities, Maxeon is required to make any payment in respect of the Notes (excluding any coupon payable on the Notes, cash due upon conversion in lieu of any fractional shares and other than as part of a mandatory redemption prior to the Spin-off, but including (without limitation) any other cash payment in repayment, prepayment and/or redemption (in whole or in part) of the Notes, or any amount payable as the result of an event of default under the Notes), all amounts outstanding under the Bank Facilities are required to be mandatorily prepaid prior to the repayment of the Notes.

On July 14, 2020, the lenders to each Bank Facility as well as the borrowers and guarantors of the Bank Facilities (and other members of the Maxeon Group providing security to the lenders of the Bank Facilities) also entered into an intercreditor agreement that prescribes certain rights of the lenders, including relating to rights to enforce against security and standstill periods.

The foregoing description of the Bank Facilities does not purport to be complete and is qualified in its entirety by reference to the full text of each of the Bank Facilities, which are filed as Exhibit 10.3, Exhibit 10.4, Exhibit 10.5 and Exhibit 10.6 hereto and incorporated herein by reference.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02. Unregistered Sale of Equity Securities.

The description of the Indenture set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Maxeon offered and sold the Notes to the initial purchasers in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and for resale by the initial purchasers to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. Maxeon relied on these exemptions from registration based in part on representations made by the initial purchasers in the purchase agreement dated July 9, 2020 by and among Maxeon and the initial purchasers. The ordinary shares of Maxeon issuable upon conversion of the Notes, if any, have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

To the extent that any ordinary shares of Maxeon are issued upon conversion of the Notes, they will be issued in transactions anticipated to be exempt from registration under the Securities Act by virtue of Section 3(a)(9) thereof because no commission or other remuneration is expected to be paid in connection with conversion of the Notes and any resulting issuance of ordinary shares of Maxeon.

Item 8.01. Other Events.

Prepaid Forward Transaction

On July 17, 2020 and in connection with the issuance of the Notes, Maxeon entered into a privately negotiated forward-starting forward share purchase transaction (the “Prepaid Forward Transaction”) with Merrill Lynch International (the “Prepaid Forward Counterparty”), pursuant to which Maxeon will repurchase approximately \$40 million worth of ordinary shares of Maxeon Solar, subject to the conditions set forth therein, including receipt of required shareholder approvals on an annual basis.

The Prepaid Forward Transaction will become effective on the first day of the Note Valuation Period. The number of ordinary shares of Maxeon to be repurchased under the Prepaid Forward Transaction will be determined based on the arithmetic average of the volume-weighted average prices per ordinary share of Maxeon over the Note Valuation Period, subject to a floor price and subject under Singapore law to a limit in aggregate of no more than 20% of the total number of ordinary shares in Maxeon’s capital as of the date of the annual shareholder repurchase approval (calculated together with the number of ordinary shares to be repurchased in connection with the Physical Delivery Forward Transaction (as described below)), and Maxeon will prepay the forward purchase price in cash using a portion of the net proceeds from the sale of the Notes. Under the terms of the Prepaid Forward Transaction, the Prepaid Forward Counterparty will be obligated to deliver the number of ordinary shares of Maxeon underlying the transaction to Maxeon, or pay cash to the extent Maxeon fails to provide to Prepaid Forward Counterparty evidence of a valid shareholder authorization, on or shortly after the maturity date of the Notes, subject to the ability of the Prepaid Forward Counterparty to elect to settle all or a portion of the transaction early.

The foregoing description of the Prepaid Forward Transaction does not purport to be complete and is qualified in its entirety by reference to the full text of confirmation for the Prepaid Forward Transaction, which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

Physical Delivery Forward Transaction

On July 17, 2020 and in connection with the issuance of the Notes, Maxeon entered into a privately negotiated forward-starting physical delivery forward transaction (the “Physical Delivery Forward Transaction” and, together with the Prepaid Forward Transaction, the “Forward Transactions”), with Merrill Lynch International (the “Physical Delivery Forward Counterparty,” together with the Prepaid Forward Counterparty, the “Forward Counterparties”), with respect to approximately \$60 million worth of ordinary shares of Maxeon (the “Physical Delivery Maxeon Shares”), pursuant to which the Physical Delivery Forward Counterparty agreed to deliver the Physical Delivery Maxeon Shares to Maxeon or a third party-trustee designated by Maxeon for no consideration at or around the maturity of the Notes subject to the conditions set forth in the agreements governing the Physical Delivery Forward Transaction. The Physical Delivery Forward Transaction will become effective on the first day of the Note Valuation Period.

The number of ordinary shares of Maxeon underlying the Physical Delivery Forward Transaction is approximately \$60 million worth of ordinary shares of Maxeon to be issued and sold by Maxeon to one or more of the initial purchasers or their affiliates (the “Underwriters”), to be sold during the Note Valuation Period in a registered offering off of Maxeon’s registration statement on Form F-3 to be filed with the Securities and Exchange Commission at prevailing market prices at the time of sale or at negotiated prices. The Underwriters will receive all of the proceeds from the sale of such ordinary shares of Maxeon. Maxeon will not receive any proceeds from the sale of such ordinary shares of Maxeon. This Current Report on Form 8-K does not constitute an offer of ordinary shares of Maxeon pursuant to the Physical Delivery Forward Transaction.

The Forward Transactions are generally expected to facilitate privately negotiated derivative transactions, including swaps, between the Forward Counterparties and investors in the Notes relating to ordinary shares of Maxeon by which investors in the Notes will establish short positions relating to ordinary shares of Maxeon and otherwise hedge their investments in the Notes concurrently with the Note Valuation Period.

While the sales of ordinary shares of Maxeon during the Note Valuation Period in a registered offering in connection with the Physical Delivery Forward Transaction could cause the market price of ordinary shares of Maxeon to be lower, the entry into the Forward Transactions and the entry by the Forward Counterparties into derivative transactions in respect of ordinary shares of Maxeon with the purchasers of the Notes could have the effect of increasing, or reducing the size of any decrease in, the price of ordinary shares of Maxeon during and/or shortly after, the Note Valuation Period.

Neither Maxeon nor the Forward Counterparties will control how such purchasers of the Notes may use such derivative transactions. In addition, such purchasers may enter into other transactions relating to ordinary shares of Maxeon or the Notes in connection with or in addition to such derivative transactions, including the purchase or sale of ordinary shares of Maxeon. As a result, the existence of the Forward Transactions, such derivative transactions and any related market activity could cause more purchases or sales of ordinary shares of Maxeon over the term of the Forward Transactions than there otherwise would have been had Maxeon not entered into the Forward Transactions, and such purchases or sales could potentially increase (or reduce the size of any decrease in) or decrease (or reduce the size of any increase in) the market price of ordinary shares of Maxeon and/or the trading prices of the Notes.

In addition, in connection with the settlement or unwind of the Forward Transactions, the Forward Counterparties may purchase ordinary shares of Maxeon, and such purchases may have the effect of increasing, or preventing a decline in, the market price of ordinary shares of Maxeon.

The foregoing description of the Physical Delivery Forward Transaction does not purport to be complete and is qualified in its entirety by reference to the full text of confirmation for the Physical Delivery Forward Transaction, which is filed as Exhibit 10.2 hereto and incorporated herein by reference.

Forward-Looking Statements

This Current Report includes forward-looking statements that are subject to risks, contingencies or uncertainties. You can identify forward-looking statements by words such as “anticipate,” “believe,” “commitment,” “could,” “design,” “estimate,” “expect,” “forecast,” “goal,” “guidance,” “imply,” “intend,” “may,” “objective,” “opportunity,” “outlook,” “plan,” “policy,” “position,” “potential,” “predict,” “priority,” “project,” “proposition,” “prospective,” “pursue,” “seek,” “should,” “strategy,” “target,” “will,” “would” or other similar expressions that convey the uncertainty of future events or outcomes. Forward-looking statements are not guarantees of future performance, and you should not rely unduly on them, as they involve risks, uncertainties and assumptions that we cannot predict. Material differences between actual results and any future performance suggested in our forward-looking statements could result from a variety of factors, such as the severity and duration of the COVID-19 pandemic and its impact on global economic conditions and our ability to consummate the contemplated Spin-off and Investment. Many of such factors are beyond our control. These factors also include such risks and uncertainties detailed in SunPower’s periodic public filings with the SEC, including but not limited to those discussed under “Risk Factors” in Maxeon’s Form 20-F and SunPower’s annual report on Form 10-K for the year ended December 29, 2019 and its quarterly Form 10-Q filings, and in other SunPower investor communications from time to time. SunPower undertakes no obligation to update any forward-looking statement except to the extent required by applicable law.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

Exhibit Number	Description
4.1	<u>Indenture, dated as of July 17, 2020, between Maxeon Solar Technologies, Ltd. and Deutsche Bank Trust Company Americas, as Trustee</u>
4.2	<u>Form of Global Note, representing Maxeon Solar Technologies, Ltd.'s 6.50% Green Convertible Senior Notes due 2025 (included as Exhibit A to the Indenture filed as Exhibit 4.1)</u>
10.1	<u>Prepaid Forward Share Purchase Confirmation, dated as of July 17, 2020, by and between Maxeon Solar Technologies, Ltd. and Merrill Lynch International</u>
10.2	<u>Physical Delivery Forward Confirmation, dated as of July 17, 2020, by and between Maxeon Solar Technologies, Ltd. and Merrill Lynch International</u>
10.3	<u>Common Terms Agreement, dated as of July 14, 2020, by and among Maxeon Solar Technologies, Ltd. and SunPower Philippines Manufacturing Ltd., as Borrowers, Maxeon Solar Technologies, Ltd., SunPower Systems Sarl, SunPower Energy Solutions France S.A.S. and SunPower Corporation Mexico S. de R.L. de C.V. as Guarantors, the Lenders party thereto and DBS Bank Ltd. as Intercreditor Agent, Facility Agent and Security Agent</u>
10.4	<u>Term Facility Agreement, dated as of July 14, 2020, by and between Maxeon Solar Technologies, Ltd. and DBS Bank Ltd., as Facility Agent</u>
10.5	<u>SunPower Philippines Facility Agreement, dated as of July 14, 2020, by and among SunPower Philippines Manufacturing Ltd., as the Borrower, the Lenders party thereto and DBS Bank Ltd. as the Facility Agent</u>
10.6	<u>Working Capital Facility Agreement, dated as of July 14, 2020, by and among Maxeon Solar Technologies, Ltd., as the Borrower, the Lenders party thereto, and DBS Bank Ltd. as the Facility Agent</u>
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL

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.

SUNPOWER CORPORATION

By: /s/ Manavendra S. Sial
Name: Manavendra S. Sial
Title: Executive Vice President and Chief Financial Officer

Date: July 20, 2020

MAXEON SOLAR TECHNOLOGIES, LTD.

and

DEUTSCHE BANK TRUST COMPANY AMERICAS

as Trustee

INDENTURE

Dated as of July 17, 2020

6.50% Green Convertible Senior Notes due 2025

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Exhibit B-2:	Form of Global Note Legend	B2-1
Exhibit B-3:	Form of Non-Affiliate Legend	B3-1

INDENTURE, dated as of July 17, 2020, between Maxeon Solar Technologies, Ltd. (Company Registration No: 201934268H), a company incorporated in Singapore, as issuer (the “**Company**”) and Deutsche Bank Trust Company Americas, as trustee (the “**Trustee**”).

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 6.50% Green Convertible Senior Notes due 2025 (the “**Notes**”).

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01. DEFINITIONS.

“**Additional Interest**” means any interest that accrues on any Note pursuant to **Section 3.04**.

“**Affiliate**” has the meaning set forth in Rule 144 as in effect on the Issue Date.

“**Authorized Denomination**” means, with respect to a Note, a principal amount thereof equal to \$1,000 or any integral multiple of \$1,000 in excess thereof.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

“**Bid Solicitation Agent**” means the Person who is required to obtain bids for the Trading Price in accordance with **Section 5.01(C)(i)(2)** and the definition of “Trading Price.” The initial Bid Solicitation Agent on the Issue Date will be the Company; *provided, however*, that the Company may appoint any other Person (including any of the Company’s Subsidiaries) to be the Bid Solicitation Agent at any time after the Issue Date without prior notice to Holders.

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

“**Business Day**” means any day other than a Saturday, a Sunday or any day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Capital Stock**” of any Person means any and all shares of, interests in, rights to purchase, warrants or options for, participations in, or other equivalents of, in each case however designated, the equity of such Person, but excluding any debt securities convertible into or exchangeable for such equity.

“**Change in Tax Law**” means any change or amendment in the laws, rules or regulations of a Relevant Taxing Jurisdiction, or any change in an official written interpretation, administration or application of such laws, rules or regulations by any legislative body, court, governmental taxing authority or regulatory or administrative authority of such Relevant Taxing Jurisdiction (including the enactment of any legislation and the publication of any judicial decision or regulatory or administrative interpretation or determination) affecting taxation, which change or amendment (A)

had not been publicly announced before; and (B) becomes effective on or after July 9, 2020 (or, if the Relevant Taxing Jurisdiction was not a Relevant Taxing Jurisdiction on such date, the date on which such Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction).

“**Close of Business**” means 5:00 p.m., New York City time.

“**Company**” means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

“**Company Order**” means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

“**Conversion Date**” means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to convert such Note are satisfied.

“**Conversion Price**” means, as of any time at or after the determination of the Initial Conversion Rate, an amount equal to (A) one thousand dollars (\$1,000) *divided by* (B) the Conversion Rate in effect at such time.

“**Conversion Rate**” initially means a number of Ordinary Shares per \$1,000 principal amount of Notes equal to the Initial Conversion Rate; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5** ; *provided, further*, that whenever this Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

“**Conversion Share**” means any Ordinary Share issued or issuable upon conversion of any Note.

“**Convertibility Commencement Calendar Quarter**” means the calendar quarter in which the Convertibility Commencement Date occurs; *provided, however*, that if the last Scheduled Trading Day of such calendar quarter is less than thirty (30) Scheduled Trading Days after the Convertibility Commencement Date, then the Convertibility Commencement Calendar Quarter will instead be the next calendar quarter.

“**Convertibility Commencement Date**” means the second (2nd) Business Day immediately after the last VWAP Trading Day of the Note Valuation Period.

“**Current Reporting Rule 144 Period**” means, with respect to any Note, the period that (A) begins on, and includes, the later of (i) the date that is six (6) months after the Last Original Issue Date of such Note; and (ii) the date that is ninety (90) calendar days after the Exchange Act Reporting Commencement Date (or, with respect to this **clause (ii)**, such earlier date, if any, on which the ninety (90)-day period referred to in Rule 144(c)(1) has been satisfied, including, if applicable, pursuant to paragraph 8 of SEC Staff Legal Bulletin No. 4); and (B) ends on the date that is one (1) year after such Last Original Issue Date.

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

“Daily Conversion Value” means, with respect to any VWAP Trading Day, one-sixtieth (1/60th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per Ordinary Share on such VWAP Trading Day.

“Daily Maximum Cash Amount” means, with respect to the conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) sixty (60).

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

“Daily VWAP” means, for any VWAP Trading Day, the per share volume-weighted average price of the Ordinary Shares as displayed under the heading “Bloomberg VWAP” on Bloomberg page identified by “MAXN” (or such other ticker symbol for such Ordinary Shares) appended by the suffix “<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 VWAP Trading Day (or, if such volume-weighted average price is unavailable, the market value of one Ordinary Share on such VWAP Trading Day, reasonably 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.

“De-Legending Deadline Date” means, with respect to any Note, the fifteenth (15th) day after the Free Trade Date of such Note; *provided, however*, that if such fifteenth (15th) day is after a Regular Record Date and on or before the next Interest Payment Date, then the De-Legending Deadline Date for such Note will instead be the Business Day immediately after such Interest Payment Date.

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

“Default Settlement Method” means Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes; *provided, however*, that (x) subject to **Section 5.03(A)(iii)**, the Company may, from time to time, change the Default Settlement Method by sending notice of the new Default Settlement Method to the Holders, the Trustee and the Conversion Agent; and (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**.

“Depository” means The Depository Trust Company or its successor.

“Depository Participant” means any member of, or participant in, the Depository.

“Depository Procedures” means, with respect to any conversion, transfer, exchange or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository applicable to such conversion, transfer, exchange or transaction.

“Escrow Agent” means Bank of America, National Association.

“Escrow Agreement” means that certain escrow agreement, dated July 9, 2020, among the Company, the Trustee and the Escrow Agent.

“Ex-Dividend Date” means, with respect to an issuance, dividend or distribution on the Ordinary Shares, the first date on which Ordinary Shares trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Ordinary Shares under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended.

“Exchange Act Reporting Commencement Date” means the earlier of (A) the date the Maxeon Spin-Off Form 20-F has become effective under the Exchange Act; and (B) the first date on which the Company has otherwise become subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

“Free Trade Date” means, with respect to any Note, the date that is one (1) year after the Last Original Issue Date of such Note.

“Freely Tradable” means, with respect to any Note, that such Note would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that, during the Current Reporting Rule 144 Period, any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time); *provided, however*, that from and after the Free Trade Date of such Note, such Note will not be “Freely Tradable” unless such Note (x) is not identified by a “restricted” CUSIP or ISIN number; and (y) is not represented by any certificate that bears the Restricted Note Legend. For the avoidance of doubt, whether a Note is deemed to be identified by a “restricted” CUSIP or ISIN number or to bear the Restricted Note Legend is subject to **Section 2.12**.

“Fundamental Change” means any of the following events:

(A) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly Owned Subsidiaries, or their respective employee

benefit plans), files a Schedule TO (or any successor schedule, form or report) or any report under the Exchange Act disclosing that such person or group has become, as of any date after the Maxeon Spin-Off Distribution Date, the direct or indirect “beneficial owner” (as defined below) of Ordinary Shares representing more than fifty percent (50%) of the voting power of all of the Ordinary Shares; *provided, however*, that, for purposes of this **clause (A)**, no person or group will be deemed to be a beneficial owner of any securities tendered pursuant to a tender offer or exchange offer made by or on behalf of such person or group until such tendered securities are accepted for purchase or exchange in such offer;

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (other than solely in connection with the Maxeon Spin-Off), other than solely to one or more of the Company’s Wholly Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) (other than changes solely resulting from a subdivision or combination of the Ordinary Shares or solely a change in the par value or nominal value of the Ordinary Shares) all of the Ordinary Shares are exchanged for, converted into, acquired for, or constitute solely the right to receive, other securities, cash or other property; *provided, however*, that any transaction described in **clause (B)(ii)** above pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)** ;

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

(D) at any time after the Convertibility Commencement Date, the Ordinary Shares are not listed on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors);

provided, however, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Ordinary Shares (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of ordinary shares or shares of common stock or other corporate common equity listed on any of The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes an Ordinary Share Change Event whose Reference Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a “**beneficial owner**” and whether shares are “**beneficially owned**” will be determined in accordance with Rule 13d-3 under the Exchange Act.

“**Fundamental Change Repurchase Date**” means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

“**Fundamental Change Repurchase Notice**” means a notice (including a notice substantially in the form of the “Fundamental Change Repurchase Notice” set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

“**Global Note**” means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depositary or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depositary.

“**Global Note Legend**” means a legend substantially in the form set forth in **Exhibit B-2**.

“**Holder**” means a person in whose name a Note is registered on the Registrar’s books.

“**Indenture**” means this Indenture, as amended or supplemented from time to time.

“**Initial Conversion Rate**” means a number of Ordinary Shares per \$1,000 principal amount of Notes equal to the following amount (rounded down to the nearest fourth (4th) decimal place):

$$\frac{\$1,000}{(1 + Premium) \times RP}$$

where:

Premium = fifteen percent (15.00%); and

RP = the Maxeon Spin-Off Reference Price.

“**Initial Purchasers**” means BofA Securities, Inc., Merrill Lynch (Singapore) Pte. Ltd., Morgan Stanley Asia (Singapore) Pte. and DBS Bank Ltd.

“**Interest Payment Date**” means, with respect to a Note, each January 15 and July 15 of each year, commencing on January 15, 2021 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

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

“Issue Date” means July 17, 2020.

“Last Original Issue Date” means (A) with respect to any Notes issued pursuant to the Purchase Agreement (including any Notes issued pursuant to the exercise of the Shoe Option by the Initial Purchasers), and any Notes issued in exchange therefor or in substitution thereof, the later of (i) the Issue Date and (ii) the last date any Notes are originally issued pursuant to the exercise of the Shoe Option; and (B) with respect to any Notes issued pursuant to **Section 2.03(B)**, and any Notes issued in exchange therefor or in substitution thereof, either (i) the later of (x) the date such Notes are originally issued and (y) the last date any Notes are originally issued as part of the same offering pursuant to the exercise of an option granted to the initial purchasers of such Notes to purchase additional Notes; or (ii) such other date as is specified in an Officer’s Certificate delivered to the Trustee before the original issuance of such Notes.

“Last Reported Sale Price” of the Ordinary Shares for any Trading Day means the closing sale price per Ordinary Share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per Ordinary Share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per Ordinary Share) on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Ordinary Shares are then listed. If the Ordinary Shares are not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per Ordinary Share on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Ordinary Shares are not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per Ordinary Share on such Trading Day from each of at least three (3) nationally recognized independent investment banking firms selected by the Company. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price.

“Make-Whole Event” means (A) a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition) (an event referred to in this **clause (A)**, a **“Make-Whole Fundamental Change”**); or (B) the sending of a Redemption Notice pursuant to **Section 4.03(G)** in respect of a Provisional Redemption or a Tax Redemption; *provided, however*, that the sending of a Redemption Notice for a Provisional Redemption of less than all of the outstanding Notes will constitute a Make-Whole Event only with respect to the Notes called (or deemed to be called pursuant to **Section 4.03(K)**) for Provisional Redemption pursuant to such Redemption Notice and not with respect to any other Notes. For the avoidance of doubt, the sending of any Redemption Notice for a Tax Redemption will constitute a Make-Whole Event with respect to all outstanding Notes.

“Make-Whole Event Conversion Period” has the following meaning:

(A) in the case of a Make-Whole Event pursuant to **clause (A)** of the definition thereof, the period from, and including, the Make-Whole Event Effective Date of such Make-Whole Event to, and including, the thirty fifth (35th) Trading Day after such Make-Whole Event Effective Date (or, if such Make-Whole Event also constitutes a Fundamental Change, to, but excluding, the related Fundamental Change Repurchase Date); and

(B) in the case of a Make-Whole Event pursuant to **clause (B)** of the definition thereof, the period from, and including, the Redemption Notice Date for the related Redemption to, and including, the second (2nd) Business Day immediately before the related Redemption Date;

provided, however, that if the Conversion Date for the conversion of a Note that has been called (or deemed, pursuant to **Section 4.03(K)**, to be called) for Redemption occurs during the Make-Whole Event Conversion Period for both a Make-Whole Fundamental Change occurring pursuant to **clause (A)** of the definition of “Make-Whole Event” and a Make-Whole Event resulting from such Redemption pursuant to **clause (B)** of such definition, then, notwithstanding anything to the contrary in **Section 5.07**, solely for purposes of such conversion, (x) such Conversion Date will be deemed to occur solely during the Make-Whole Event Conversion Period for the Make-Whole Event with the earlier Make-Whole Event Effective Date; and (y) the Make-Whole Event with the later Make-Whole Event Effective Date will be deemed not to have occurred.

“Make-Whole Event Effective Date” means (A) with respect to a Make-Whole Event pursuant to **clause (A)** of the definition thereof, the date on which such Make-Whole Event occurs or becomes effective; and (B) with respect to a Make-Whole Event pursuant to **clause (B)** of the definition thereof, the applicable Redemption Notice Date.

“Make-Whole Fundamental Change” has the meaning set forth in the definition of Make-Whole Event.

“Market Disruption Event” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Ordinary Shares are listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Ordinary Shares or in any options contracts or futures contracts relating to the Ordinary Shares.

“Maturity Date” means July 15, 2025.

“Maxeon Form F-3” means the registration statement of the Company on Form F-3 under the Securities Act to be filed by the Company with the SEC as described in the Offering Memorandum.

“Maxeon Spin-Off” means the series of transactions whereby (A) no later than the Maxeon Spin-Off Deadline Date, Ordinary Shares held by SunPower Corporation are distributed to the holders of common stock of SunPower Corporation substantially in the manner described in the

Maxeon Spin-Off Form 20-F, including the ratio, set forth in the Maxeon Spin-Off Form 20-F, of the number of Ordinary Shares to be issued per outstanding share of common stock of SunPower Corporation; and (B) Maxeon Solar Technologies, Pte. Ltd. is converted to a public company under the Singapore Companies Act, which public company's Ordinary Shares are distributed as contemplated in **clause (A)**; *provided, however*, that the Maxeon Spin-Off will be deemed not to occur unless such Ordinary Shares are, when so distributed, listed (or approved for listing) on The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors).

"Maxeon Spin-Off Deadline Date" means the date that is three (3) months after the Issue Date (or, if earlier, the date on which the Company delivers a notice to the Trustee and the Escrow Agent that it will not consummate the Maxeon Spin-Off).

"Maxeon Spin-Off Distribution Date" means the first date on which (A) the Ordinary Shares have been distributed, pursuant to the Maxeon Spin-Off, to the holders of common stock of SunPower Corporation; and (B) the Ordinary Shares trade "regular way" on the applicable exchange.

"Maxeon Spin-Off Form 20-F" means the registration statement under Section 12 of the Exchange Act relating to the Ordinary Shares in the form in which such registration statement is incorporated by reference into the Offering Memorandum as of its date.

"Maxeon Spin-Off Reference Price" means the greater of (A) four dollars (\$4.00); and (B) the average of the Daily VWAPs per Ordinary Share over the Note Valuation Period.

"Maximum Conversion Rate" initially means a number of Ordinary Shares per \$1,000 principal amount of Notes equal to the amount (rounded down to the nearest fourth (4th) decimal place) obtained by dividing (A) \$1,000 by (B) the Maxeon Spin-Off Reference Price; *provided, however*, that the Maximum Conversion Rate will be subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05**.

"Note Valuation Period" means the fifteen (15) consecutive VWAP Trading Days beginning on, and including, the later of (A) the fifth (5th) VWAP Trading Day immediately after the Maxeon Spin-Off Distribution Date; and (B) the VWAP Trading Day immediately after the first date on which the Note Valuation Period Conditions Precedent have been satisfied.

The **"Note Valuation Period Conditions Precedent"** will be deemed to be satisfied if (A) the Maxeon Form F-3 has been declared effective under the Securities Act; and (B) the underwriting agreement contemplated by the physical delivery forward transaction, as described under the caption "Description of the Physical Delivery Forward Transaction" in the Offering Memorandum, has been executed and delivered by the Company and the underwriters party thereto.

"Non-Affiliate Legend" means a legend substantially in the form set forth in **Exhibit B-3**.

“Note Agent” means any Registrar, Paying Agent or Conversion Agent.

“Notes” means the 6.50% Green Convertible Senior Notes due 2025 issued by the Company pursuant to this Indenture.

“Observation Period” means, with respect to any Note to be converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs on or before the sixty fifth (65th) Scheduled Trading Day immediately before the Maturity Date, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the third (3rd) VWAP Trading Day immediately after such Conversion Date; (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling all or any Notes for Provisional Redemption or Tax Redemption pursuant to **Section 4.03(G)** and before the related Redemption Date, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the sixty first (61st) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs after the sixty fifth (65th) Scheduled Trading Day immediately before the Maturity Date, the sixty (60) consecutive VWAP Trading Days beginning on, and including, the sixty first (61st) Scheduled Trading Day immediately before the Maturity Date.

“Offering Memorandum” means the Company’s preliminary offering memorandum relating to the offering of the Notes, dated July 9, 2020, as supplemented by the related pricing term sheet, dated July 9, 2020.

“Officer” means the any member of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

“Officer’s Certificate” means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section 11.03**.

“Open of Business” means 9:00 a.m., New York City time.

“Opinion of Counsel” means an opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) reasonably acceptable to the Trustee, that meets the requirements of **Section 11.03**, subject to customary qualifications and exclusions.

“Ordinary Shares” means the ordinary shares, no par value per share, of the Company, subject to **Section 5.09**.

“Person” or **“person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Indenture.

“Physical Note” means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

“Purchase Agreement” means that certain Purchase Agreement, dated July 9, 2020, between the Company and the Initial Purchasers.

“Redemption” means a Provisional Redemption, a Tax Redemption or a Mandatory Redemption.

“Redemption Date” means (A) the date fixed, pursuant to **Section 4.03(E)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Provisional Redemption or a Tax Redemption; or (B) a Mandatory Redemption Date.

“Redemption Notice Date” means, with respect to a Provisional Redemption or a Tax Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(G)**.

“Redemption Price” means (A) in the case of a Provisional Redemption or Tax Redemption, the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(F)**; and (B) in the case of a Mandatory Redemption the cash price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.04(B)**.

“Regular Record Date” has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on January 15, the immediately preceding January 1; and (B) if such Interest Payment Date occurs on July 15, the immediately preceding July 1.

“Repurchase Upon Fundamental Change” means the repurchase of any Note by the Company pursuant to **Section 4.02**.

“Responsible Officer” means (A) any officer within the Corporate Trust Administration of the Trustee (or any successor group of the Trustee) having direct responsibility for the administration of this Indenture; and (B) with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of, and familiarity with, the particular subject.

“Restricted Note Legend” means a legend substantially in the form set forth in **Exhibit B-1**.

“Restricted Share Legend” means, with respect to any Conversion Share, a legend substantially to the effect that the offer and sale of such Conversion Share have not been registered under the Securities Act and that such Conversion Share cannot be sold or otherwise transferred except pursuant to a transaction that is registered under the Securities Act or that is exempt from, or not subject to, the registration requirements of the Securities Act.

“Rule 144” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“Rule 144A” means Rule 144A under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“Scheduled Trading Day” means any day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange on which the Ordinary Shares are then listed or, if the Ordinary Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Ordinary Shares are then traded. If the Ordinary Shares are not so listed or traded, then “Scheduled Trading Day” means a Business Day.

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

“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Security” means any Note or Conversion Share.

“Settlement Method” means Cash Settlement, Physical Settlement or Combination Settlement.

“Share Price” has the following meaning for any Make-Whole Event: (A) if the holders of the Ordinary Shares receive only cash in consideration for their Ordinary Shares in such Make-Whole Event and such Make-Whole Event is pursuant to **clause (B)** of the definition of “Fundamental Change,” then the Share Price is the amount of cash paid per Ordinary Share in such Make-Whole Event; and (B) in all other cases, the Share Price is the average of the Last Reported Sale Prices per Ordinary Share for the five consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Event Effective Date of such Make-Whole Event.

“Shoe Option” means the Initial Purchasers’ option to purchase up to fifteen million dollars (\$15,000,000) aggregate principal amount of additional Notes as provided for in the Purchase Agreement.

“Significant Subsidiary” has the meaning set forth in Article I, Rule 1-02(w) of Regulation S-X promulgated by the SEC (or any successor rule); *provided, however*, that if a Subsidiary that meets the criteria of clause (3) of such rule but not clause (1) or (2) thereof, in each case as such rule is in effect on the Issue Date, then such Subsidiary will not be deemed to be a Significant Subsidiary unless such Subsidiary’s income (or loss) from continuing operations before income taxes, exclusive of amounts attributable to any non-controlling interests, for the last completed fiscal year prior to the date of determination exceeds twenty five million dollars (\$25,000,000) (with such amount calculated pursuant to Rule 1-02(w) as in effect on the Issue Date). For the avoidance of doubt, a Subsidiary that satisfies the condition set forth in the proviso to the preceding sentence will not be deemed to be a “Significant Subsidiary” unless such Subsidiary also constitutes a “Significant Subsidiary” within the meaning set forth in Article I, Rule 1-02(w) of Regulation S-X promulgated by the SEC (or any successor rule).

“Special Interest” means any interest that accrues on any Note pursuant to **Section 7.03**.

“Specified Dollar Amount” means, with respect to the conversion of a Note to which Combination Settlement applies, the maximum cash amount per \$1,000 principal amount of such Note deliverable upon such conversion (excluding cash in lieu of any fractional Ordinary Share).

“Subsidiary” means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or shareholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; and (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company.

“Supplemental Interest” means any interest that accrues on any Note pursuant to **Section 3.11**.

“Tax” means any tax, duty, levy, impost, assessment or other governmental charge (including penalties and interest and other similar liabilities related thereto).

“Tax Redemption” means the Redemption of any Note pursuant to **Section 4.03(C)**.

“Trading Day” means any day on which (A) trading in the Ordinary Shares generally occurs on the principal U.S. national or regional securities exchange on which the Ordinary Shares are then listed or, if the Ordinary Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Ordinary Shares are then traded; and (B) there is no Market Disruption Event. If the Ordinary Shares are not so listed or traded, then “Trading Day” means a Business Day.

“Trading Price” of the Notes on any Trading Day means the average of the secondary market bid quotations, expressed as a cash amount per \$1,000 principal amount of Notes, obtained by the Bid Solicitation Agent for five million dollars (\$5,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes at approximately 3:30 p.m., New York City time, on such Trading Day from three (3) nationally recognized independent securities dealers selected by the Company, which may include any of the Initial Purchasers; *provided, however*, that, if three (3) such bids cannot reasonably be obtained by the Bid Solicitation Agent but two (2) such bids are obtained, then the average of the two (2) bids will be used, and if only one (1) such bid can reasonably be obtained by the Bid Solicitation Agent, then that one (1) bid will be used.

If, on any Trading Day, (A) the Bid Solicitation Agent cannot reasonably obtain at least one (1) bid for five million dollars (\$5,000,000) (or such lesser amount as may then be outstanding) in principal amount of Notes from a nationally recognized independent securities dealer; (B) the Company is not acting as the Bid Solicitation Agent and the Company fails to instruct the Bid Solicitation Agent to obtain bids when required; or (C) the Bid Solicitation Agent fails to solicit bids when required, then, in each case, the Trading Price per \$1,000 principal amount of Notes on such Trading Day will be deemed to be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per Ordinary Share on such Trading Day and the Conversion Rate on such Trading Day. Neither the Trustee nor the Conversion Agent will have any responsibility to obtain the Trading Price.

“Transfer-Restricted Security” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and may conclusively rely on an Officer’s Certificate with respect thereto.

“Trust Indenture Act” means the U.S. Trust Indenture Act of 1939, as amended.

“Trustee” means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

“VWAP Market Disruption Event” means, with respect to any date, (A) the failure by the principal U.S. national or regional securities exchange on which the Ordinary Shares are then listed, or, if the Ordinary Shares are not then listed on a U.S. national or regional securities exchange, the principal other market on which the Ordinary Shares are then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Ordinary Shares or in any options contracts or futures contracts relating to the Ordinary Shares, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

“VWAP Trading Day” means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Ordinary Shares generally occurs on the principal U.S. national or regional securities exchange on which the Ordinary Shares are then listed or, if the Ordinary Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Ordinary Shares are then traded. If the Ordinary Shares are not so listed or traded, then “VWAP Trading Day” means a Business Day.

“Wholly Owned Subsidiary” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. OTHER DEFINITIONS.

<u>Term</u>	<u>Defined in Section</u>
“Additional Amounts”	3.05(A)
“Additional Shares”	5.07(A)
“Applicable Terrorism Law”	11.11
“Business Combination Event”	6.01(A)
“Cash Settlement”	5.03(A)
“Combination Settlement”	5.03(A)
“Conversion Agent”	2.06(A)
“Conversion Consideration”	5.03(B)
“Corporate Event”	5.01(C)(i)(3)(b)
“Default Interest”	2.05(B)
“Defaulted Amount”	2.05(B)
“Event of Default”	7.01(A)
“Executed Documentation”	11.01
“Expiration Date”	5.05(A)(v)
“Expiration Time”	5.05(A)(v)
“FATCA”	3.05(A)(iv)
“Fundamental Change Notice”	4.02(E)
“Fundamental Change Repurchase Right”	4.02(A)
“Initial Notes”	2.03(A)
“Mandatory Redemption”	4.04
“Mandatory Redemption Date”	4.04
“Mandatory Redemption Notice”	4.04(C)
“Maxeon Spin-Off Failure”	4.04(A)(i)
“Maxeon Spin-Off Reference Price”	1.01
“Measurement Period”	5.01(C)(i)(2)
“Note Valuation Period Conditions Precedent Failure”	4.04(A)(ii)
“Ordinary Share Change Event”	5.09(A)
“Paying Agent”	2.06(A)

“Physical Settlement”	5.03(A)
“Provisional Redemption”	4.03(B)
“Redemption Notice”	4.03(G)
“Reference Property”	5.09(A)
“Reference Property Unit”	5.09(A)
“Register”	2.06(B)
“Registrar”	2.06(A)
“Relevant Taxing Jurisdiction”	3.05(A)
“Reporting Event of Default”	7.03(A)
“Specified Courts”	11.07
“Spin-Off”	5.05(A)(iii)(2)
“Spin-Off Valuation Period”	5.05(A)(iii)(2)
“Stated Interest”	2.05(A)
“Successor Corporation”	6.01(A)
“Successor Person”	5.09(A)
“Tax Redemption”	4.03(C)
“Tax Redemption Opt-Out Election”	4.03(C)(ii)
“Tax Redemption Opt-Out Election Notice”	4.03(C)(ii)(1)
“Template Make-Whole Table”	5.07(B)
“Tender/Exchange Offer Valuation Period”	5.05(A)(v)
“Trading Price Condition”	5.01(C)(i)(2)
“Transfer Taxes”	3.05(B)
“Underlying Issuer”	5.09(A)

Section 1.03. RULES OF CONSTRUCTION.

For purposes of this Indenture:

- (A) “or” is not exclusive;
- (B) “including” means “including without limitation”;
- (C) “will” expresses a command;
- (D) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (G) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;

- (H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;
- (I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture; and
- (J) the term “**interest**,” when used with respect to a Note, includes any Supplemental Interest, Additional Interest and Special Interest, unless the context requires otherwise.

Article 2. THE NOTES

Section 2.01. FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee’s certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.09** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depositary. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.10**.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided, however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

Section 2.02. EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company.* At least one (1) duly authorized Officer will sign the Notes on behalf of the Company by manual or facsimile signature. A Note’s validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery.*

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually or electronically signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually or electronically sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depositary, then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture, to be authenticated by the Trustee. Each duly appointed authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authentication agent was validly appointed to undertake.

Section 2.03. INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes.* On the Issue Date, there will be originally issued two hundred million dollars (\$200,000,000) aggregate principal amount of Notes, subject to the provisions of this Indenture (including **Section 2.02**). Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the “**Initial Notes**.”

(B) *Additional Notes.* The Company may, subject to the provisions of this Indenture (including **Section 2.02**), originally issue additional Notes with the same terms as the Initial Notes (except, to the extent applicable, with respect to the date as of which interest begins to accrue on such additional Notes and the first Interest Payment Date and the Last Original Issue Date of such additional Notes), which additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Indenture; *provided, however*, that if any such additional Notes (and any Notes that are resold after such Notes have been purchased or otherwise acquired by the Company) are not fungible with other Notes issued under this Indenture for federal income tax or federal securities laws purposes, then such additional Notes will be identified by a separate CUSIP number or by no CUSIP number.

Section 2.04. METHOD OF PAYMENT.

(A) *Global Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Global Note to the Depositary by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, interest on, and any cash Conversion Consideration for, any Physical Note no later than the time the same is due as provided in this Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Paying Agent or the Trustee, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds to such account; and (ii) in all other cases, by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash Conversion Consideration, the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

Section 2.05. ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Accrual of Interest.* Each Note will accrue interest at a rate per annum equal to 6.50% (the “**Stated Interest**”), plus any Supplemental Interest, Additional Interest and Special Interest that may accrue pursuant to **Sections 3.11, 3.04 and 7.03**, respectively. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to **Sections 4.02(D), 4.03(F) and 5.02(D)** (but without duplication of any payment of interest), payable semi-annually in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Supplemental Interest, Additional Interest and Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts.* If the Company fails to pay any amount (a “**Defaulted Amount**”) payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(C) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

Section 2.06. REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

(A) *Generally.* The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the “**Registrar**”); (ii) an office or agency in the continental United States where Notes may be presented for payment (the “**Paying Agent**”); and (iii) an office or agency in the continental United States where Notes may be presented for conversion (the “**Conversion Agent**”). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent or Conversion Agent.

(B) *Duties of the Registrar.* The Registrar will keep a record (the “**Register**”) of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee may treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company’s Right to Appoint Successor Registrars, Paying Agents and Conversion Agents.* The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments.* The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

Section 2.07. PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of Holders or the Trustee all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or

delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Holders or the Trustee all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in this Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (ix) or (x)** of **Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

Section 2.08. HOLDER LISTS.

If the Trustee is not the Registrar, the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

Section 2.09. LEGENDS.

(A) *Global Note Legend.* Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depositary for such Global Note).

(B) *Non-Affiliate Legend.* Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend.* Subject to **Section 2.12**,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, or to effect a partial conversion of, another Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.09(C)(ii)**), including pursuant to **Section 2.10(B)**, **2.10(C)**, **2.11** or **2.13**, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided, however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

(D) *Other Legends.* A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(E) *Acknowledgment and Agreement by the Holders.* A Holder's acceptance of any Note bearing any legend required by this **Section 2.09** will constitute such Holder's acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

(F) *Restricted Share Legend.*

(i) Each Conversion Share will bear the Restricted Share Legend if the Note upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided, however,* that such Conversion Share need not bear the Restricted Share Legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear the Restricted Share Legend.

(ii) Notwithstanding anything to the contrary in this **Section 2.09(F)**, a Conversion Share need not bear a Restricted Share Legend if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in the Restricted Share Legend.

Section 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges.*

(i) Subject to this **Section 2.10**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time and the Registrar will record each such transfer or exchange in the Register.

(ii) Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture, as such old Note or portion thereof, as applicable.

(iii) The Company the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of Notes, but the Company, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Notes, other than exchanges pursuant to **Section 2.11, 2.17** or **8.05** not involving any transfer.

(iv) Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) The Trustee will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under this Indenture or applicable law with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture.

(vi) Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.09**.

(vii) Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(viii) For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section 2.10**, an “exchange” of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a “restricted” CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an “unrestricted” CUSIP number.

(B) *Transfers and Exchanges of Global Notes.*

(i) Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided, however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depositary notifies the Company or the Trustee that the Depositary is unwilling or unable to continue as depositary for such Global Note or (y) the Depositary ceases to be a “clearing agency” registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depositary within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depositary, or from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

(ii) Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to **Section 2.15**);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Global Note bearing each legend, if any, required by **Section 2.09**; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section 2.09**.

(iii) Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) Subject to this **Section 2.10**, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided, however*, that, to effect any such transfer or exchange, such Holder must:

(1) surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and

(2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the “old Physical Note” for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to **Section 2.15**;

(2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.09**; *provided, however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section 2.09** then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; and (y) bear each legend, if any, required by **Section 2.09**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 2.09**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.09**.

(D) *Requirement to Deliver Documentation and Other Evidence.* If a Holder of any Note that is identified by a “restricted” CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

- (i) cause such Note to be identified by an “unrestricted” CUSIP number;
- (ii) remove such Restricted Note Legend; or
- (iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless there is delivered to the Company, the Trustee and the Registrar such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided, however*, that no such certificates, documentation or evidence need be so delivered on and after the Free Trade Date with respect to such Note unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act.

(E) *Transfers of Notes Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for conversion, except to the extent that any portion of such Note is not subject to conversion; (ii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)**, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

Section 2.11. EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED OR TO BE REPURCHASED PURSUANT TO A REPURCHASE UPON FUNDAMENTAL CHANGE OR REDEMPTION.

(A) *Partial Conversions of Physical Notes and Partial Repurchases of Physical Notes Pursuant to a Repurchase Upon Fundamental Change or Redemption.* If only a portion of a Physical Note of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a

Repurchase Upon Fundamental Change or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such conversion or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C)**, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so converted or repurchased, as applicable, which Physical Note will be converted or repurchased, as applicable, pursuant to the terms of this Indenture; *provided, however*, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such conversion or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.18**.

(B) *Cancellation of Notes that Are Converted and Notes that Are Repurchased Pursuant to a Repurchase Upon Fundamental Change or Redemption.*

(i) *Physical Notes.* If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A)**) of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18** and the time such Physical Note is surrendered for such conversion or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section 2.15**; and (2) in the case of a partial conversion or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**.

(ii) *Global Notes.* If a Global Note (or any portion thereof) is to be converted pursuant to **Article 5** or repurchased pursuant to a Repurchase Upon Fundamental Change or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.18**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so converted or repurchased, as applicable, by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section 2.15**).

Section 2.12. REMOVAL OF TRANSFER RESTRICTIONS.

Without limiting the generality of any other provision of this Indenture (including **Section 3.04**), the Restricted Note Legend affixed to any Note will be deemed, pursuant to this **Section 2.12** and the footnote to such Restricted Note Legend, to be removed therefrom upon the Company’s delivery to the Trustee of notice, signed on behalf of the Company by one (1) of its Officers, to such effect (and, for the avoidance of doubt, such notice need not be accompanied by an Officer’s Certificate or an Opinion of Counsel in order to be effective to cause such Restricted

Note Legend to be deemed to be removed from such Note). If such Note bears a “restricted” CUSIP or ISIN number at the time of such delivery, then, upon such delivery, such Note will be deemed, pursuant to this **Section 2.12** and the footnotes to the CUSIP and ISIN numbers set forth on the face of the certificate representing such Note, to thereafter bear the “unrestricted” CUSIP and ISIN numbers identified in such footnotes; *provided, however*, that if such Note is a Global Note and the Depositary thereof requires a mandatory exchange or other procedure to cause such Global Note to be identified by “unrestricted” CUSIP and ISIN numbers in the facilities of such Depositary, then (i) the Company will effect such exchange or procedure as soon as reasonably practicable; and (ii) for purposes of **Section 3.04** and the definition of Freely Tradable, such Global Note will not be deemed to be identified by “unrestricted” CUSIP and ISIN numbers until such time as such exchange or procedure is effected.

Section 2.13. REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a replacement Note upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company and the Trustee to protect the Company and the Trustee from any loss that any of them may suffer if such Note is replaced.

Every replacement Note issued pursuant to this **Section 2.13** will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes issued under this Indenture.

Section 2.14. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, Depositary Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depositary or its nominee, or by the Trustee as its custodian, and the Company, the Trustee and the Note Agents, and their respective agents, may treat the Depositary as the absolute owner of such Global Note for all purposes whatsoever; *provided, however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depositary Participants and Persons that hold interests in Notes through Depositary Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depositary.

Section 2.15. CANCELLATION.

The Company may at any time deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange, payment or conversion. The Trustee will promptly cancel all Notes

so surrendered to it in accordance with its customary procedures. Without limiting the generality of **Section 2.03(B)**, the Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange, payment or conversion.

Section 2.16. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 2.18**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided, however*, that, for purposes of determining whether the Trustee is protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.17. TEMPORARY NOTES.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.18. OUTSTANDING NOTES.

(A) *Generally.* The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with **Section 2.15**; (ii) assigned a principal amount of zero by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of any a Global Note representing such Note; (iii) paid in full (including upon conversion) in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B), (C) or (D)** of this **Section 2.18**.

(B) *Replaced Notes.* If a Note is replaced pursuant to **Section 2.13**, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a “protected purchaser” under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase.* If, on a Redemption Date, a Fundamental Change Repurchase Date or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price or principal amount, respectively, together, in each case, with the aggregate interest, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided

in **Section 4.02(D)**, **4.03(F)** or **5.02(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount, as applicable, of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) *Notes to Be Converted.* At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B)** or **Section 5.02(D)**, upon such conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D)** or **Section 5.08**.

(E) *Cessation of Accrual of Interest.* Except as provided in **Section 4.02(D)**, **4.03(F)** or **5.02(D)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.18**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

Section 2.19. REPURCHASES BY THE COMPANY.

Without limiting the generality of **Section 2.15**, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions without delivering prior notice to Holders. The Company may, to the extent permitted by applicable law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or the Company's Subsidiaries or through a private or public tender or exchange offer or through counterparties pursuant to private agreements, including cash-settled swaps or other derivatives, in each case, without prior notice to, or consent of, the Holders. The Company may, at its option and to the extent permitted by applicable law, reissue, resell or surrender to the Trustee for cancellation any Notes that the Company may repurchase, *provided* that, in the case of any reissuance or resale, the Notes do not constitute "restricted securities" (as defined in Rule 144) and are fungible for U.S. federal income tax purposes with the other Notes issued under this Indenture upon such reissuance or resale, as applicable. Any Notes that the Company may repurchase will be considered "outstanding" under this Indenture (except as provided in **Section 2.16**) unless and until such time the Company causes them to be surrendered to the Trustee for cancellation, and, upon receipt of a written order from the Company, the Trustee will cancel all Notes so surrendered.

Section 2.20. CUSIP AND ISIN NUMBERS.

Subject to **Section 2.12**, the Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that (i) the Trustee makes no representation as to the correctness or accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3. COVENANTS

Section 3.01. PAYMENT ON NOTES.

(A) *Generally.* The Company will pay or cause to be paid all the principal of, the Fundamental Change Repurchase Price and Redemption Price for, interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds.* Before 10:00 A.M., New York City time, on each Redemption Date, Fundamental Change Repurchase Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

Section 3.02. EXCHANGE ACT REPORTS.

(A) *Generally.* From and after the Exchange Act Reporting Commencement Date, the Company will send to the Trustee copies of all reports that the Company is required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act within fifteen (15) calendar days after the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act); *provided, however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC or any correspondence with the SEC. Any report that the Company files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed via the EDGAR system (or such successor). Upon the request of any Holder, the Trustee will provide to such Holder a copy of any report that the Company has sent the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee pursuant to the preceding sentence. For the avoidance of doubt, this **Section 3.02(A)** will not apply at any time before the Exchange Act Reporting Commencement Date.

(B) *Trustee's Disclaimer.* The Trustee need not determine whether the Company has filed any material via the EDGAR system (or such successor). The sending or filing of reports pursuant to **Section 3.02(A)** will not be deemed to constitute constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company's compliance with any of its covenants under this Indenture.

Section 3.03. RULE 144A INFORMATION.

If the Company is not subject to Section 13 or 15(d) of the Exchange Act at any time when any Notes or Ordinary Shares issuable upon conversion of the Notes are outstanding and constitute "restricted securities" (as defined in Rule 144), then the Company (or its successor) will promptly provide, to the Trustee and, upon written request, to any Holder, beneficial owner or prospective purchaser of such Notes or shares, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares pursuant to Rule 144A.

Section 3.04. ADDITIONAL INTEREST.

(A) *Accrual of Additional Interest.*

(i) If, at any time during the Current Reporting Rule 144 Period of any Note,

(1) the Company fails to timely file any report that is required in order for the Company to satisfy the requirements set forth in Rule 144(c)(1) (after giving effect to all grace periods permitted thereunder); or

(2) such Note is not otherwise Freely Tradable,

then Additional Interest will accrue on such Note for each day during such Current Reporting Rule 144 Period on which such failure is continuing or such Note is not Freely Tradable.

(ii) In addition, Additional Interest will accrue on a Note on each day on which such Note is not Freely Tradable on or after the De-Legending Deadline Date for such Note.

(B) *Amount and Payment of Additional Interest.* Any Additional Interest that accrues on a Note pursuant to **Section 3.04(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Additional Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Additional Interest, together with any Special Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Additional Interest that accrues on a Note will be in addition to the Stated Interest and any Supplemental Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Special Interest that accrues on such Note.

(C) *Notice of Accrual of Additional Interest; Trustee's Disclaimer.* The Company will send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest accrues on such Note. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Additional Interest is payable or the amount thereof.

Section 3.05. ADDITIONAL AMOUNTS.

(A) *Requirement to Pay Additional Amounts.* All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to the Notes (including payment of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any premium or interest (including any Additional Interest, Special

Interest or Supplemental Interest) on, or the delivery of any Conversion Consideration due upon conversion of, any Note (together with payments of cash for any fractional share)) will be made without withholding or deduction for, or on account of, any present or future Taxes, unless such withholding or deduction is required by law or regulation or by governmental policy having the force of law. If any Taxes imposed or levied by or on behalf of Singapore, or any jurisdiction (or any political subdivision or taxing authority thereof or therein) in which the Company or any successor to the Company is, for tax purposes, organized or resident or doing business or through which payment or delivery is made or deemed to be made (each such jurisdiction, subdivision or authority, as applicable, a “**Relevant Taxing Jurisdiction**”) are required to be withheld or deducted from any payments or deliveries made under or with respect to the Notes, then, subject to **Section 4.03(C)(ii)**, the Company or any successor to the Company, as applicable, will pay or deliver to the Holder of each Note such additional amounts (the “**Additional Amounts**”) as may be necessary to ensure that the net amount received by the beneficial owner of such Note after such withholding or deduction (and after withholding or deducting any Taxes on the Additional Amounts) will equal the amounts that would have been received by such beneficial owner had no such withholding or deduction been required; *provided, however*, that such obligation to pay Additional Amounts will not apply to:

(i) any Tax that would not have been imposed but for:

(1) the existence of any present or former connection between the Holder or beneficial owner of such Note (or between a fiduciary, settlor, beneficiary, member or shareholder of, or possessor of power over, the relevant holder or beneficial owner, if the relevant holder or beneficial owner is an estate, nominee, trust, partnership, limited liability company or corporation) and the Relevant Taxing Jurisdiction (other than merely holding or being a beneficial owner of such Note or the receipt of payments or enforcement of rights thereunder), including such Holder or beneficial owner being or having been a national, domiciliary or resident, or treated as a resident, of, or being or having been physically present or engaged in a trade or business, or having had a permanent establishment, in, such Relevant Taxing Jurisdiction;

(2) in cases where presentation of such Note is required to receive such payment or delivery, the presentation of such Note after a period of thirty (30) days after the later of (x) the date on which such payment or delivery became due and payable or deliverable, as applicable, pursuant to the terms of this Indenture and (y) the date such payment or delivery was made or duly provided for, except, in each case, to the extent that such Holder or beneficial owner would have been entitled to Additional Amounts if it presented such Note for payment or delivery, as applicable, at the end of such thirty (30) day period; or

(3) the failure of such Holder or beneficial owner to comply with a timely written request from the Company or the Successor Corporation, addressed to such Holder or beneficial owner, to (x) provide certification, information, documentation or other evidence concerning such Holder’s or beneficial owner’s nationality, residence, identity or connection with such Relevant Taxing Jurisdiction; or (y) make any declaration or satisfy any other reporting requirement

relating to such matters, in each case if and to the extent that such Holder or beneficial owner is legally entitled without material burden to comply with such request and due and timely compliance with such request is required by statute, regulation or administrative practice of such Relevant Taxing Jurisdiction in order to reduce or eliminate such withholding or deduction;

(ii) any estate, inheritance, gift, use, sale, transfer, personal property or similar Tax or excise tax imposed on transfer of the Notes;

(iii) any tax that is payable other than by withholding or deduction from payments or deliveries under or with respect to the Notes;

(iv) any withholding or deduction required by (x) sections 1471 through 1474 of the Internal Revenue Code and any current or future U.S. Treasury Regulations or rulings promulgated thereunder (“**FATCA**”); (y) any inter-governmental agreement between the United States and any other non-U.S. jurisdiction to implement FATCA or any law enacted by such other jurisdiction to give effect to such agreement; or (z) any agreement with the U.S. Internal Revenue Service pursuant to Section 1471(b)(1) of the Internal Revenue Code;

(v) any Tax imposed in connection with a Note presented for payment (where presentation is required for payment) by or on behalf of a Holder or beneficial owner who would have been able to avoid such Tax by presenting the relevant Note to, or otherwise accepting payment from, another paying agent;

(vi) any taxes imposed on or with respect to any payment by the Company to such Holder if such Holder is a fiduciary, partnership or person other than the sole beneficial owner of such payment, to the extent that such payment would be required, under the laws of such Relevant Taxing Jurisdiction, to be included for tax purposes in the income of a beneficiary or settlor with respect to such fiduciary, a partner or member of such partnership, or a beneficial owner, who would not have been entitled to such Additional Amounts had such beneficiary, settlor, partner, member or beneficial owner been the Holder thereof; or

(vii) any combination of items referred to in the preceding **clauses (i) through (vi)**, inclusive, above.

(B) *Indemnification for Transfer Taxes.* The Company or any successor to the Company will, jointly and severally, pay and indemnify each Holder and beneficial owner of Notes for any present or future stamp, issue, registration, value added, transfer, court or documentary Taxes, or any other excise, property or similar Taxes (including penalties, interest and any other reasonable expenses related thereto) (“**Transfer Taxes**”) levied by any Relevant Taxing Jurisdiction (and in the case of enforcement, any jurisdiction) on or in connection with the execution, delivery, registration, issuance or enforcement of any of the Notes, this Indenture or any other document or instrument referred to herein or the receipt of any payments or deliveries with respect to the Notes (including the receipt of shares (together with payment of cash for any fractional Share) or other Conversion Consideration).

(C) *Special Provision Regarding Interest.* For the avoidance of doubt, if any Note is called for a Tax Redemption and the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then the Company's obligation to pay Additional Amounts will apply to the interest payment due on such Note on such Interest Payment Date unless such Note is subject to a Tax Redemption Opt-Out Notice.

(D) *Tax Receipts.* If the Company or any successor to the Company is required to make any deduction or withholding from any payments or deliveries with respect to the Notes, then the (i) Company or such successor to the Company will deliver to the Trustee official tax receipts (or, if, after expending reasonable efforts, the Company is unable to obtain such receipts, an Officer's Certificate evidencing the payment of any applicable Taxes so deducted or withheld) evidencing the remittance to the relevant tax authorities of the amounts so withheld or deducted; and (ii) the Trustee or the Company or such successor to the Company will provide a copy of such receipts or evidence, as applicable, to any Holder or beneficial owner of any Notes upon request.

(E) *Interpretation of Indenture and Notes.* All references in this Indenture or the Notes to any payment on, or delivery with respect to, the Notes (including payment of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any premium or interest (including Supplemental Interest, Special Interest or Additional Interest) on, or the delivery of any Conversion Consideration due upon conversion of, any Note (together with payments of cash for any fractional share)) will, to the extent that Additional Amounts are payable in respect thereof, be deemed to include the payment of such Additional Amounts.

(F) *Survival of Obligations.* The obligations set forth in this **Section 3.05** will survive any termination, defeasance or discharge of this Indenture and any transfer of Notes by a Holder (or, in the case of a Global Note, a holder of a beneficial interest therein).

Section 3.06. COMPLIANCE AND DEFAULT CERTIFICATES.

(A) *Annual Compliance Certificate.* Within one hundred twenty (120) days after December 31, 2020, and each fiscal year of the Company ending thereafter, the Company will deliver an Officer's Certificate to the Trustee stating (i) that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal year with a view towards determining whether any Default or Event of Default has occurred; and (ii) whether, to such signatory's knowledge, a Default or Event of Default has occurred or is continuing (and, if so, describing all such Defaults or Events of Default and what action the Company is taking or proposes to take with respect thereto).

(B) *Default Certificate.* If a Default or Event of Default occurs, then the Company will, within thirty (30) days after its occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto; *provided, however,* that such notice will not be required if such Default or Event of Default has been cured or waived before the date the Company is required to deliver such notice.

Section 3.07. STAY, EXTENSION AND USURY LAWS.

To the extent that it may lawfully do so, the Company (A) agrees that it will 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 (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.08. CORPORATE EXISTENCE.

Subject to **Article 6**, the Company will cause to preserve and keep in full force and effect:

- (A) its corporate existence in accordance with the organizational documents of the Company; and
- (B) the material rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries;

provided, however, that the Company need not preserve or keep in full force and effect any such license or franchise if the Board of Directors determines that (x) the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole; and (y) the loss thereof is not, individually or in the aggregate, materially adverse to the Holders.

Section 3.09. ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES.

Without limiting the generality of **Section 2.18**, Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be deemed to remain outstanding (except to the extent provided in **Section 2.16**) until such time as such Notes are delivered to the Trustee for cancellation. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

Section 3.10. FURTHER INSTRUMENTS AND ACTS.

At the Trustee's request, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to more effectively carry out the purposes of this Indenture.

Section 3.11. SUPPLEMENTAL INTEREST.

If the Maxeon Form F-3 has not been declared effective under the Securities Act on or before the twentieth (20th) Business Day after the Maxeon Spin-Off Distribution Date, then Supplemental Interest will accrue on each outstanding Note for each day from, and including, the Issue Date to, but excluding, January 15, 2021. Any Supplemental Interest that accrues on the Notes will accrue at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof and will be payable on January 15, 2021 to the Holders of record of the Notes as of the Close of Business on January 1, 2021. For the avoidance of doubt, any Supplemental Interest that accrues on a Note will be in addition to the Stated Interest and any Special Interest or Additional Interest that accrues on such Note. If Supplemental Interest accrues on the Notes, then the Company will send notice of the same to Holders, the Trustee and the Paying Agent no later than the twenty third (23rd) Business Day after the Maxeon Spin-Off Distribution Date.

Section 3.12. COVENANT RELATING TO CERTAIN EVENTS DURING THE NOTE VALUATION PERIOD.

Without limiting the generality of **Section 5.05(H)**, the Company will not voluntarily engage in any transaction or take any other voluntary action that would result in any of the following events occurring during the Note Valuation Period: (A) the Ex-Dividend Date, effective date or Expiration Date of any event described in **Section 5.05(A)**; or (B) the effective date of a Fundamental Change or Ordinary Share Change Event or the Make-Whole Event Effective Date of a Make-Whole Event.

Article 4. REPURCHASE AND REDEMPTION

Section 4.01. NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

Section 4.02. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.* Subject to the other terms of this **Section 4.02**, if a Fundamental Change occurs, then each Holder will have the right (the “**Fundamental Change Repurchase Right**”) to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including as a result of the payment of the related Fundamental Change Repurchase Price, and any related interest pursuant to the proviso to **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depositary Procedures).

(C) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company’s choosing that is no more than thirty five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to one hundred percent (100%) of the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided, however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice.* On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, the Trustee and the Paying Agent a notice of such Fundamental Change (a "**Fundamental Change Notice**"). Substantially contemporaneously, the Company will issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Fundamental Change Notice.

Such Fundamental Change Notice must state:

- (i) briefly, the events causing such Fundamental Change;
- (ii) the effective date of such Fundamental Change;
- (iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;
- (iv) the Fundamental Change Repurchase Date for such Fundamental Change;
- (v) the Fundamental Change Repurchase Price per \$1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);

(vi) the name and address of the Paying Agent and the Conversion Agent;

(vii) the Conversion Rate in effect on the date of such Fundamental Change Notice and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.07**);

(viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;

(ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and

(x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right.*

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be Repurchased.* To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, however, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depositary Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

- (1) if such Note is a Physical Note, the certificate number of such Note;
- (2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and
- (3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, however, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.11**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depositary Procedures).

(G) *Payment of the Fundamental Change Repurchase Price.* Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depositary Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depositary Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Repurchase by Third Party.* Notwithstanding anything to the contrary in this **Section 4.02**, the Company will be deemed to satisfy its obligations under this **Section 4.02** if (i) one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this **Section 4.02** in a manner that would have satisfied the requirements of this **Section 4.02** if conducted directly by the Company; and (ii) an owner of a beneficial interest in any Note repurchased by such third party or parties will not (after giving effect to the payment of any Additional Amounts pursuant to **Section 3.05**) receive a lesser amount as a result of withholding or similar taxes than such owner would have received had the Company repurchased such Note.

(I) *Compliance with Applicable Securities Laws.* To the extent applicable, the Company will comply with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture; *provided, however*, that, to the extent that any securities laws or regulations enacted after the Issue Date conflict with the **Section 4.02**, the Company will comply with such securities laws and regulations and will not be deemed to have breached its obligations under this **Section 4.02** by virtue of such conflict.

(J) *Repurchase in Part.* Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

SECTION 4.03. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *No Right to Redeem Before July 17, 2023.* The Company may not redeem the Notes at any time before July 17, 2023, except pursuant to a Tax Redemption or a Mandatory Redemption.

(B) *Right to Redeem the Notes on or After July 17, 2023.* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem (a “**Provisional Redemption**”) all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date on or after July 17, 2023 and on or before the sixtieth (60th) Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if the Last Reported Sale Price per Ordinary Share exceeds one hundred and thirty percent (130%) of the Conversion Price on (i) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Redemption Notice Date for such Redemption; and (ii) the Trading Day immediately before such Redemption Notice Date. For the avoidance of doubt, the calling of any Notes for Provisional Redemption will constitute a Make-Whole Event with respect to such Notes pursuant to **clause (B)** of the definition thereof.

(C) *Right to Redeem the Notes After a Change in Tax Law.*

(i) *Generally.* Subject to the terms of this **Section 4.03**, and without limiting the Company's right to redeem any Notes pursuant to **Section 4.03(B)**, the Company has the right, at its election, to redeem (a "**Tax Redemption**") all, but not less than all, of the Notes, at any time (subject to **Section 4.03(H)**), on a Redemption Date before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if (i) the Company has (or, on the next Interest Payment Date, would) become obligated to pay any Additional Amounts to Holders as a result of any Change in Tax Law; (ii) the Company cannot avoid such obligation by taking reasonable measures available to the Company; and (iii) the Company delivers to the Trustee (1) an Opinion of Counsel of outside legal counsel of recognized standing in the Relevant Taxing Jurisdiction attesting to clause (i) above; and (2) an Officer's Certificate attesting to clauses (i) and (ii) above. For the avoidance of doubt, the calling of any Notes for a Tax Redemption will constitute a Make-Whole Event pursuant to **clause (B)** of the definition thereof.

(ii) *Tax Redemption Opt-Out Election.* If the Company calls the Notes for a Tax Redemption, then, notwithstanding anything to the contrary in this **Section 4.03** or in **Section 3.05**, each Holder will have the right to elect (a "**Tax Redemption Opt-Out Election**") not to have such Holder's Notes (or any portion thereof in an Authorized Denomination) redeemed pursuant to such Tax Redemption, in which case, from and after the Redemption Date for such Tax Redemption (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, from and after such time as the Company pays such Redemption Price in full), the Company will no longer have any obligation to pay any Additional Amounts with respect to such Notes solely as a result of such Change in Tax Law, and all future payments (other than any payment or delivery of any Conversion Consideration (including payments of cash in lieu of any fractional shares)) with respect to such Notes will be subject to the deduction or withholding of such Relevant Taxing Jurisdiction's taxes required by law to be deducted or withheld as a result of such Change in Tax Law (it being understood, for the avoidance of doubt, that that if such Holder converts such Notes at any time, then the Company will be obligated to pay Additional Amounts, if any, with respect to such conversion).

(1) *Tax Redemption Opt-Out Notice.* To make a Tax Redemption Opt-Out Election with respect to any Note (or any portion thereof in an Authorized Denomination), the Holder of such Note must deliver a notice (a "**Tax Redemption Opt-Out Election Notice**") to the Paying Agent before the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date, which notice must state: (x) if such Note is a Physical Note, the certificate number of such Note; (y) the principal amount of such Note as to which the Tax Redemption Opt-Out Election will apply, which must be an Authorized Denomination; and (z) that such Holder is making a Tax Redemption Opt-Out Election with respect to such Note (or such portion thereof); *provided, however*, that if such Note is a Global Note, then such notice must comply with the Depositary Procedures (and any such notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.03(C)(ii)(1)**).

(2) *Withdrawal of Tax Redemption Opt-Out Election Notice.* A Holder that has delivered a Tax Redemption Opt-Out Election Notice with respect to any Note (or any portion thereof in an Authorized Denomination) may withdraw such Tax Redemption Opt-Out Election Notice by delivering a withdrawal notice to the Paying Agent at any time before the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date, which withdrawal notice must state: (x) if such Note is a Physical Note, the certificate number of such Note; (y) the principal amount of such Note as to which the Tax Redemption Opt-Out Election is being withdrawn, which must be an Authorized Denomination; and (z) that such Holder is withdrawing the Tax Redemption Opt-Out Election with respect to such Note (or such portion thereof); *provided, however*, that if such Note is a Global Note, then such withdrawal notice must comply with the Depositary Procedures (and any such withdrawal notice delivered in compliance with the Depositary Procedures will be deemed to satisfy the requirements of this **Section 4.03(C)(ii)(2)**).

(iii) *Right to Convert Not Affected.* For the avoidance of doubt, a Tax Redemption will not affect any Holder's right to convert any Notes on or after the Convertibility Commencement Date and the Company's obligation to pay any Additional Amounts with respect to such conversion. For the avoidance of doubt, if a Tax Redemption Opt-Out Election Notice is not delivered (or is delivered but thereafter withdrawn) with respect to any Note as of the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date, then such Note will be redeemed pursuant to the Tax Redemption without any further action.

(D) *Redemption Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to **Section 4.03(F)**, on such Redemption Date), then (i) the Company may not call for Provisional Redemption or Tax Redemption or otherwise redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depositary Procedures).

(E) *Redemption Date.* The Redemption Date for a Provisional Redemption or Tax Redemption will be a Business Day of the Company's choosing that is no more than eighty five (85), nor less than sixty five (65), Scheduled Trading Days after the related Redemption Notice Date for such Provisional Redemption or Tax Redemption.

(F) *Redemption Price.* The Redemption Price for any Note called for Provisional Redemption or Tax Redemption is an amount in cash equal to one hundred percent (100%) of the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided, however*, that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled,

notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date. For the avoidance of doubt, Additional Amounts will be added to the Redemption Price if, and to the extent, provided for in **Section 3.05**.

(G) *Redemption Notice*. To call any Notes for Provisional Redemption or Tax Redemption, the Company must (i) send to each Holder of such Notes, the Trustee and the Paying Agent a written notice of such Provisional Redemption or Tax Redemption (a "**Redemption Notice**"); and (ii) substantially contemporaneously therewith, either (x) issue a press release through such national newswire service as the Company then uses; (y) publish the same through such other widely disseminated public medium as the Company then uses, including its website; or (z) file or furnish a Form 8-K or Form 6-K (or any successor form) with the SEC, in each case of **clauses (x), (y) and (z)**, containing the information set forth in the Redemption Notice.

Such Redemption Notice must state:

- (i) that such Notes have been called for Redemption, briefly describing the Company's Redemption right under this Indenture;
- (ii) the Redemption Date for such Redemption;
- (iii) the Redemption Price per \$1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.03(F)**);
- (iv) the name and address of the Paying Agent and the Conversion Agent;
- (v) that Notes called for Redemption may be converted at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);
- (vi) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section 5.07**);
- (vii) the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the second (2nd) Business Day before such Redemption Date; and

(viii) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee and the Paying Agent.

(H) *Special Requirement for Notice of Tax Redemption.* A Redemption Notice relating to a Tax Redemption must be sent pursuant to **Section 4.03(G)** no earlier than (i) the Convertibility Commencement Date, and (ii) one hundred and eighty (180) calendar days before the earliest date on which the Company would have been required to make the related payment or withholding (assuming a payment in respect of the Notes were then due), and the obligation to pay Additional Amounts must be in effect as of the date the Company sends such Redemption Notice and must be expected to remain in effect at the time of the next payment or delivery in respect of the Notes.

(I) *Selection and Conversion of Notes to Be Redeemed in Part.* If less than all Notes then outstanding are called for Redemption, then:

(i) the Notes to be redeemed will be selected by the Company as follows: (1) in the case of Global Notes, in accordance with the Depositary Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Company considers fair and appropriate; and

(ii) if only a portion of a Note is subject to Redemption and such Note is converted in part, then the converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(J) *Payment of the Redemption Price.* Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.03(F)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

(K) *Special Provisions for Partial Provisional Redemptions.* If the Company elects to redeem less than all of the outstanding Notes pursuant to a Provisional Redemption, and the Holder of any Note, or any owner of a beneficial interest in any Global Note, is reasonably not able to determine, before the Close of Business on the sixty second (62nd) Scheduled Trading Day immediately before the relevant Redemption Date for such Provisional Redemption, whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such Provisional Redemption, then such Holder or owner, as applicable, will be entitled to convert such Note or beneficial interest, as applicable, at any time before the Close of Business on the second (2nd) Business Day immediately before such Redemption Date, and each such conversion will be deemed to be of a Note called for Provisional Redemption for purposes of this **Section 4.03** and **Sections 5.01(C)(i)(4)** and **5.07**.

SECTION 4.04. MANDATORY REDEMPTION.

(A) *Mandatory Redemption.* If either:

(i) either (1) the Maxeon Spin-Off Distribution Date does not occur on or before the Maxeon Spin-Off Deadline Date; or (2) the Company delivers, at any time before the date that is three (3) months after the Issue Date, a notice to the Trustee and the Escrow Agent that it will not consummate the Maxeon Spin-Off (the occurrence of any of the events described in this **Section 4.04(A)(i)**, a “**Maxeon Spin-Off Failure**”); or

(ii) the Note Valuation Period Conditions Precedent have not been satisfied as of November 16, 2020 (a “**Note Valuation Period Conditions Precedent Failure**”),

then the Company will be required to redeem (a “**Mandatory Redemption**”) all, but not less than all, of the Notes, for cash, on a redemption date (the “**Mandatory Redemption Date**”) occurring on the fifteenth (15th) Business Day after (1) the Maxeon Spin-Off Deadline Date (in the case of a Maxeon Spin-Off Failure); or (2) November 16, 2020 (in the case of a Note Valuation Period Conditions Precedent Failure).

(B) *Mandatory Redemption Price.* The Redemption Price for any Note called for Mandatory Redemption will be one hundred and one percent (101%) of the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Mandatory Redemption Date; *provided, however*, that if such Mandatory Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Mandatory Redemption, to receive, on or, at the Company’s election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Mandatory Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Mandatory Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Mandatory Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date. For the avoidance of doubt, Additional Amounts will be added to the Redemption Price if, and to the extent, provided for in **Section 3.05**.

(C) *Mandatory Redemption Notice.* No later than the second (2nd) Business Day after the Maxeon Spin-Off Deadline Date (in the case of a Maxeon Spin-Off Failure) or November 16, 2020 (in the case of a Note Valuation Period Conditions Precedent Failure), the Company will send to each Holder notice of Mandatory Redemption (a “**Mandatory Redemption Notice**”). Substantially contemporaneously, the Company will issue a press release through such national newswire service as the Company then uses (or publish the same through such other widely disseminated public medium as the Company then uses, including its website) containing the information set forth in the Mandatory Redemption Notice.

Such Mandatory Redemption Notice must state:

- (i) that such Notes have been called for Mandatory Redemption, briefly describing reason why the Notes have been called for such Mandatory Redemption;
- (ii) the Mandatory Redemption Date for such Redemption;
- (iii) the Redemption Price per \$1,000 principal amount of Notes for such Mandatory Redemption (and, if the Mandatory Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.04(B)**);
- (iv) the name and address of the Paying Agent;
- (v) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the date that the Company sends the Mandatory Redemption Notice, the Company will send a copy of such Mandatory Redemption Notice to the Trustee and the Paying Agent.

Article 5. CONVERSION

SECTION 5.01. RIGHT TO CONVERT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Notes will not be convertible before the Convertibility Commencement Date. From and after the Convertibility Commencement Date, subject to the provisions of this **Article 5**, each Holder may, at its option, convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part.* Subject to the terms of this Indenture, Notes may be converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted.*

- (i) *Generally.* Subject to **Section 5.01(C)(ii)**, a Note may be converted only in the following circumstances:

- (1) *Conversion upon Satisfaction of Ordinary Share Sale Price Condition.* From and after the Convertibility Commencement Date until the Close of Business on the Business Day immediately before January 15, 2025, a Holder may convert its Notes during any calendar quarter (and only during such calendar quarter) commencing after the Convertibility Commencement Calendar Quarter, if the Last Reported Sale Price per Ordinary Share exceeds one hundred and thirty percent (130%) of the Conversion Price for each of at least twenty (20) Trading

Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter.

(2) *Conversion upon Satisfaction of Note Trading Price Condition.* From and after the Convertibility Commencement Date until the Close of Business on the Business Day immediately before January 15, 2025, a Holder may convert its Notes during the five (5) consecutive Business Days immediately after any five (5) consecutive Trading Day period (such five (5) consecutive Trading Day period, the “**Measurement Period**”) if the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder in accordance with the procedures set forth below, for each Trading Day of the Measurement Period was less than ninety eight percent (98%) of the product of the Last Reported Sale Price per Ordinary Share on such Trading Day and the Conversion Rate on such Trading Day. The condition set forth in the preceding sentence is referred to in this Indenture as the “**Trading Price Condition.**”

The Trading Price will be determined by the Bid Solicitation Agent pursuant to this **Section 5.01(C)(i)(2)** and the definition of “Trading Price.” The Bid Solicitation Agent (if not the Company) will have no obligation to determine the Trading Price of the Notes unless the Company has requested such determination in writing, and the Company will have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company will have no obligation to determine such Trading Price) unless a Holder of at least two million dollars (\$2,000,000) aggregate principal amount of Notes (or such lesser principal amount of Notes that may then be outstanding) provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than ninety eight percent (98%) of the product of the Last Reported Sale Price per Ordinary Share and the Conversion Rate. If a Holder provides such evidence, then the Company will (if acting as Bid Solicitation Agent), or will instruct the Bid Solicitation Agent to, determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per Ordinary Share on such Trading Day and the Conversion Rate on such Trading Day. If the Trading Price Condition has been met as set forth above, then the Company will notify the Holders, the Trustee and the Conversion Agent of the same. The Company will determine whether the Trading Price Condition has been satisfied, and such determination by the Company will be conclusive absent manifest error. If, on any Trading Day after the Trading Price Condition has been met as set forth above, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to ninety eight percent (98%) of the product of the Last Reported Sale Price per Ordinary Share on such Trading Day and the Conversion Rate on such Trading Day, then the Company will notify the Holders, the Trustee and the Conversion Agent that the Trading Price Condition is no longer satisfied, and, thereafter, neither the Company nor the Bid Solicitation Agent (if other than the Company) will be required to solicit bids again until another qualifying request is made as described above.

(3) *Conversion upon Specified Corporate Events.*

(a) *Certain Distributions.* From and after the Convertibility Commencement Date until the Close of Business on the Business Day immediately before January 15, 2025, if the Company elects to:

(I) distribute, to all or substantially all holders of Ordinary Shares, any rights, options or warrants (other than rights issued pursuant to a shareholder rights plan, so long as such rights have not separated from the Ordinary Shares and are not exercisable until the occurrence of a triggering event, except that such rights will be deemed to be distributed under this **clause (I)** upon their separation from the Ordinary Shares or upon the occurrence of such triggering event) entitling them, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase Ordinary Shares at a price per share that is less than the average of the Last Reported Sale Prices per Ordinary Share for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced (determined in the manner set forth in the third paragraph of **Section 5.05(A)(ii)**); or

(II) distribute, to all or substantially all holders of Ordinary Shares, assets or securities of the Company or rights to purchase the Company's securities, which distribution per Ordinary Share has a value, as reasonably determined by the Board of Directors, exceeding ten percent (10%) of the Last Reported Sale Price per Ordinary Share on the Trading Day immediately before the date such distribution is announced,

then, in either case, (x) the Company will send notice of such distribution, and of the related right to convert Notes, to Holders, the Trustee and the Conversion Agent at least sixty five (65) Scheduled Trading Days before the Ex-Dividend Date for such distribution (or, if later in the case of any such separation of rights issued pursuant to a shareholder rights plan or the occurrence of any such triggering event under a shareholder rights plan, as soon as reasonably practicable after the Company becomes aware that such separation or triggering event has occurred or will occur); and (y) once the Company has sent such notice, Holders may convert their Notes at any time until the earlier of the Close of Business on the Business Day immediately before such Ex-Dividend Date and the Company's announcement that such distribution will not take place; *provided, however*, that the Notes will not become convertible pursuant to clause (y) above (but the Company will be required to send notice of such distribution pursuant to clause (x) above) on account of such distribution if each Holder participates, at the same time and upon the same terms as holders of Ordinary Shares, and solely by virtue

of being a Holder, in such distribution without having to convert such Holder's Notes and as if such Holder held a number of Ordinary Shares equal to (i) the Conversion Rate in effect on the record date for such distribution, multiplied by (ii) the principal amount (expressed in thousands) of Notes held by such Holder on such record date.

(b) *Certain Corporate Events.* If a Fundamental Change, Make-Whole Event (other than a Make-Whole Event pursuant to **clause (B)** of the definition thereof) or Ordinary Share Change Event occurs (other than an Ordinary Share Change Event that is solely for the purpose of changing the Company's jurisdiction of organization and that (x) does not constitute a Fundamental Change or a Make-Whole Event and (y) results in a reclassification, conversion or exchange of the Ordinary Shares into common equity that constitutes the Reference Property of such Ordinary Share Change Event) occurs on or after the Convertibility Commencement Date and prior to the Close of Business on the Business Day immediately before January 15, 2025 (such a Fundamental Change, Make-Whole Event or Ordinary Share Change Event, a "**Corporate Event**"), then, in each case, Holders may convert their Notes at any time from, and including, the effective date of such Corporate Event until the earlier of (I) the Close of Business on the thirty fifth (35th) Trading Day after such effective date (or, if such Corporate Event also constitutes a Fundamental Change, the Close of Business on the Business Day immediately prior to the related Fundamental Change Repurchase Date); and (II) the second (2nd) Scheduled Trading Day immediately preceding the Maturity Date; *provided, however*, that if the Company does not provide the notice referred to in the immediately following sentence by such effective date, then the last day on which the Notes are convertible pursuant to this sentence will be extended by the number of Business Days from, and including, such effective date to, but excluding, the date the Company provides such notice. No later than such effective date, the Company will send notice to the Holders, the Trustee and the Conversion Agent of such transaction or event, such effective date and the related right to convert Notes.

(4) *Conversion upon Provisional Redemption or Tax Redemption.* If the Company calls any or all Notes for Provisional Redemption or Tax Redemption, then the Holder of any Note may convert such Note at any time before the Close of Business on the second (2nd) Business Day immediately before the related Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full).

(5) *Conversions During Free Convertibility Period.* A Holder may convert its Notes at any time from, and including, January 15, 2025 until the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date.

For the avoidance of doubt, the Notes may become convertible pursuant to any one or more of the preceding sub-paragraphs of this **Section 5.01(C)(i)** and the Notes ceasing to be convertible pursuant to a particular sub-paragraph of this **Section 5.01(C)(i)** will not preclude the Notes from being convertible pursuant to any other sub-paragraph of this **Section 5.01(C)(i)**.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary in this Indenture or the Notes:

(1) Notes may be surrendered for conversion only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be converted after the Close of Business on the second (2nd) Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.03**, then the Holder of such Note may not convert such Note after the Close of Business on the second (2nd) Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** with respect to any Note, then such Note may not be converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)**; or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note in accordance with this Indenture.

SECTION 5.02. CONVERSION PROCEDURES.

(A) *Generally.*

(i) *Global Notes.* To convert a beneficial interest in a Global Note that is convertible pursuant to **Section 5.01(C)**, the owner of such beneficial interest must (1) comply with the Depositary Procedures for converting such beneficial interest (at which time such conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(ii) *Physical Notes.* To convert all or a portion of a Physical Note that is convertible pursuant to **Section 5.01(C)**, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the conversion notice attached to such Physical Note or a facsimile of such conversion notice; (2) deliver such Physical Note to the Conversion Agent (at which time such conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(B) *Effect of Converting a Note.* At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs

a Default in the delivery of the Conversion Consideration or interest due, pursuant to **Section 5.03(B)** or **5.02(D)**, upon such conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except to the extent provided in **Section 5.02(D)**.

(C) *Holder of Record of Conversion Shares.* The Person in whose name any Ordinary Share is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on (i) the Conversion Date for such conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(D) *Interest Payable upon Conversion in Certain Circumstances.* If the Conversion Date of a Note is after a Regular Record Date and before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such conversion (and, for the avoidance of doubt, notwithstanding anything set forth in the proviso to this sentence), to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (ii) the Holder surrendering such Note for conversion must deliver to the Conversion Agent, at the time of such surrender, an amount of cash equal to the amount of such interest referred to in clause (i) above; *provided, however*, that the Holder surrendering such Note for conversion need not deliver such cash (v) if the Company has specified a Redemption Date for a Provisional Redemption or Tax Redemption that is after such Regular Record Date and on or before the second (2nd) Business Day immediately after such Interest Payment Date; (w) if such Conversion Date occurs after the Regular Record Date immediately before the Maturity Date; (x) if the Company has specified a Fundamental Change Repurchase Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; or (y) to the extent of any overdue interest or interest that has accrued on any overdue interest. For the avoidance of doubt, as a result of, and without limiting the generality of, the foregoing, if a Note is converted with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, then the Company will pay, as provided above, the interest that would have accrued on such Note to, but excluding, the Maturity Date. For the avoidance of doubt, if the Conversion Date of a Note to be converted is on an Interest Payment Date, then the Holder of such Note at the Close of Business on the Regular Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date, and such Note, when surrendered for conversion, need not be accompanied by any cash amount pursuant to the first sentence of this **Section 5.02(D)**.

(E) *Taxes and Duties.* If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery (including, for the avoidance of doubt, pursuant to **Section 5.08**) of any Ordinary Shares upon such conversion; *provided, however*, that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty.

(F) *Conversion Agent to Notify Company of Conversions.* If any Note is submitted for conversion to the Conversion Agent or the Conversion Agent receives any notice of conversion with respect to a Note, then the Conversion Agent will promptly notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will cooperate with the Company to determine the Conversion Date for such Note.

SECTION 5.03. SETTLEMENT UPON CONVERSION.

(A) *Settlement Method.* Upon the conversion of any Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this **Article 5**, either (x) Ordinary Shares, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(1)** (a “**Physical Settlement**”); (y) solely cash as provided in **Section 5.03(B)(i)(2)** (a “**Cash Settlement**”); or (z) a combination of cash and Ordinary Shares, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(3)** (a “**Combination Settlement**”).

(i) *The Company’s Right to Elect Settlement Method.* The Company will have the right to elect the Settlement Method applicable to any conversion of a Note; *provided, however*, that:

(1) subject to **clause (3)** below, all conversions of Notes with a Conversion Date that occurs on or after January 15, 2025 will be settled using the same Settlement Method, and the Company will send notice of such Settlement Method to Holders and the Conversion Agent no later than the Open of Business on January 15, 2025;

(2) subject to **clause (3)** below, if the Company elects a Settlement Method with respect to the conversion of any Note whose Conversion Date occurs before January 15, 2025, then the Company will send notice of such Settlement Method to the Holder of such Note and the Conversion Agent no later than the Close of Business on the Business Day immediately after such Conversion Date;

(3) if any Notes are called for Redemption, then (1) the Company will specify, in the related Redemption Notice (and, in the case of a Redemption of less than all outstanding Notes, in a notice simultaneously sent to all Holders of Notes not called for Redemption) sent pursuant to **Section 4.03(G)**, the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after the related Redemption Notice Date and before the related Redemption Date; and (2) if such Redemption Date occurs on or after January 15, 2025, then such Settlement Method must be the same Settlement Method that, pursuant to **clause (1)** above, applies to all conversions of Notes with a Conversion Date that occurs on or after January 15, 2025;

(4) the Company will use the same Settlement Method for all conversions of Notes with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Settlement Method with respect to conversions of Notes with different Conversion Dates, except as provided in **clause (1)** or **(3)** above);

(5) if the Company does not timely elect a Settlement Method with respect to the conversion of a 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 Event of Default);

(6) 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 send such notification will not constitute a Default or Event of Default); and

(7) the Settlement Method will be subject to **Section 5.09(A)(2)**.

(ii) *The Company's Right to Irrevocably Fix the Settlement Method.* The Company will have the right, exercisable at its election by sending notice of such exercise to the Holders (with a copy to the Trustee and the Conversion Agent), to irrevocably fix the Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders, *provided* that (x) such Settlement Method must be a Settlement Method that the Company is then permitted to elect (for the avoidance of doubt, including pursuant to, and subject to, the other provisions of this **Section 5.03(A)**); (y) no such irrevocable election will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to the other provisions of this **Section 5.03(A)**; and (z) upon any such irrevocable election, the Default Settlement Method will automatically be deemed to be set to the Settlement Method so fixed. Such notice, if sent, must set forth the applicable Settlement Method and expressly state that the election is irrevocable and applicable to all conversions of Notes with a Conversion Date that occurs on or after the date such notice is sent to Holders. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to **Section 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(iii) *Requirement to Publicly Disclose the Fixed or Default Settlement Method.* If the Company changes the Default Settlement Method pursuant to **clause (x)** of the proviso to the definition of such term or irrevocably fixes the Settlement Method pursuant **Section 5.03(A)(ii)**, then the Company will either post the Default Settlement Method or fixed Settlement Method, as applicable, on its website or disclose the same in a Current Report on Form 8-K or Form 6-K (or any successor form) that is filed with the SEC.

(B) *Conversion Consideration.*

(i) *Generally.* Subject to **Section 5.03(B)(ii)** and **Section 5.03(B)(iii)**, the type and amount of consideration (the “**Conversion Consideration**”) due in respect of each \$1,000 principal amount of a Note to be converted will be as follows:

(1) if Physical Settlement applies to such conversion, a number of Ordinary Shares equal to the Conversion Rate in effect on the Conversion Date for such conversion;

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

(3) if Combination Settlement applies to such conversion, consideration consisting of (a) a number of Ordinary Shares equal to the sum of the Daily Share Amounts for each VWAP 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 VWAP Trading Day in such Observation Period.

(ii) *Cash in Lieu of Fractional Shares.* If Physical Settlement or Combination Settlement applies to the conversion of any Note and the number of Ordinary Shares deliverable pursuant to **Section 5.03(B)(i)** upon such conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) (x) the Daily VWAP on the Conversion Date for such conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), in the case of Physical Settlement; or (y) the Daily VWAP on the last VWAP Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(iii) *Conversion of Multiple Notes by a Single Holder.* If a Holder converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depositary Procedures) be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder.

(iv) *Notice of Calculation of Conversion Consideration.* If Cash Settlement or Combination Settlement applies to the conversion of any Note, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make any such determination.

(C) *Delivery of the Conversion Consideration.* Except as set forth in **Sections 5.05(D)** and **5.09**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Holder as follows: (i) if Cash Settlement or Combination Settlement applies to such conversion, on or before the second (2nd) Business Day immediately after the last VWAP Trading Day of the Observation Period for such conversion; and (ii) if Physical Settlement applies to such conversion, on or before the second (2nd) Business Day immediately after the Conversion Date for such conversion.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest Notwithstanding Conversion.* If a Holder converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration due in respect of such conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding the Conversion Date. As a result, except as provided in **Section 5.02(D)**, any accrued and unpaid interest on a converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, subject to **Section 5.02(D)**, if the Conversion Consideration for a Note consists of both cash and Ordinary Shares, then accrued and unpaid interest that is deemed to be paid therewith will be deemed to be paid first out of such cash.

SECTION 5.04. RESERVE AND STATUS OF ORDINARY SHARES ISSUED UPON CONVERSION.

(A) *Share Reserve.* At all times from and after the Convertibility Commencement Date when any Notes are outstanding, the Company will reserve, out of its share issue mandate, a number of Ordinary Shares sufficient to permit the conversion of all then-outstanding Notes, assuming (x) Physical Settlement will apply to such conversion; and (y) the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.07**.

(B) *Status of Conversion Shares; Listing.* Each Conversion Share, if any, delivered upon conversion of any Note will be a newly issued share (except that any Conversion Share delivered by a designated financial institution pursuant to **Section 5.08** need not be a newly issued share), will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered) and will rank pari passu with the existing Ordinary Shares. If the Ordinary Shares are then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will cause each Ordinary Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

SECTION 5.05. ADJUSTMENTS TO THE CONVERSION RATE.

(A) *Events Requiring an Adjustment to the Conversion Rate.* The Conversion Rate will be adjusted from time to time as follows:

(i) *Share Dividends, Splits and Combinations.* If the Company issues solely the Ordinary Shares as a dividend or distribution on all or substantially all of the Ordinary Shares, or if the Company effects a split or a combination of the Ordinary Shares (in each case excluding an issuance solely pursuant to an Ordinary Share Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will be adjusted based on the following

formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

- CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such split or combination, as applicable;
- CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date, as applicable;
- OS_0 = the number of Ordinary Shares outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, split or combination; and
- OS_1 = the number of Ordinary Shares outstanding immediately after giving effect to such dividend, distribution, split or combination.

If any dividend, distribution, split or combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such split or combination, to the Conversion Rate that would then be in effect had such dividend, distribution, split or combination not been declared or announced.

(ii) *Rights, Options and Warrants.* If the Company distributes, to all or substantially all holders of the Ordinary Shares, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a shareholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase Ordinary Shares at a price per share that is less than the average of the Last Reported Sale Prices per Ordinary Share for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

- CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1	=	the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
OS	=	the number of Ordinary Shares outstanding immediately before the Open of Business on such Ex-Dividend Date;
X	=	the total number of Ordinary Shares issuable pursuant to such rights, options or warrants; and
Y	=	a number of Ordinary Shares obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per Ordinary Share for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent such rights, options or warrants referred to in this **Section 5.05(A)(ii)** are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that Ordinary Shares are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of Ordinary Shares actually delivered upon exercise of such rights, option or warrants.

For purposes of this **Section 5.05(A)(ii)** and **Section 5.01(C)(i)(3)(a)(I)**, in determining whether any rights, options or warrants entitle holders of Ordinary Shares to subscribe for or purchase Ordinary Shares at a price per share that is less than the average of the Last Reported Sale Prices per Ordinary Share for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Company in good faith.

(iii) *Spin-Offs and Other Distributed Property.*

(1) *Distributions Other than Spin-Offs.* If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Ordinary Shares, excluding:

- (a) dividends, distributions, rights, options or warrants (including Ordinary Share splits) for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(i)** or **5.05(A)(ii)**;

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iv)**;

(c) rights issued or otherwise distributed pursuant to a shareholder rights plan, except to the extent provided in **Section 5.05(F)**;

(d) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iii)(2)**;

(e) a distribution solely pursuant to a tender offer or exchange offer for Ordinary Shares, as to which **Section 5.05(A)(v)** will apply; and

(f) a distribution solely pursuant to an Ordinary Share Change Event, as to which **Section 5.09** will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per Ordinary Share for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Company in good faith), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per Ordinary Share pursuant to such distribution;

provided, however, that if FMV is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each

\$1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Ordinary Shares, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received if such Holder had owned, on such record date, a number of Ordinary Shares equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Company to all or substantially all holders of the Ordinary Shares (other than solely pursuant to (x) an Ordinary Share Change Event, as to which **Section 5.09** will apply; or (y) a tender offer or exchange offer for Ordinary Shares, as to which **Section 5.05(A)(v)** will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a “**Spin-Off**”), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

- CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;
- CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;
- FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the “**Spin-Off Valuation Period**”) beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Ordinary Shares in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per Ordinary Share in such Spin-Off; and
- SP = the average of the Last Reported Sale Prices per Ordinary Share for each Trading Day in the Spin-Off Valuation Period.

Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Ordinary Shares, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

- CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;
- CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;
- SP = the Last Reported Sale Price per Ordinary Share on the Trading Day immediately before such Ex-Dividend Date; and
- D = the cash amount distributed per Ordinary Share in such dividend or distribution;

provided, however, that if D is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution,

at the same time and on the same terms as holders of Ordinary Shares, the amount of cash that such Holder would have received if such Holder had owned, on such record date, a number of Ordinary Shares equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer that is subject to the then-applicable tender offer rules under the Exchange Act (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act or any successor rule thereto), for Ordinary Shares, and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per Ordinary Share in such tender or exchange offer exceeds the Last Reported Sale Price per Ordinary Share on the Trading Day immediately after the last date (the “**Expiration Date**”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

- CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;
- CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;
- AC = the aggregate value (determined as of the time (the “**Expiration Time**”) such tender or exchange offer expires by the Board of Directors) of all cash and other consideration paid for Ordinary Shares purchased or exchanged in such tender or exchange offer;
- OS_0 = the number of Ordinary Shares outstanding immediately before the Expiration Time (including all Ordinary Shares accepted for purchase or exchange in such tender or exchange offer);
- OS_1 = the number of Ordinary Shares outstanding immediately after the Expiration Time (excluding all Ordinary Shares accepted for purchase or exchange in such tender or exchange offer); and
- SP = the average of the Last Reported Sale Prices per Ordinary Share over the ten (10) consecutive Trading Day period (the “**Tender/Exchange Offer Valuation Period**”) beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Company being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of Ordinary Shares in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of Ordinary Shares, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases.*

(i) *Where Holders Participate in the Transaction or Event Without Conversion.* Notwithstanding anything to the contrary in **Section 5.05(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.05(A)** (other than a split or combination of the type set forth in **Section 5.05(A)(i)**) or a tender or exchange offer of the type set forth in **Section 5.05(A)(v)** if each Holder participates, at the same time and on the same terms as holders of Ordinary Shares, and solely by virtue of being a Holder of Notes, in such transaction or event without having to convert such Holder's Notes and as if such Holder held a number of Ordinary Shares equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events*. The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.05** or **Section 5.07**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

- (1) except as otherwise provided in **Section 5.05**, the sale of Ordinary Shares for a purchase price that is less than the market price per Ordinary Share or less than the Conversion Price;
- (2) the issuance of any Ordinary Shares 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 Ordinary Shares under any such plan;
- (3) the issuance of any Ordinary Shares or options or rights to purchase Ordinary Shares pursuant to any present or future employee, director or consultant benefit or incentive plan (including pursuant to an evergreen provision) or program of, or assumed by, the Company or any of its Subsidiaries or in connection with any shares withheld for tax withholding purposes;
- (4) the issuance of any Ordinary Shares pursuant to any option, warrant, right or convertible or exchangeable security of the Company outstanding as of the Issue Date;
- (5) for a tender offer or exchange offer by any party other than a tender offer or exchange offer by the Company or one or more of its Subsidiaries as described in **Section 5.05(A)(v)**;
- (6) an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act or any successor rule thereto;
- (7) upon the repurchase of any of the Ordinary Shares pursuant to an open-market repurchase program or other buy-back transaction (including through any structured or derivative transactions, such as accelerated share repurchase transactions, prepaid forward transactions or similar forward derivatives) that is not a tender offer or exchange offer of the nature described in **Section 5.05(A)(v)**;
- (8) solely a change in the par value of the Ordinary Shares; or
- (9) accrued and unpaid interest on the Notes.

(iii) Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting the operation of **Section 5.05(H)**), the Conversion Rate will not be adjusted pursuant to **Section 5.05(A)** on an account of (1) the Maxeon Spin-Off; or (2) any event described in any of **clauses (i) through (v)**, inclusive **Section 5.05(A)** where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs before the Convertibility Commencement Date.

(C) If an adjustment to the Conversion Rate otherwise required by this **Article 5** would result in a change of less than one percent (1%) to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article 5**, the Company may, at its election, defer such adjustment,

except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments not already given effect would result in a change of at least one percent (1%) to the Conversion Rate; (ii) the Conversion Date of, or any VWAP Trading Day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Event occurs; (iv) the date the Company calls any Notes for Redemption; and (iv) the sixty fifth (65th) VWAP Trading Day before the Maturity Date.

(D) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before the Conversion Date for such conversion (in the case of Physical Settlement) or on or before any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the Conversion Consideration due upon such conversion includes any whole Ordinary Shares (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional Ordinary Shares (in the case of Combination Settlement); and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the second (2nd) Business Day after such first date.

(E) *Conversion Rate Adjustments where Converting Holders Participate in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such conversion includes any whole Ordinary Shares (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional Ordinary Shares (in the case of Combination Settlement), in each case based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then (x) in the case of Physical Settlement, such Conversion Rate adjustment will not be given effect for such conversion and the Ordinary Shares issuable upon such conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution, but there will be added, to the Conversion Consideration otherwise due upon such conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such Ordinary Shares had such shares been entitled to participate in such dividend or distribution ; and (y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such conversion in respect of such VWAP Trading Day, but the Ordinary Shares issuable with respect to such VWAP Trading Day based on such adjusted Conversion Rate will not be entitled to participate in such dividend or distribution.

(F) *Shareholder Rights Plans.* If any Ordinary Shares are to be issued or delivered upon conversion of any Note and, at the time of such conversion, the Company has in effect any shareholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Indenture upon such conversion, the rights set forth in such shareholder rights plan, unless such rights have separated from the Ordinary Shares at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Ordinary Shares, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(G) *Limitation on Effecting Transactions Resulting in Certain Adjustments.* The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section 5.07** to an amount that would result in the Conversion Price per Ordinary Share being less than the par value per Ordinary Share.

(H) *Equitable Adjustments to Prices.* Whenever any provision of this Indenture requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate (i) the Share Price for a Make-Whole Event or (ii) or an adjustment to the Conversion Rate), or to calculate the Daily Conversion Values or Daily VWAPs over an Observation Period or the Note Valuation Period, the Company will make appropriate adjustments, if any, to such calculations to account for any adjustment to the

Conversion Rate pursuant to **Section 5.05(A)** (or, in the case of the Note Valuation Period, any event that, notwithstanding **Section 5.05(B)(iii)**, would have resulted in an adjustment to the Conversion Rate) that becomes effective, or any event that requires (or in the case of the Note Valuation Period, would have required) such an adjustment to the Conversion Rate where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period, Observation Period or Note Valuation Period, as applicable.

(I) *Calculation of Number of Outstanding Ordinary Shares.* For purposes of **Section 5.05(A)**, the number of Ordinary Shares outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of Ordinary Shares; and (ii) exclude Ordinary Shares held in the Company's treasury (unless the Company pays any dividend or makes any distribution on Ordinary Shares held in its treasury).

(J) *Calculations.* All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of an Ordinary Share (with 5/100,000ths rounded upward).

(K) *Notice of Conversion Rate Adjustments.* Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

Section 5.06. VOLUNTARY ADJUSTMENTS.

(A) *Generally.* To the extent permitted by law and applicable listing standards of The Nasdaq Global Stock Market (or any other securities exchange on which the Ordinary Shares (or other applicable security) is then listed), the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Ordinary Shares or rights to purchase Ordinary Shares as a result of any dividend or distribution of shares (or rights to acquire shares) of Ordinary Shares or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) subject to applicable law, such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases.* If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.07. ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE EVENT.

(A) *Generally.* If a Make-Whole Event occurs on or after the Convertibility Commencement Date and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Event Conversion Period, then, subject to this **Section 5.07**, the Conversion Rate applicable to such conversion will be increased by a number of shares (the "**Additional**

Shares”) set forth in the Make-Whole Table corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Event Effective Date and the Share Price of such Make-Whole Event.

If such Make-Whole Event Effective Date or Share Price is not set forth in the Make-Whole Table, then:

- (i) if such Share Price is between two Share Prices in the Make-Whole Table above or the Make-Whole Event Effective Date is between two dates in the Make-Whole Table, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Share Prices in the Make-Whole Table above or the earlier and later dates in the Make-Whole Table above, based on a 365- or 366-day year, as applicable; and
- (ii) if the Share Price is greater than the highest Share Price, or less than the lowest Share Price, set forth in the Make-Whole Table (which highest and lowest Share Prices are, for the avoidance of doubt, subject to adjustment pursuant to **Section 5.07(D)**), then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds the Maximum Conversion Rate.

For the avoidance of doubt, but subject to **Section 4.03(K)**, (x) the sending of a Redemption Notice relating to a Provisional Redemption will constitute a Make-Whole Event only with respect to the Notes called for Provisional Redemption pursuant to such Redemption Notice, and not with respect to any other Notes; and (y) the Conversion Rate applicable to the Notes not so called for Provisional Redemption will not be subject to increase pursuant to this **Section 5.07** on account of such Redemption Notice.

(B) *Calculation of the Initial Make-Whole Table.* The initial Make-Whole Table will be in the form of the table set forth below (the “**Template Make-Whole Table**”), with each numerical percentage set forth in the Template Make-Whole Table being replaced with a dollar or other numerical amount calculated in accordance with the provisions set forth immediately below.

Make-Whole Event Effective Date	Share Price															
	100.00%	105.00%	110.00%	115.00%	120.00%	130.00%	140.00%	149.50%	175.00%	200.00%	300.00%	400.00%	500.00%	600.00%	700.00%	800.00%
July 17, 2020	100.0000%	105.4844%	109.4902%	113.5130%	117.5529%	125.6714%	133.8371%	141.6291%	162.6729%	183.4370%	267.2844%	351.9280%	437.1295%	522.7872%	608.8922%	695.6520%
July 15, 2021	100.0000%	105.2074%	109.1552%	113.1311%	117.1308%	125.1904%	133.3171%	141.0871%	162.1158%	182.9030%	266.9244%	351.7120%	437.0115%	522.7398%	608.8922%	695.6520%
July 15, 2022	100.0000%	104.7594%	108.6022%	112.4901%	116.4159%	124.3655%	132.4202%	140.1481%	161.1490%	181.9750%	266.2974%	351.3352%	436.8005%	522.6360%	608.8565%	695.6520%
July 15, 2023	100.0000%	104.0814%	107.7182%	111.4340%	115.2168%	122.9555%	130.8751%	138.5290%	159.4908%	180.3970%	265.2516%	350.7080%	436.4515%	522.4620%	608.7872%	695.6520%
July 15, 2024	100.0000%	102.9604%	106.1422%	109.4890%	112.9788%	120.3186%	128.0271%	135.6011%	156.6450%	177.7900%	263.5716%	349.6752%	435.8825%	522.2322%	608.7837%	695.6520%
July 15, 2025	100.0000%	100.0000%	100.0000%	100.0000%	104.3478%	113.0435%	121.7391%	130.0000%	152.1739%	173.9130%	260.8695%	347.8260%	434.7825%	521.7390%	608.6955%	695.6520%

On the Convertibility Commencement Date, the table entries in the initial Make-Whole Table will be calculated and populated as follows:

- (i) the numerical percentage set forth in each cell of the Template Make-Whole Table corresponding to a Share Price column heading will be replaced with a dollar amount (rounded to the nearest cent) equal to the product of (1) such numerical percentage; and (2) the Maxeon Spin-Off Reference Price; and

(ii) the numerical percentage set forth in each other cell of the Template Make-Whole Table will be replaced with a numerical amount (which will represent the number of Additional Shares for such cell) equal to the following amount (rounded to the nearest fourth (4th) decimal place):

$$\frac{(1,000 \times BP) - (CR_0 \times SP)}{SP}$$

where:

BP = such numerical percentage;

CR₀ = the Initial Conversion Rate; and

SP = the Share Price set forth in the column heading for such cell (calculated as provided in **Section 5.07(B)(i)**);

provided, however, that (x) if the sum of the Initial Conversion Rate and the amount calculated in accordance with the preceding formula in this **Section 5.07(B)(ii)** exceeds the initial Maximum Conversion Rate, then such cell will instead be populated with a number equal to the excess of the initial Maximum Conversion Rate over the Initial Conversion Rate; and (ii) in no event will such amount calculated in accordance with the preceding formula in this **Section 5.07(B)(ii)** be less than zero.

(C) *Notice of the Initial Make-Whole Table.* The Company will send noteholders a copy of the initial Make-Whole Table no later than the second (2nd) Business Day after the Convertibility Commencement Date, in accordance with **Section 5.11**.

(D) *Adjustment of Share Prices and Number of Additional Shares.* The Share Prices in the first row (i.e., the column headers) of the Make-Whole Table will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.05(A)**. The numbers of Additional Shares in the Make-Whole Table will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.05(A)**.

(E) *Notice of the Occurrence of a Make-Whole Event.* The Company will notify the Holders, the Trustee and the Conversion Agent of each Make-Whole Event (i) occurring pursuant to **clause (A)** of the definition thereof in accordance with **Section 5.01(C)(i)(3)(b)**; and (ii) occurring pursuant to **clause (B)** of the definition thereof in accordance with **Section 4.03(G)**.

Section 5.08. EXCHANGE IN LIEU OF CONVERSION.

Notwithstanding anything to the contrary in this **Article 5**, and subject to the terms of this **Section 5.08**, if a Note is submitted for conversion, the Company may elect, in lieu of conversion, to transfer such Note to a financial institution designated by the Company and arrange to have such financial institution deliver to the Holder of such Note the Conversion Consideration that would have been due upon conversion. To make such election, the Company must send notice of such

election to the Holder of such Note, the Trustee and the Conversion Agent before the Close of Business on the Business Day immediately following the Conversion Date for such Note. If the Company has made such election, then:

(A) no later than the Business Day immediately following such Conversion Date, the Company must deliver (or cause the Conversion Agent to deliver) such Note, together with delivery instructions for the Conversion Consideration due upon such conversion (including wire instructions, if applicable), to a financial institution designated by the Company that has agreed to deliver such Conversion Consideration in the manner and at the time the Company would have had to deliver the same pursuant to this **Article 5**;

(B) if such Note is a Global Note, then (i) such designated institution will send written confirmation to the Conversion Agent promptly after wiring the cash Conversion Consideration, if any, and delivering any other Conversion Consideration, due upon such conversion to the Holder of such Note; and (ii) the Conversion Agent will as soon as reasonably practicable thereafter contact such Holder's custodian with the Depository to confirm receipt of the same; and

(C) such Note will not cease to be outstanding by reason of such exchange in lieu of conversion;

provided, however, that if such financial institution does not accept such Note or fails to timely deliver such Conversion Consideration, then the Company will be responsible for delivering such Conversion Consideration in the manner and at the time provided in this **Article 5** as if the Company had not elected to make an exchange in lieu of conversion.

Section 5.09. EFFECT OF ORDINARY SHARE CHANGE EVENT.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Ordinary Shares (other than (x) changes solely resulting from a subdivision or combination of the Ordinary Shares, (y) a change only in par value or from par value to no par value or no par value to par value and (z) splits and combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Ordinary Shares is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Ordinary Share Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) Ordinary Share would be entitled to receive on account of such Ordinary Share Change

Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “**Reference Property Unit**”), then the Company and the resulting, surviving or transferee person (if not the Company) of such Ordinary Share Change Event (the “**Successor Person**”), and, if applicable as set forth below, the Underlying Issuer, will execute and deliver to the Trustee a supplemental indenture, without the consent of the Holders, providing, notwithstanding anything to the contrary in this Indenture or the Notes, as follows:

(1) from and after the effective time of such Ordinary Share Change Event, (I) the Conversion Consideration due upon conversion of any Note, and the conditions to any such conversion, will be determined in the same manner as if each reference to any number of Ordinary Shares in this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 4.03**, each reference to any number of Ordinary Shares in such Section (or in any related definitions) will instead be deemed to be a reference to the same number of Reference Property Units; and (III) for purposes of the definition of “Fundamental Change” and “Make-Whole Event,” references to Ordinary Shares or to “Common Equity” will be deemed to refer to the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then the Company will be deemed to elect Physical Settlement in respect of all conversions whose Conversion Date occurs on or after the effective date of such Ordinary Share Change Event and will pay the cash due upon such conversions no later than the second (2nd) Business Day after the relevant Conversion Date;

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof); and

(4) if such Reference Property includes any shares of Capital Stock, then the Conversion Rate will be subject to subsequent adjustments in a manner consistent with **Section 5.05(A)**.

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of shareholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per Ordinary Share, by the holders of the Ordinary Shares. The Company will notify Holders of such weighted average as soon as practicable after such determination is made.

For the avoidance of doubt, the Maxeon Spin-Off will not constitute an Ordinary Share Change Event.

At or before the effective time of such Ordinary Share Change Event, the Company and the Successor Person will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)** as set forth above. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person (such person, the “**Underlying Issuer**”), then such Underlying Issuer will also execute such supplemental indenture.

(B) *Notice of Ordinary Share Change Events.* The Company will provide notice of each Ordinary Share Change Event to Holders, the Trustee and the Conversion Agent no later than the effective date of such Ordinary Share Change Event.

(C) *Compliance Covenant.* The Company will not become a party to any Ordinary Share Change Event unless its terms are consistent with this **Section 5.09**.

Section 5.10. NOTICE OF THE COMMENCEMENT OF THE NOTE VALUATION PERIOD.

No later than the Close of Business on the Scheduled Trading Day immediately before the first VWAP Trading Day of the Note Valuation Period, the Company will issue a press release, through such national newswire service as the Company then uses, that states (A) that Maxeon Spin-Off Distribution Date has occurred, stating the date thereof; and (B) the date scheduled to be the first VWAP Trading Day of the Note Valuation Period.

Section 5.11. NOTICE OF THE CONVERTIBILITY COMMENCEMENT DATE, INITIAL MAKE-WHOLE TABLE AND RELATED INFORMATION.

No later than the second (2nd) Business Day after the Convertibility Commencement Date, the Company will (A) send notice to each Holder of the occurrence of the Convertibility Commencement Date, setting forth the Initial Conversion Rate, the initial Conversion Price, the initial Maximum Conversion Rate and the initial Make-Whole Table; and (B) file with the SEC a report on Form 8-K or Form 6-K (or any successor form) that discloses the same information.

For the avoidance of doubt, the establishment of the Initial Conversion Rate, the initial Conversion Price and the initial Make-Whole Table pursuant to this **Article 5** will be effective without the need to amend this Indenture or the Notes, including pursuant to **Section 8.01(H)**. However, the Company may nonetheless choose to execute such an amendment at the Company’s option.

Article 6. SUCCESSORS

Section 6.01. WHEN THE COMPANY MAY MERGE, ETC.

(A) *Generally.* The Company will not consolidate with or merge with or into, or (directly, or indirectly through one or more of its Subsidiaries) sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to another Person (a “**Business Combination Event**”), unless:

(i) the resulting, surviving or transferee Person either (x) is the Company or (y) if not the Company, is a corporation (the “**Successor Corporation**”) duly organized and existing under the laws of the United States of America, any State thereof, the District of Columbia or Singapore that expressly assumes (by executing and delivering to the Trustee, at or before the effective time of such Business Combination Event, a supplemental indenture pursuant to **Section 8.01(E)**) all of the Company’s obligations under this Indenture and the Notes (including, for the avoidance of doubt, the obligation to pay Additional Amounts pursuant to **Section 3.05**); and

(ii) immediately after giving effect to such Business Combination Event, no Default or Event of Default will have occurred and be continuing.

(B) *Delivery of Officer’s Certificate and Opinion of Counsel to the Trustee.* Before the effective time of any Business Combination Event, the Company will deliver to the Trustee an Officer’s Certificate and Opinion of Counsel, each stating that (i) such Business Combination Event (and, if applicable, the related supplemental indenture) comply with **Section 6.01(A)**; and (ii) all conditions precedent to such Business Combination Event provided in this Indenture have been satisfied.

Section 6.02. SUCCESSOR CORPORATION SUBSTITUTED.

At the effective time of any Business Combination Event that complies with **Section 6.01**, the Successor Corporation (if not the Company) will succeed to, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such Successor Corporation had been named as the Company in this Indenture and the Notes, and, except in the case of a lease, the predecessor Company will be discharged from its obligations under this Indenture and the Notes.

Section 6.03. TRANSACTIONS TO EFFECT MAXEON SPIN-OFF.

Notwithstanding anything to the contrary in this **Article 6**, this **Article 6** will not apply to any transfer of assets effected in connection with the Maxeon Spin-Off between or among the Company and any one or more of the Company’s Subsidiaries, provided such transfer is not effected by any merger or consolidation to which the Company is a party and the Company is not the surviving entity.

Article 7. DEFAULTS AND REMEDIES

Section 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default.* “**Event of Default**” means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, any Note;

- (ii) a default in the payment when due of interest on any Note, which default continues for thirty (30) days;
- (iii) the Company's failure to deliver, when required by this Indenture, a Fundamental Change Notice, or a notice pursuant to **Section 5.01(C)(i)(3)**, if (in the case of any notice other than a notice pursuant to **Section 5.01(C)(i)(3)(b)**) such failure is not cured within three (3) Business Days after its occurrence;
- (iv) a default in the Company's obligation to convert a Note in accordance with **Article 5** upon the exercise of the conversion right with respect thereto, if such default is not cured within two (2) Business Days after its occurrence;
- (v) a default in the Company's obligations under **Article 6**;
- (vi) a default in any of the Company's obligations or agreements under this Indenture or the Notes (other than a default set forth in **clause (i), (ii), (iii), (iv) or (v)** of this **Section 7.01(A)**) where such default is not cured or waived within sixty (60) days after notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";
- (vii) a default by the Company or any of its Significant Subsidiaries with respect to indebtedness for money borrowed (whether pursuant to one or more agreements or other instruments) of greater than twenty five million dollars (\$25,000,000) (or its foreign currency equivalent) in the aggregate of the Company or any of its Significant Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, either: (x) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity, or (y) constituting a failure to pay the principal of any such indebtedness when due and payable (after the expiration of all applicable grace periods) at its stated maturity, upon required repurchase, upon declaration or otherwise, and, in the case of either **clause (x)** or **(y)**, such acceleration is not, after the expiration of any applicable grace period, rescinded or annulled or such indebtedness is not paid or discharged, as the case may be, within thirty (30) days after notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding in accordance with this Indenture;
- (viii) one or more final judgments being rendered against the Company or any of its Subsidiaries for the payment of at least twenty five million dollars (\$25,000,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance), where such judgment is not discharged or stayed within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced; or (ii) the date on which all rights to appeal have been extinguished;

(ix) the Company or any of its Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

- (1) commences a voluntary case or proceeding;
- (2) consents to the entry of an order for relief against it in an involuntary case or proceeding;
- (3) consents to the appointment of a custodian of it or for any substantial part of its property;
- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due;

(x) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that either:

- (1) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding;
- (2) appoints a custodian of the Company or any of its Significant Subsidiaries, or for any substantial part of the property of the Company or any of its Significant Subsidiaries;
- (3) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries; or
- (4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(x)**, such order or decree remains unstayed and in effect for at least sixty (60) days; or

(xi) the Company fails to comply in any material respect with any of its obligations under the Escrow Agreement.

(B) *Cause Irrelevant.* Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or 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.

Section 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** occurs with respect to the Company (and not solely with respect to a Significant Subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration.* Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(ix)** or **7.01(A)(x)** with respect to the Company and not solely with respect to a Significant Subsidiary of the Company) occurs and is continuing, then the Trustee, by notice to the Company, or Holders of at least twenty five percent (25%) of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; (ii) all existing Events of Default (except the non-payment of principal of, or interest on, the Notes that has become due solely because of such acceleration) have been cured or waived; and (iii) all sums paid or advanced by the Trustee under this Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel have been paid. No such rescission will affect any subsequent Default or impair any right consequent thereto.

Section 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a “**Reporting Event of Default**”) pursuant to **Section 7.01(A)(vi)** arising from the Company’s failure to comply with **Section 3.02** will, for each of the first one hundred and eighty (180) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the one hundred and eighty first (181st) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such one hundred and eighty first (181st) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest.* Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Special Interest, together with any Additional Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest and any Supplemental Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election.* To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer.* If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default.* No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04. OTHER REMEDIES.

(A) *Trustee May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee may pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters.* The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05. WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i), (ii), (iv) or (vi) of Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Holders of a majority in aggregate principal amount of the Notes then outstanding. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06. CONTROL BY MAJORITY.

Holders of a majority in aggregate principal amount of the Notes then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section 10.01**, the Trustee determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee in liability, unless the Trustee is offered security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such direction.

Section 7.07. LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or interest on, any Notes; or (y) the Company's obligations to convert any Notes pursuant to **Article 5**), unless:

- (A) such Holder has previously delivered to the Trustee notice that an Event of Default is continuing;
- (B) Holders of at least twenty five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a request to the Trustee to pursue such remedy;
- (C) such Holder or Holders offer and, if requested, provide to the Trustee security and indemnity satisfactory to the Trustee against any loss, liability or expense to the Trustee that may result from the Trustee's following such request;
- (D) the Trustee does not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and
- (E) during such sixty (60) calendar day period, Holders of a majority in aggregate principal amount of the Notes then outstanding do not deliver to the Trustee a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. The Trustee will have no duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.08. ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any interest on, or the Conversion Consideration due pursuant to **Article 5** upon conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.09. COLLECTION SUIT BY TRUSTEE.

The Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i), (ii) or (iv) of Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Redemption Price or Fundamental Change Repurchase Price for, or interest on, or Conversion Consideration due pursuant to **Article 5** upon conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 10.06**.

Section 7.10. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel, and any other amounts payable to the Trustee pursuant to **Section 10.06**. To the extent that the payment of any such compensation, expenses, disbursements, advances and other amounts out of the estate in such proceeding, is denied for any reason, payment of the same will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 7.11. PRIORITIES.

The Trustee will pay or deliver in the following order any money or other property that it collects pursuant to this **Article 7**:

First: to the Trustee and its agents and attorneys for amounts due under **Section 10.06**, including payment of all fees, compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Redemption Price or Fundamental Change Repurchase Price for, or any interest on, or any Conversion Consideration due upon conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.11**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder and the Trustee a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.12. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit, and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided, however*, that this **Section 7.12** does not apply to any suit by the Trustee, any suit by a Holder pursuant to **Section 7.08** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company and the Trustee may amend or supplement this Indenture or the Notes without the consent of any Holder to:

- (A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;
- (B) add guarantees with respect to the Company's obligations under this Indenture or the Notes;
- (C) secure the Notes;
- (D) add to the Company's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;
- (E) provide for the assumption of the Company's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 6**;
- (F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with an Ordinary Share Change Event;
- (G) irrevocably elect or eliminate any Settlement Method or Specified Dollar Amount; *provided, however*, that no such election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**;

(H) adjust the Conversion Rate, the Conversion Price or the Make-Whole Table (including the establishment of the Initial Conversion Rate, the initial Conversion Price or the initial Make-Whole Table) in accordance with, and subject to the terms of, this Indenture;

(I) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee;

(J) conform the provisions of this Indenture and the Notes to the “Description of Notes” section of the Offering Memorandum;

(K) provide for or confirm the issuance of additional Notes pursuant to **Section 2.03(B)**;

(L) comply with the rules of any applicable Depository in a manner that does not adversely affect the rights of the Holders;

(M) comply with any requirement of the SEC in connection with any qualification of this Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect; or

(N) make any other change to this Indenture or the Notes that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders, as such, in any material respect.

Section 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally.* Subject to **Sections 8.01, 7.05 and 7.08** and the immediately following sentence, the Company and the Trustee may, with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding, amend or supplement this Indenture or the Notes or waive compliance with any provision of this Indenture or the Notes. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may:

(i) reduce the principal, or extend the stated maturity, of any Note;

(ii) reduce the Redemption Price or Fundamental Change Repurchase Price for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the time for the payment, of interest on any Note;

(iv) make any change that adversely affects the conversion rights of any Note other than as permitted or required by this Indenture or the Notes;

(v) impair the rights of any Holder set forth in **Section 7.08** (as such section is in effect on the Issue Date);

- (vi) change the ranking of the Notes;
- (vii) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;
- (viii) make any change to **Section 3.05**, or in any related definitions, in any manner that is adverse to the rights of the Holders or beneficial owners of the Notes;
- (ix) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or
- (x) make any change to any amendment, supplement, waiver or modification provision of this Indenture or the Notes that requires the consent of each affected Holder.

For the avoidance of doubt, pursuant to **clauses (i), (ii), (iii) and (iv)** of this **Section 8.02(A)**, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, Fundamental Change Repurchase Date or the Maturity Date or upon conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment.* A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided, however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents.* The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided, however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents.* For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect.* Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06. TRUSTEE TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided, however*, that the Trustee need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee will be entitled to receive, and (subject to **Sections 10.01** and **10.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company in accordance with its terms.

Article 9. SATISFACTION AND DISCHARGE

Section 9.01. TERMINATION OF COMPANY'S OBLIGATIONS.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent (or, with respect to Conversion Consideration, the Conversion Agent), in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be converted, Conversion Consideration) sufficient to satisfy all amounts or other property (including, if applicable, all related Additional Amounts) due on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.13**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, however, that **Article 10** and **Section 11.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.15** and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

Section 9.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

Section 9.03. REINSTATEMENT.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 9.01** will be rescinded; *provided, however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10. TRUSTEE

Section 10.01. DUTIES OF THE TRUSTEE.

(A) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(B) Except during the continuance of an Event of Default:

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(C) The Trustee may not be relieved from liabilities for its negligence, bad faith or willful misconduct, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to **Section 7.06**.

(D) Each provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (A), (B) and (C) of this **Section 10.01**, regardless of whether such provision so expressly provides.

(E) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability.

(F) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

Section 10.02. RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely on any document that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

(C) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any such agent appointed with due care.

(D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture at the request or direction of any Holder unless such Holder has offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be responsible or liable for any punitive, special, indirect or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(H) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture (including in its capacity as Conversion Agent) and each agent, custodian and other Person employed to act under this Indenture, including the Conversion Agent.

(I) The permissive rights of the Trustee enumerated in this Indenture will not be construed as duties.

(J) Neither the Trustee nor the Registrar will have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary Participants, members of the Depositary or owners of beneficial interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements of this Indenture.

(K) Except with respect to receipt of payments of principal and interest on the Notes payable by the Company pursuant to **Section 3.01** and any Default or Event of Default information contained in the Officer's Certificate delivered to it pursuant to **Section 3.06(B)**, the Trustee will have no duty to monitor the Company's compliance with or the breach of any representation, warranty or covenant made in this Indenture.

Section 10.03. INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided, however*, that if the Trustee acquires a "conflicting interest" (within the meaning of Section 310(b) of the Trust Indenture Act), then it must eliminate such conflict within ninety (90) days or resign as Trustee. Each Note Agent will have the same rights and duties as the Trustee under this **Section 10.03**.

Section 10.04. TRUSTEE'S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

Section 10.05. NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing and is known to the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not known to the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes known to a Responsible Officer; *provided, however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. The Trustee will not be charged with knowledge of any Default or Event of Default, or knowledge of any cure of any Default or Event of Default, unless written notice of such Default or Event of Default, or of such cure of any Default or Event of Default, has been given by the Company or any Holder to a Responsible Officer of the Trustee.

Section 10.06. COMPENSATION AND INDEMNITY.

(A) The Company will, from time to time, pay the Trustee reasonable compensation for its acceptance of this Indenture and services under this Indenture. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation for the Trustee's services, the Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(B) The Company will indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this **Section 10.06**) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture, except to the extent any such loss, liability or expense may be attributable to its negligence, bad faith or willful misconduct. The Trustee will promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's failure to so notify the Company will not relieve the Company of its obligations under this **Section 10.06(B)**, except to the extent the Company is materially prejudiced by such failure. The Company will defend such claim, and the Trustee will cooperate in such defense. If the Trustee is advised by counsel that it may have defenses available to it that are in conflict with the defenses available to the Company, or that there is an actual or potential conflict of interest, then the Trustee may retain separate counsel, and the Company will pay the reasonable fees and expenses of such counsel (including the reasonable fees and expenses of counsel to the Trustee incurred in evaluating whether such a conflict exists). The Company need not pay for any settlement of any such claim made without its consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section 10.06** will survive the resignation or removal of the Trustee and the satisfaction or discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section 10.06**, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, or interest on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee incurs expenses or renders services after an Event of Default pursuant to **clause (ix) or (x) of Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 10.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 10.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 10.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Holders of a majority in aggregate principal amount of the Notes then outstanding may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 10.09**;
- (ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (iii) a custodian or public officer takes charge of the Trustee or its property; or
- (iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the Notes then outstanding may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 10.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the lien provided for in **Section 10.06(D)**.

Section 10.08. SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, then such corporation will become the successor Trustee without any further act.

Section 10.09. ELIGIBILITY; DISQUALIFICATION.

There will at all times be a Trustee under this Indenture that is a corporation organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100.0 million as set forth in its most recent published annual report of condition.

Article 11. MISCELLANEOUS

Section 11.01. NOTICES.

Any notice or communication by the Company or the Trustee to the other must be provided in writing and will be deemed to have been duly given in writing if delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Maxeon Solar Technologies, Ltd.
8 Marina Boulevard, #05-02
Marina Bay Financial Centre
018981, Singapore
Attention: General Counsel
Telephone: (480) 734 - 1234
Email address: lindsey.wiedmann@sunpower.com

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

Jones Day
90 South Seventh Street, Suite 4950
Minneapolis, Minnesota 55402
Facsimile: (312) 782-8585
Attention: Bradley C. Brasser; David Sikes

If to the Trustee:

Deutsche Bank Trust Company Americas
60 Wall Street, 24th Floor, Mail Stop 24-2405
New York, New York 10005
Facsimile: (732) 578-4635
Attention: Trust and Agency Services-Maxeon Solar Technologies

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business

Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by facsimile, electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided, however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities; and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, will be deemed original signatures for purposes of this Indenture and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Indenture or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Indenture or related hereto or thereto (including addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) ("**Executed Documentation**") may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations

will be binding on all parties to this Indenture to the same extent as if it were physically executed and each party hereby consents to the use of any third-party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When the Trustee or a Note Agent acts on any Executed Documentation sent by electronic transmission, the Trustee or Note Agent will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (A) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise); or (B) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it is understood and agreed that the Trustee and each Agent will conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising out of such electronic methods, including the risk of the Trustee or a Note Agent acting on unauthorized instructions and the risk of interception and misuse by third parties.

Section 11.02. DELIVERY OF OFFICER’S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee:

(A) an Officer’s Certificate in form and substance reasonably satisfactory to the Trustee that complies with **Section 11.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been satisfied; and

(B) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee that complies with **Section 11.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

Section 11.03. STATEMENTS REQUIRED IN OFFICER’S CERTIFICATE AND OPINION OF COUNSEL.

Each Officer’s Certificate (other than an Officer’s Certificate pursuant to **Section 3.06**) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

(A) a statement that the signatory thereto has read such covenant or condition;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

Section 11.04. RULES BY THE TRUSTEE, THE REGISTRAR AND THE PAYING AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS.

No past, present or future director, officer, employee, incorporator or shareholder of the Company, as such, will have any liability for any obligations of the Company under this Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

Section 11.06. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND THE TRUSTEE IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE OR THE NOTES.

Section 11.07. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party’s address set forth in **Section 11.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Trustee and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 11.08. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 11.09. SUCCESSORS.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.10. FORCE MAJEURE.

The Trustee and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, epidemic, local or national disturbance or disaster, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 11.11. U.S.A. PATRIOT ACT.

In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States (“**Applicable Terrorism Law**”), the Trustee and the Note Agents are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Trustee and/or the Note Agents. Accordingly, the Company agrees to provide to the Trustee and the Note Agents upon its request from time to time such documentation as may be available for such party in order to enable the Trustee and the Note Agents to comply with Applicable Terrorism Law.

Section 11.12. CALCULATIONS.

Except as otherwise provided in this Indenture, the Company will be responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Share Price, the Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, accrued interest on the Notes, the Conversion Rate, the Conversion Price and the Make-Whole Table.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and the Conversion Agent, and each of the Trustee and the Conversion Agent may rely conclusively on the accuracy of the Company’s calculations without independent verification. The Trustee will promptly forward a copy of each such schedule to a Holder upon its written request therefor.

Section 11.13. SEVERABILITY.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

Section 11.14. COUNTERPARTS.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

Section 11.15. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

Section 11.16. SERVICE OF PROCESS.

The Company irrevocably appoints CSC Corporation Service Company, which currently maintains an office at 1180 Avenue of the Americas, Suite 210, New York, New York 11036-8401, United States of America, as its authorized agent in the City of New York upon which process may be served in any suit, action or proceeding referred to in **Section 11.07**, and agrees that service of process upon such agent, and written notice of such service to the Company by the person serving the same to Maxeon Solar Technologies, Ltd., Maxeon Solar Technologies, Pte. Ltd., 51 Rio Robles, San Jose, California 95134, Attention: General Counsel, will be every respect effective service of process upon the Company in any such suit, action or proceeding. The Company agrees to take any and all reasonable action as may be necessary to maintain such designation and appointment of such agent in full force and effect until the date that is six (6) months after the Maturity Date. If, for any reason, such agent ceases to be such agent for service of process, then the Company will promptly appoint a new agent of recognized standing for service of process in the State of New York and deliver to the Holders and the Trustee a copy of the new agent's acceptance of that appointment within ten (10) Business Days of such acceptance. Nothing in this **Section 11.16** will affect the right of the Trustee, any Note Agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other court of competent jurisdiction. To the extent that the Company has or hereafter may acquire any sovereign or other immunity from jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives such immunity in respect of its obligations under this Indenture or under any Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

MAXEON SOLAR TECHNOLOGIES, LTD.

By: /s/ Joanne Solomon
Name: Joanne Solomon
Title: Chief Financial Officer

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee,
Registrar, Paying Agent and Conversion Agent

By: /s/ Bridgette Casasnovas
Name: Bridgette Casasnovas
Title: Vice President

/s/ Jacqueline Bartnick
Name: Jacqueline Bartnick
Title: Director

[Signature Page to Indenture]

FORM OF NOTE*[Insert Global Note Legend, if applicable]**[Insert Restricted Note Legend, if applicable]**[Insert Non-Affiliate Legend]***Maxeon Solar Technologies, Ltd.****6.50% Green Convertible Senior Note due 2025**

CUSIP No.: [_____] *[Insert for a “restricted” CUSIP number: *]* Certificate No. [_____]

 ISIN No.: [_____] *[Insert for a “restricted” ISIN number: *]*

Maxeon Solar Technologies, Ltd., a company incorporated in Singapore, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [_____] dollars (\$[_____] *[(as revised by the attached Schedule of Exchanges of Interests in the Global Note)]*† on July 15, 2025 and to pay interest thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: January 15 and July 15 of each year, commencing on *[date]*.

Regular Record Dates: January 1 and July 1.

Additional provisions of this Note are set forth on the other side of this Note.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

* This Note will be deemed to be identified by CUSIP No. [_____] and ISIN No. [_____] from and after such time when the Company delivers, pursuant to Section 2.12 of the within-mentioned Indenture, written notice to the Trustee of the deemed removal of the Restricted Note Legend affixed to this Note.

† Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, Maxeon Solar Technologies, Ltd. has caused this instrument to be duly executed as of the date set forth below.

MAXEON SOLAR TECHNOLOGIES, LTD.

Date: _____ By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Deutsche Bank Trust Company Americas, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

6.50% Green Convertible Senior Note due 2025

This Note is one of a duly authorized issue of notes of Maxeon Solar Technologies, Ltd., a company incorporated in Singapore (the “**Company**”), designated as its 6.50% Green Convertible Senior Notes due 2025 (the “**Notes**”), all issued or to be issued pursuant to an indenture, dated as of July 17, 2020 (as the same may be amended from time to time, the “**Indenture**”), between the Company and Deutsche Bank Trust Company Americas, as trustee. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Trustee and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest.** This Note will accrue interest at a rate and in the manner set forth in Section 2.05 of the Indenture. Stated Interest on this Note will begin to accrue from, and including, [date].
2. **Maturity.** This Note will mature on July 15, 2025, unless earlier repurchased, redeemed or converted.
3. **Method of Payment.** Cash amounts due on this Note will be paid in the manner set forth in Section 2.04 of the Indenture.
4. **Persons Deemed Owners.** The Holder of this Note will be treated as the owner of this Note for all purposes.
5. **Denominations; Transfers and Exchanges.** All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.
6. **Right of Holders to Require the Company to Repurchase Notes upon a Fundamental Change.** If a Fundamental Change occurs, then each Holder will have the right to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in Section 4.02 of the Indenture.
7. **Redemption of the Notes.** The Notes will be subject to Redemption for cash in the manner, and subject to the terms, set forth in Section 4.03 and Section 4.04 of the Indenture.
8. **Conversion.** The Holder of this Note may convert this Note into Conversion Consideration in the manner, and subject to the terms, set forth in Article 5 of the Indenture.

9. **When the Company May Merge, Etc.** Article 6 of the Indenture places certain restrictions on the Company's ability to be a party to a Business Combination Event.

10. **Defaults and Remedies.** If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in Article 7 of the Indenture.

11. **Amendments, Supplements and Waivers.** The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in Section 7.05 and Article 8 of the Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Shareholders.** No past, present or future director, officer, employee, incorporator or shareholder of the Company, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication.** No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually or electronically signs the certificate of authentication of such Note.

14. **Abbreviations.** Customary abbreviations may be used in the name of a Holder or its assignee, such as TEN COM (tenants in common), TEN ENT (tenants by the entireties), JT TEN (joint tenants with right of survivorship and not as tenants in common), CUST (custodian), and U/G/M/A (Uniform Gift to Minors Act).

15. **Governing Law.** THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Maxeon Solar Technologies, Ltd.
8 Marina Boulevard, #05-02
Marina Bay Financial Centre
018981, Singapore
Attention: General Counsel

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

INITIAL PRINCIPAL AMOUNT OF THIS GLOBAL NOTE: \$[_____]

The following exchanges, transfers or cancellations of this Global Note have been made:

Date	Amount of Increase (Decrease) in Principal Amount of this Global Note	Principal Amount of this Global Note After Such Increase (Decrease)	Signature of Authorized Signatory of Trustee

* Insert for Global Notes only.

CONVERSION NOTICE

Maxeon Solar Technologies, Ltd.

6.50% Green Convertible Senior Notes due 2025

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

- ☐ the entire principal amount of
- ☐ \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

FUNDAMENTAL CHANGE REPURCHASE NOTICE

Maxeon Solar Technologies, Ltd.

6.50% Green Convertible Senior Notes due 2025

Subject to the terms of the Indenture, by executing and delivering this Fundamental Change Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Fundamental Change Repurchase Right with respect to (check one):

☐ the entire principal amount of

☐ \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Fundamental Change Repurchase Price will be paid.

Date: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

* Must be an Authorized Denomination.

ASSIGNMENT FORM

Maxeon Solar Technologies, Ltd.

6.50% Green Convertible Senior Notes due 2025

Subject to the terms of the Indenture, the undersigned Holder of the within Note assigns to:

Name: _____

Address: _____

Social security or
tax identification
number: _____

the within Note and all rights thereunder irrevocably appoints:

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____ (Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

1. ☐ Such Transfer is being made to the Company or a Subsidiary of the Company.
2. ☐ Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.
3. ☐ Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**
4. ☐ Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

TRANSFeree ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____

(Name of Transferee)

By: _____

Name:

Title:

FORM OF RESTRICTED NOTE LEGEND

THE OFFER AND SALE OF THIS NOTE AND THE ORDINARY SHARES, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; AND
- (2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
 - (B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
 - (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
 - (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.*

* This paragraph and the immediately preceding paragraph will be deemed to be removed from the face of this Note at such time when the Company delivers written notice to the Trustee of such deemed removal pursuant to Section 2.12 of the within-mentioned Indenture.

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY ("DTC") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY MAY PURCHASE OR OTHERWISE ACQUIRE THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN.

B3-1

July 17, 2020

To: Maxeon Solar Technologies, Ltd.
8 Marina Boulevard #05-02
Marina Bay Financial Centre
018981, Singapore
Attn: General Counsel

Re: Prepaid Forward Share Purchase Transaction
(Transaction Reference Number: [])

Dear Sir / Madam:

The purpose of this letter agreement (this “**Confirmation**”) is to set forth certain terms and conditions of the transaction entered into between Merrill Lynch International (“**Dealer**”) and Maxeon Solar Technologies, Ltd. (“**Counterparty**”) on the Trade Date specified below (the “**Transaction**”). The Transaction shall be further evidenced by the pricing supplement substantially in the form of Annex A hereto (a “**Pricing Supplement**”). This Confirmation and the Pricing Supplement together shall constitute a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation and the Pricing Supplement shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2006 ISDA Definitions (the “**Swap Definitions**”) and the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”) and together with the Swap Definitions, the “**Definitions**”) in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated July 9, 2020 (the “**Offering Memorandum**”) relating to the 6.50% Convertible Senior Notes due 2025 (as originally issued by Counterparty, the “**Convertible Notes**”) issued by Counterparty in an aggregate initial principal amount of USD 185,000,000 (as increased by up to an aggregate principal amount of USD 15,000,000 if and to the extent that the Initial Purchasers (as defined herein) exercise their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture to be dated July 17, 2020 between Counterparty and Deutsche Bank Trust Company Americas, as trustee (the “**Indenture**”). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein, in each case, will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Dealer and Counterparty as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date hereof and on the date of its execution, respectively, and if the Indenture is amended following such date (other than any amendment or supplement of the Indenture pursuant to Section 8.01(J) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of the Convertible Notes in the Offering Memorandum), any such amendment will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation and the Pricing Supplement evidence a complete binding agreement between Counterparty and Dealer as to the terms of the Transaction to which this Confirmation and the Pricing Supplement

relate. This Confirmation and the Pricing Supplement (notwithstanding anything to the contrary herein) shall be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Master Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (1) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine), (2) the election of US Dollars (“**USD**”) as the Termination Currency, and (3) (a) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Master Agreement shall apply to Dealer with a “Threshold Amount” of three percent of the shareholders’ equity of Dealer as of the Trade Date, (b) the phrase “, or becoming capable at such time of being declared,” shall be deleted from clause (1) of such Section 5(a)(vi), (c) the term “Specified Indebtedness” shall have the meaning specified in Section 14 of the Master Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer’s (or its subsidiaries’) banking business and (d) the following language shall be added to the end thereof: “Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Business Days of such party’s receipt of written notice of its failure to pay.”) on the Trade Date. In the event of any inconsistency between the provisions of the Master Agreement, this Confirmation, the Pricing Supplement, the Swap Definitions and the Equity Definitions, the following will prevail for purposes of the Transaction in the order of precedence indicated: (i) the Pricing Supplement, (ii) this Confirmation, (iii) the Equity Definitions, (iv) the Swap Definitions and (v) the Master Agreement.

2. The Transaction constitutes a Share Forward for purposes of the Equity Definitions. Set forth below are the general terms and conditions related to the particular Transaction which, together with the terms and conditions set forth in the Pricing Supplement, shall govern the Transaction.

General Terms.

Trade Date:	July 17, 2020
Effective Date:	The first day of the “note valuation period” (as defined in the Offering Memorandum), subject to cancellation of the Transaction as provided in Section 7(c) “Early Unwind” below.
Seller:	Dealer
Buyer:	Counterparty
Shares:	The ordinary share of Counterparty, no par value per share (Exchange Symbol: “MAXN”).
Number of Shares:	Following the Hedging Period, a number of Shares equal to the Prepayment Amount <i>divided by</i> the Forward Price, rounded down to the nearest whole number. On each Settlement Date, the Number of Shares shall be reduced by the Daily Number of Shares delivered by Dealer to Counterparty on such Settlement Date.
Daily Number of Shares:	For any Valuation Date occurring prior to the Maturity Date, the number of Shares specified by Dealer in the related Settlement Notice (as defined below under “Valuation Dates”), which shall not exceed the Number of Shares on such Valuation Date, and for the Valuation Date occurring on the Maturity Date, if any, the Number of Shares on such Valuation Date.
Maturity Date:	The last day of the 60 Business Day period commencing on, and including, the 61st Scheduled Trading Day immediately preceding July 15, 2025.
Hedging Period:	The period over 15 consecutive Scheduled Trading Days beginning on, and including, the later of (i) the fifth Scheduled Trading Day

immediately after the date on which the Shares are distributed pursuant to the “Maxeon spin-off” (as defined in the Offering Memorandum) and (ii) the Scheduled Trading Day immediately after the first date on which the “note valuation period conditions precedent” (as defined in the Offering Memorandum) have been satisfied, subject to “Hedging Period Disruption” below.

Within one Scheduled Trading Day following the Hedging Period, Dealer shall deliver the Pricing Supplement to Counterparty.

Hedging Period Disruption:	If any Scheduled Trading Day during the Hedging Period is a Disrupted Day, the Calculation Agent shall determine in good faith and in a commercially reasonable manner whether (i) such Disrupted Day is a Disrupted Day in full, in which case the Relevant Price for such Disrupted Day shall not be included for purposes of determining the Forward Price, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the Calculation Agent shall (x) determine in good faith and in a commercially reasonable manner the Relevant Price for such Disrupted Day based on transactions in the Shares on such Disrupted Day effected before the relevant Market Disruption Event occurred and/or after the relevant Market Disruption Event ended, taking into account the nature and duration of such Market Disruption Event on such Disrupted Day, (y) designate another Scheduled Trading Day at the end of the originally scheduled Hedging Period that is not a Disrupted Day for the remaining portion and (z) determine in good faith and in a commercially reasonable fashion the Forward Price by an appropriately weighted average of the Relevant Prices in respect of the Hedging Period rather than an arithmetic average of such Relevant Prices. Such determination shall be based on the duration of any Market Disruption Event, the volume, historical trading pattern and price of the Shares.
Forward Price:	The greater of (i) the arithmetic average of the Relevant Prices during the Hedging Period and (ii) USD 4.00.
Relevant Price:	In respect of any Scheduled Trading Day, the volume-weighted average price per Share based on transactions executed in the United States on such Scheduled Trading Day, as determined by the Calculation Agent by reference to Bloomberg Page “MAXN <equity> AQR <Go>” (or any successor page thereto), in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Scheduled Trading Day; <i>provided</i> that if such price is not so reported for any reason or is manifestly erroneous, such Relevant Price determined by the Calculation Agent in good faith and in a commercially reasonable manner using, if practicable, a volume-weighted average. The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Prepayment:	Applicable
Prepayment Amount:	USD 40,000,000.00
Prepayment Date:	The Effective Date.
Exchange:	The NASDAQ Global Select Market

Related Exchange(s): All Exchanges; *provided* that Section 1.26 of the Equity Definitions shall be amended to add the word “United States” before the word “exchange” in the tenth line of such section.

Calculation Agent: Dealer, subject to the following:

The Calculation Agent is Dealer, whose judgments, determinations and calculations as Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent shall promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email to the email address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary or confidential data or information or any proprietary or confidential models used by it for such determination or calculation.

Settlement Terms:

Settlement Method Election: Not Applicable.

Default Settlement Method: For any Settlement Date for which Counterparty has provided to Dealer evidence of a valid Counterparty Shareholder Purchase Approval allowing Physical Settlement on such Settlement Date pursuant to Section 6(r) below, Physical Settlement; otherwise, Cash Settlement.

Counterparty Shareholder Purchase Approval: A special resolution by the shareholders of Counterparty authorizing a selective off-market purchase of the Number of Shares to be redelivered to Counterparty under this Confirmation (in aggregate with number of Shares to be repurchased in connection with the physical delivery share forward transaction dated July 17, 2020 entered into between Dealer and Counterparty (“**Physical Delivery Share Forward Transaction**”) be no more than 20% of the total number of ordinary Shares in the capital of Counterparty ascertained as at the date of the Counterparty Shareholder Purchase Approval) in accordance with the terms of this Transaction pursuant to s.76D of the Companies Act, Chapter 50 of Singapore (as amended, supplemented and re-enacted from time to time) (“**Companies Act**”) to be passed each year prior to the date of the expiry of the then existing Counterparty Shareholder Purchase Approval so as to renew the shareholders’ approval under s.76D of the Companies Act for the selective off-market purchase annually (“**annual buy-back mandate renewal**”). Within five Business Days following the receipt of each annual buy-back mandate renewal, the Counterparty and the Dealer will enter into a supplemental confirmation of the Transaction in form and substance reasonably satisfactory to Dealer and Counterparty pursuant to such annual buy-back mandate renewal, setting out the maximum Number of Shares to be redelivered to Counterparty under this Confirmation (in aggregate with number of Shares to be repurchased in connection with the Physical Delivery Share Forward Transaction be no more than 20% of the total number of ordinary Shares in the capital of Counterparty calculated based on then existing Share capital of Counterparty ascertained as at the date of such subsequent Counterparty Shareholder

	Purchase Approval) that is authorized to be purchased pursuant to such annual buy-back mandate renewal. Dealer shall, and shall procure that its associated persons shall, abstain from voting on the initial Counterparty Shareholder Purchase Approval and subsequent Counterparty Shareholder Purchase Approvals sought at any general meeting of Counterparty in respect of the renewal of the annual buy-back mandate renewal in accordance with s.76D of the Companies Act.
Physical Settlement:	In lieu of Section 9.2(a)(iii) of the Equity Definitions, Dealer will deliver to Counterparty the Daily Number of Shares for the related Valuation Date on the relevant Settlement Date.
Settlement Date:	The date that is one Settlement Cycle following the relevant Valuation Date.
Cash Settlement:	In lieu of Sections 8.4 and 8.5 of the Equity Definitions, Dealer will deliver to Counterparty the Cash Settlement Amount on the relevant Cash Settlement Payment Date.
Settlement Currency:	USD.
Cash Settlement Amount:	With respect to any Valuation Date, an amount in USD equal to (i) the Daily Number of Shares for such Valuation Date <i>multiplied by</i> (ii) (x) the arithmetic average of the VWAP Prices for each Scheduled Trading Day in the Averaging Period <i>minus</i> (y) the Commission Amount.
Commission Amount:	With respect to any Valuation Date, (i) if the market capitalization of Counterparty is greater than USD 250,000,000 as of the close of business on the Trading Day immediately preceding such Valuation Date, USD 0.00, or (ii) otherwise, USD 0.02.
Averaging:	Applicable.
Averaging Dates:	(i) For any Valuation Date occurring prior to the Maturity Date, a number of consecutive Scheduled Trading Days specified in the relevant Settlement Notice for such Valuation Date commencing on such Valuation Date; and (ii) for the Valuation Date occurring on the Maturity Date, the 60 Trading Days immediately preceding the Maturity Date.
VWAP Price:	In respect of any Scheduled Trading Day, the volume-weighted average price per Share based on transactions executed in the United States on such Scheduled Trading Day, as determined by the Calculation Agent by reference to Bloomberg Page “MAXN <equity> AQR <Go>” (or any successor page thereto), in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Scheduled Trading Day; <i>provided</i> that if such price is not so reported for any reason or is manifestly erroneous, such Relevant Price determined by the Calculation Agent in good faith and in a commercially reasonable manner using, if practicable, a volume-weighted average. The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Cash Settlement Payment Date:	With respect to any Valuation Date, the date that is one Settlement Cycle immediately following the final Averaging Date.

Valuation Dates:

(a) Any Scheduled Trading Day following the Effective Date designated by Dealer from time to time in a written notice (a “**Settlement Notice**”) that is delivered to Counterparty at least one Scheduled Trading Day prior to such Valuation Date, specifying (i) the Valuation Date, (ii) the Daily Number of Shares, (iii) the number of Scheduled Trading Days in the Averaging Period determined, acting in good faith and in a commercially reasonable manner, based on the Daily Number of Shares, the volume, historical trading patterns and price of the Shares, and (iv) whether Dealer has received evidence of a valid Counterparty Shareholder Purchase Approval allowing Physical Settlement on the expected Settlement Date following such Valuation Date pursuant to Section 6(r), in which case Physical Settlement shall apply with respect to such Valuation Date; and

(b) the Maturity Date.

If, on any Business Day, the Number of Shares is greater than the number of Shares underlying all of Counterparty’s then outstanding Convertible Notes, Counterparty may provide written notice to Dealer of such fact (such notice, a “**Notional Excess Notice**”). Promptly following the date 90 calendar days immediately following the date on which Dealer receives a Notional Excess Notice from Counterparty (taking into consideration the amount of time necessary to completed any related unwind activity with respect to Dealer’s Hedge Position), Dealer shall deliver a Settlement Notice to Counterparty designating a Valuation Date and related Settlement Date with respect to a Daily Number of Shares following such Settlement Date is less than or equal to the number of Shares underlying all then outstanding Convertible Notes.

Market Disruption Event:

The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) by deleting the words “at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” and inserting the words “at any time on any Valuation Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption:

Any event that Dealer, in its reasonable discretion and in good faith, based on advice of legal counsel, determines that it is advisable with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures applicable to Dealer (*provided* that such requirements, policies and procedures relate to legal and regulatory issues and are generally applicable in similar situations and applied in a consistent manner in similar transactions), including any requirements, policies or procedures relating to Dealer’s commercially reasonable hedging activity hereunder, to refrain from or decrease any market activity in connection with the Transaction. Dealer shall notify Counterparty as reasonably practicable (but in no event later than two Scheduled Trading Days) that a Regulatory Disruption has occurred and the Valuation Dates affected by it, and Dealer shall promptly notice Counterparty of any termination of such Regulatory Disruption.

Averaging Date Disruption:

Modified Postponement; *provided* that notwithstanding anything to the contrary herein or in the Equity Definitions, if any Averaging Date is a Disrupted Day, then the Calculation Agent shall in good faith and in a commercially reasonable manner determine whether (i) such Disrupted Day is a Disrupted Day in full, in which case the VWAP Price for such Disrupted Day shall not be included for purposes of determining the Cash Settlement Amount, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the Calculation Agent shall (x) determine in good faith and in a commercially reasonable manner the Relevant Price for such Disrupted Day based on transactions in the Shares on such Disrupted Day effected before the relevant Market Disruption Event occurred and/or after the relevant Market Disruption Event ended, taking into account the nature and duration of such Market Disruption Event on such Disrupted Day, (y) designate a Valid Date determined pursuant to Section 6.7(c)(iii) of the Equity Definitions as the Averaging Date for the remaining portion and (z) determine the Cash Settlement Amount by an appropriately weighted average of the VWAP Prices in respect of the Averaging Date related to the relevant Valuation Date rather than an arithmetic average of such VWAP Prices. Such determination shall be based on the duration of any Market Disruption Event, the volume, historical trading pattern and price of the Shares.

Dividends:

Dividend Payment:

In lieu of Section 9.2(a)(iii) of the Equity Definitions, Dealer will pay to Counterparty the Dividend Amount on the second Currency Business Day immediately following the Dividend Payment Date.

Dividend Amount:

(a) 100% of the per Share amount of any cash dividend declared by Counterparty to holders of record of a Share on any record date occurring during the period from, and including, the Effective Date to, but excluding, the final Settlement Date (net of any applicable deductions by reason of taxes), *multiplied by* (b) the Number of Shares on such record date (after giving effect to any reduction on such record date, if such record date is a Settlement Date).

Dividend Payment Date:

Each date on which the relevant Dividend Amount is paid by Counterparty to shareholders of record.

Share Adjustments:

Method of Adjustment:

Calculation Agent Adjustment; *provided* that the parties agree that (x) open market Share repurchases at prevailing market price and (y) Share repurchases through a dealer pursuant to accelerated share repurchases, forward contracts or similar transactions (including, without limitation, any discount to average VWAP prices) that are entered into at prevailing market prices and in accordance with customary market terms for transactions of such type to repurchase the Shares shall not be considered Potential Adjustment Events; *provided, further*, that, the entry into any such accelerated share repurchase transaction, forward contract or similar transaction described in the immediately preceding proviso shall constitute a Potential Adjustment Event to the extent that, after giving effect to such transaction, the aggregate number of Shares

repurchased during the term of the Transaction pursuant to all such transactions described in the immediately preceding proviso would exceed 20% of the number of Shares outstanding as of the Effective Date, as determined by Calculation Agent; *provided further* that Section 11.2(e)(vii) of the definition of Potential Adjustment Event is hereby amended by adding the term “corporate” after the word “other” and before the word “event” in such section.

For the avoidance of doubt, the payment of any cash dividend or distribution on the Shares shall not constitute a Potential Adjustment Event but instead be governed by the provisions set forth under the heading “Dividends” above.

Extraordinary Events:

New Shares:	In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)”.
Consequences of Merger Events:	
Share-for-Share:	Calculation Agent Adjustment
Share-for-Other:	Calculation Agent Adjustment or Cancellation and Payment, at the commercially reasonable election of Dealer
Share-for-Combined:	Calculation Agent Adjustment or Cancellation and Payment, at the commercially reasonable election of Dealer
Consequences of Tender Offers:	
Tender Offer	Applicable; <i>provided</i> that the definition of “Tender Offer” in Section 12.1 of the Equity Definitions will be amended by replacing the phrase “greater than 10% and less than 100% of the outstanding voting shares of the Counterparty” in the third and fourth line thereof with “greater than 20% and less than 100% of the outstanding Shares of the Counterparty”.
Share-for-Share:	Calculation Agent Adjustment
Share-for-Other:	Calculation Agent Adjustment
Share-for-Combined:	Calculation Agent Adjustment
Calculation Agent Adjustment:	If, with respect to a Merger Event or a Tender Offer, the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation or is not organized under the laws of Singapore or the United States, any State thereof or the District of Columbia, then Cancellation and Payment may apply at Dealer’s sole election.
Composition of Combined Consideration:	Not Applicable

Nationalization, Insolvency or Delisting: Cancellation and Payment; *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange. For purposes of this Confirmation (x) the phrase “will be cancelled” in the first line of Section 12.6(c)(ii) of the Equity Definitions shall be replaced with the phrase “may be cancelled by Dealer in its commercially reasonable discretion” and (y) the words “if so cancelled” shall be inserted immediately following the word “and” in the second line of Section 12.6(c)(ii) of the Equity Definitions.

Additional Disruption Events:

Change in Law: Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”.

Failure to Deliver: Applicable

Hedging Disruption: Applicable; *provided* that (1) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption,” and (2) Section 12.9(a) of the Equity Definitions is hereby amended by inserting (i) the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (ii) the following at the end of such Section: “Such inability described in clause (A) or (B) above shall not constitute a “Hedging Disruption” if such inability results solely from the Hedging Party’s creditworthiness or financial position”.

Increased Cost of Hedging: Applicable; *provided* that for purposes of this Confirmation (1) (x) the comma immediately preceding “(B)” in the seventh line of Section 12.9(b)(vi) of the Equity Definitions shall be replaced with the word “or”, (y) clause (C) of Section 12.9(b)(vi) of the Equity Definitions shall be deleted and (z) the words “either party” in the twelfth line of Section 12.9(b)(vi) of the Equity Definitions shall be replaced with the words “the Hedging Party” and (2) such increased cost described in Section 12.9(a)(vi) of the Equity Definitions shall not constitute an “Increased Cost of Hedging” if such increased costs results from solely the Hedging Party’s creditworthiness or financial position.

Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer who, in such capacity, shall make all determinations and calculations in good faith and in a commercially reasonable manner.
Determining Party:	For all Extraordinary Events, Dealer, in each case subject to the following: The Determining Party is Dealer, whose judgments, determinations and calculations as Determining Party shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Determining Party hereunder, upon a written request by Counterparty, the Determining Party shall promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email to the email address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Determining Party shall not be obligated to disclose any proprietary or confidential data or information or any proprietary or confidential models used by it for such determination or calculation.
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgements:	Applicable

3. Account Details:

- (a) Account for payments to Counterparty:
To be provided by Counterparty.
Account for delivery of Shares to Counterparty:
To be provided by Counterparty.
- (b) Account for payments to Dealer:
Beneficiary Bank: Bank of America
ABA: 026-009-593
SWIFT: BOFAUS3N
Acct #: 65504-60511
Acct Name: Merrill Lynch International Equity Derivatives, London
SWIFT: MLILGB2A
Account for delivery of Shares from Dealer:
To be provided by Dealer.

4. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of Dealer for the Transaction is: London.

5. Notices: For purposes of this Confirmation:

- (a) Address for notices or communications to Counterparty:
Maxeon Solar Technologies, Ltd.
8 Marina Boulevard #05-02
Marina Bay Financial Centre
018981, Singapore
Attn: General Counsel
- (b) Address for notices or communications to Dealer:
Merrill Lynch Financial Centre
2 King Edward Street
London EC1A 1HQ

with a copy to:

BofA Securities, Inc.
One Bryant Park
New York, NY 10036
Attn: Chris Hutmaker, Managing Director; Robert Stewart, Assistant General Counsel
Telephone: 646-855-8907; 646-855-0711
Email: chris.hutmaker@bofa.com; rstewart4@bofa.com

6. Representations, Warranties and Agreements.

Each of the representations and warranties of Counterparty set forth in Section 1 of the Purchase Agreement (the “**Purchase Agreement**”), dated as of July 9, 2020, between Counterparty and BofA Securities, Inc., Merrill Lynch (Singapore) Pte. Ltd., DBS Bank Ltd., and Morgan Stanley Asia Singapore Pte., as representatives of the Initial Purchasers party thereto (the “**Initial Purchasers**”), are true and correct and are hereby deemed to be repeated to Dealer as if set forth herein. Furthermore, in addition to the representations set forth in the Master Agreement, Counterparty represents and warrants to, and agrees with, Dealer, on date hereof, that:

- (a) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the Transaction is subject to complex risks which may arise without warning and may at times be volatile, and that losses may occur quickly and in unanticipated magnitude; (iii) it is authorized to enter into the Transaction and such action does not violate any laws of its jurisdiction of incorporation, organization or residence (including, but not limited to, any applicable position or exercise limits set by any self-regulatory organization, either acting alone or in concert with others) or the terms of any agreement to which it is a party; (iv) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction; (v) it has concluded that the Transaction is suitable in light of its own investment objectives, financial condition and expertise; and (vi) neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (b) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least \$50 million.

(c) The reports and other documents filed by Counterparty with the U.S. Securities and Exchange Commission (“SEC”) pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading. Counterparty is not in possession of any material nonpublic information regarding the business, operations or prospects of Counterparty or the Shares.

(d) Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.

(e) Counterparty shall not, from the fifth Scheduled Trading Day immediately prior to the Effective Date until the end of the “note valuation period” (as defined in the Offering Memorandum), engage in a distribution, as such term is used in Regulation M under the Exchange Act of any securities of Counterparty, other than (i) a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M or (ii) the underwritten offering described in the Offering Memorandum. Counterparty shall not, during (x) the period beginning on, and including, the 61st Scheduled Trading Day immediately preceding July 15, 2025 and ending on, and including, the second Scheduled Trading Day immediately following the Maturity Date or (y) the period the period beginning on, and including, the date on which Counterparty or any subsidiary repurchases the Convertible Notes in connection with a “Fundamental Change” (as such term is defined in the Indenture) or Counterparty or any subsidiary thereof enters into any agreement to repurchase or convert any of the Convertible Notes other than pursuant to the terms of the Indenture or Counterparty or any subsidiary repurchases or converts Convertible Notes pursuant to a tender offer for the Convertible Notes (each such event, a “**Repurchase**”) and ending on, and including, the second Scheduled Trading Day immediately following completion by Dealer of any unwind activity with respect to Dealer’s Hedge Positions as a result of any such Repurchase (*provided* that Dealer shall complete such activity within 20 Scheduled Trading Days (excluding any Scheduled Trading Day on which a Market Disruption Event occurs) of any such Repurchase) (any period described in clause (x) or clause (y), a “**Prohibited Period**”), engage in any such distribution, other than a distribution meeting the requirements of one of the exceptions set forth in Rule 101(b) and Rule 102(b) of Regulation M. Counterparty shall give contemporaneous written notice to Dealer of any Repurchase and Dealer shall give prompt written notice (but in any event no later than the Scheduled Trading Day following such event) to Counterparty of its completion of any unwind activity with respect to Dealer’s Hedge Positions as a result of such Repurchase.

(f) The Transaction was approved by the board of directors of Counterparty, and Counterparty is entering into the Transaction solely for the purposes stated in such board resolution. There is no internal policy of Counterparty, whether written or oral, that would prohibit Counterparty from entering into any aspect of the Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.

(g) Subject to the Counterparty Shareholder Purchase Approvals for Physical Settlement of this Transaction to be obtained pursuant to Section 6(r)(ii) below, Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of the Transaction and the Counterparty Shareholder Purchase Approval for Physical Settlement of this Transaction valid until the next annual general meeting of Counterparty following the Trade Date; such execution, delivery and performance have been duly authorized by all necessary corporate action on Counterparty’s part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.

- (h) On and immediately after the Trade Date and the Prepayment Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, (D) Counterparty is not, and will not be, “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”)), and (E) Counterparty could have purchased Shares with an aggregate purchase price equal to the Prepayment Amount in compliance with the corporate laws of the jurisdiction of its incorporation.
- (i) Counterparty has made, and will make, all filings required to be made by it with the SEC, any securities exchange or any other regulatory body with respect to the Transaction contemplated hereby.
- (j) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of (i) the constitution (or any equivalent documents) of Counterparty other than the requirement to obtain the Counterparty Shareholder Purchase Approval relating to Physical Settlement of this Transaction pursuant to Section 6(r)(ii) below, or (ii) any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or (iii) any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, except in the case of clauses (ii) and (iii), as would not reasonably be expected to have a material adverse effect on the ability of Counterparty to meet its obligations under the Transaction.
- (k) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the “**Securities Act**”), or state securities laws.
- (l) Counterparty is not and, after giving effect to the transactions contemplated in this Confirmation and the transactions contemplated under “Use of Proceeds” in the Offering Memorandum, will not be required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (m) Each of the Counterparty and the Dealer is an “eligible contract participant” (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).
- (n) No state or local (including any non-U.S. jurisdiction’s) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares, *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being financial institutions or broker-dealers.
- (o) On the Effective Date and on any day during a Prohibited Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.
- (p) Counterparty and Dealer acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(q) Counterparty (x) represents and warrants that it has not, as of the Trade Date and will not have as of the Effective Date, applied for or received a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”)) or other investment, or any financial assistance or relief under any program or facility (collectively “Financial Assistance”) that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) (i) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that Counterparty comply with a requirement not to, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty, and that it has not, as of the date specified in the condition, made a capital distribution or will make a capital distribution, or (ii) for which the terms of the Transaction would cause Counterparty to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance and (y) acknowledges that entering into the Transaction may limit its ability to receive such loan, loan guarantee, direct loan.

(r) Counterparty (i) has, as of the Trade Date, obtained the initial Counterparty Shareholder Purchase Approval that is valid until the next annual general meeting of Counterparty following the Trade Date, (ii) shall (x) use its reasonable best efforts to obtain a Counterparty Shareholder Purchase Approval at a general meeting of Counterparty to be held each year prior to the expiry of the then Counterparty Shareholder Purchase Approval during the term of this Transaction and (y) provide a copy of each such annual buy-back mandate renewal relating to Physical Settlement of this Transaction to Dealer within five Business Days after each such general meeting of Counterparty, and (iii) if the annual buy-back mandate renewal is not obtained at any general meeting of Counterparty to be held during the term of this Transaction, shall on the close of such general meeting inform Dealer that the Counterparty Shareholder Purchase Approval has lapsed.

7. Other Provisions.

(a) Opinions. On or prior to the Trade Date, Counterparty shall deliver to Dealer opinions of both New York and Singapore counsel, each dated as of the Trade Date, in form and substance reasonably satisfactory to Dealer, with respect to the matters set forth in Section 6(g), Section 6(j), Section 6(k) and Section 6(l) of this Confirmation. Delivery of such opinion to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Master Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Master Agreement.

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the Notice Percentage as determined on such day is greater than 1.0%. The “**Notice Percentage**” as of any day is the fraction, expressed as a percentage, the numerator of which is the number of Shares subject to such repurchase and the denominator of which is the number of Shares outstanding immediately prior to such repurchase. Counterparty agrees to indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable, out-of-pocket fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment.

Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph that is in respect of which any Indemnified Person is a party and indemnity has been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

(c) Early Unwind. In the event (i) the “distribution date for the Maxeon spin-off” (as described in the Offering Memorandum) does not occur on or before the “Maxeon spin-off deadline date” (as defined in the Offering Memorandum) or (ii) the sale of the “Initial Securities” (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason pursuant to the terms and conditions of the Purchase Agreement, (the date of such occurrence, the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”) on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(d) Transfer or Assignment.

(i) Dealer may transfer or assign (a “**Transfer**”) all or any part of its rights or obligations under the Transaction (A) without Counterparty’s consent to any affiliate of Dealer, but, only if (1) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment, (2) as a result of such Transfer, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Master Agreement, as applicable, greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (3) such affiliate of Dealer (x) has a rating for its long term, unsecured and unsubordinated indebtedness that is equal to or better than Dealer’s credit rating at the time of such Transfer or (y) whole obligations hereunder will be guaranteed, pursuant to terms of a customary guarantee in a form used by Dealer generally for similar transactions by Dealer, or (B) with Counterparty’s consent (whose consent shall not be unreasonably withheld) (1) to any other third party with a rating for its long term, unsecured and unsubordinated indebtedness (or to any other third party whose obligations are guaranteed by an entity with a rating for its long term, unsecured and unsubordinated indebtedness) equal to or better than the lesser of (1) the credit rating of Dealer at the time of the transfer and (2) A- by Standard and Poor’s Rating Group, Inc. or its successor (“**S&P**”), or A3 by Moody’s Investor Service, Inc. (“**Moody’s**”) or, if either S&P or Moody’s ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer and (2) as a result of such Transfer, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Master Agreement, as applicable, greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Dealer shall provide prior written notice to Counterparty of any such Transfer.

If at any time at which (A) the Section 16 Percentage exceeds 8.5%, (B) the Forward Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an “**Excess Ownership Position**”), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of a portion of the Transaction to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Business Day as an Early Termination Date with respect to a portion of the Transaction (the “**Terminated Portion**”), such that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment (or if applicable, in accordance with and subject to Section 7(f), delivery) shall be made pursuant to Section 6 of the Master Agreement as if (1) an Early Termination Date had been designated in respect of

a Transaction having terms identical to the Transaction and a Number of Shares equal to the number of Shares underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 7(f) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The “**Section 16 Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and each person subject to aggregation of Shares with Dealer under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder directly or indirectly beneficially own (as defined under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) and (B) the denominator of which is the number of Shares outstanding. The “**Forward Equity Percentage**” as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the Number of Shares and (B) the denominator of which is the number of Shares outstanding. The “**Share Amount**” as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a “**Dealer Person**”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares (“**Applicable Restrictions**”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The “**Applicable Share Limit**” means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity or making the Shares subject to redemption) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in its reasonable discretion, *minus* (B) 1% of the number of Shares outstanding.

(ii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer’s obligations in respect of the Transaction and any such designee shall assume such obligations (a “**Dealer Affiliated Entity**”). Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance by such Dealer Affiliated Entity of Dealer’s obligations hereunder.

(e) Staggered Settlement. If upon advice of counsel with respect to any legal, regulatory or self-regulatory requirements or related policies or procedures applicable to Dealer, including any requirements, policies or procedures relating to Dealer’s hedging activities hereunder that would be customarily applicable to transactions of this type by Dealer, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to such Settlement Date (a “**Nominal Settlement Date**”), elect to deliver the Daily Number of Shares otherwise deliverable on such Nominal Settlement Date on two or more dates (each, a “**Staggered Settlement Date**”) or at two or more times on a Nominal Settlement Date as follows:

- (1) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to the twentieth (20th) Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date or delivery times;
- (2) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates or delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
- (3) the Physical Settlement terms will apply on each Staggered Settlement Date, except that the Daily Number of Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates or delivery times as specified by Dealer in the notice referred to in clause (1) above.

Notwithstanding anything herein to the contrary, solely in connection with a Staggered Settlement Date, Dealer shall be entitled to deliver Shares to Counterparty from time to time prior to the date on which Dealer would be obligated to deliver them to Counterparty pursuant to the Physical Settlement terms set forth above, and Counterparty agrees to credit all such early deliveries against Dealer’s obligations hereunder in the direct order in which such obligations arise. No such early delivery of Shares will accelerate or otherwise affect any of Counterparty’s obligations to Dealer hereunder.

(f) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Master Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), then Dealer shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below).

Share Termination Alternative:

Subject to the Counterparty Shareholder Purchase Approvals for Physical Settlement of this Transaction being obtained and in force, if applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Master Agreement, as applicable (the “**Share Termination Payment Date**”), in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation, *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:

The value to Dealer of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation. For the avoidance of doubt, the parties agree that in determining the Share Termination Delivery Unit Price the Calculation Agent may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property or the per Share unwind price of any Share-linked Hedge Positions, as the case may be.

Share Termination Delivery Unit:

One Share or, if the Shares have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent.

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that the Share Termination Alternative is applicable to the Transaction.

(g) Securities Contract, Swap Agreement. The parties hereto intend for (i) the Transaction to be a “securities contract” and a “swap agreement” as defined in the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party’s right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default, Early Termination Event, Extraordinary Event or Additional Disruption Event under this Confirmation with respect to the other party to constitute a “contractual right” as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a “margin payment” or “settlement payment” and a “transfer” as defined in the Bankruptcy Code.

(h) No Collateral, Netting or Setoff. Notwithstanding any provision of the Master Agreement, or any other agreement between the parties, to the contrary, no collateral is transferred in connection with the Transaction. Obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Master Agreement) against any other obligations of the parties, whether arising under the Master Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Master Agreement) against obligations under the Transaction, whether arising under the Master Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment.

(i) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of ordinary shareholders of Counterparty in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further*, that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transactions other than the Transaction.

(j) Governing Law. This Confirmation will be governed by, and construed in accordance with, the laws of the State of New York (without reference to choice of law doctrine).

(k) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(l) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(m) Right to Extend. Dealer may postpone or add, in whole or in part, any Valuation Dates and related Settlement Dates, or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Number of Shares hereunder, if Dealer reasonably determines, in its discretion, based on advice of counsel, that such action is necessary or appropriate to preserve Dealer's hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements or related policies and procedures applicable to Dealer, including any requirements, policies or procedures relating to Dealer's hedging activities hereunder; *provided* that such requirements, policies and procedures are generally applicable in similar situations and applied in a consistent manner in similar transactions); provided further that in no event shall Dealer have the right to postpone or add any Valuation Date(s), Settlement Date(s) or any other date of valuation, payment or delivery beyond the 60th Scheduled Trading Day immediately following the Maturity Date.

(n) Further Assurance. Each party shall, and shall use its best endeavours to, procure that any necessary third party shall, from time to time execute such documents and do all such acts and things as the other party may reasonably require to give effect to the transactions contemplated herein and to comply with the requirements under s. 76D of the Companies Act (including without limitation the entry into any confirmations of and/or supplementals to this Confirmation).

(o) Wall Street Transparency and Accountability Act. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party's otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Master Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Master Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Master Agreement)).

(p) Notice. Counterparty shall, upon obtaining knowledge of the occurrence of any event that would, with the giving of notice, the passage of time or the satisfaction of any condition, constitute an Event of Default in respect of which it would be the Defaulting Party, a Termination Event in respect of which it would be an Affected Party, a Potential Adjustment Event or an Extraordinary Event (including without limitation an Additional Disruption Event), notify Dealer within one Scheduled Trading Day of the occurrence of obtaining such knowledge.

(q) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the final Valuation Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares in a manner that may be adverse to Counterparty.

(r) [Reserved].

(s) Tax Matters.

- (i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Indemnifiable Tax", as defined in Section 14 of the Master Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of

doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement. Counterparty shall provide to Dealer tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by Dealer and any other tax forms and documents it is legally able to provide that are reasonably requested by Dealer.

- (ii) HIRE Act. “Tax” and “Indemnifiable Tax”, each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.
- (iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-8BEN-E, or any successor thereto, (i) on or before the date of execution of this Confirmation and (ii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer.
- (iv) Tax Representations. Counterparty represents to Dealer that: it is a “non-U.S. branch of a foreign person” for purposes of section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a “foreign person” for purposes of section 1.6041-4(a)(4) of the United States Treasury Regulations.
- (v) Stamp Tax. Counterparty shall pay, and indemnify Dealer (including for this purpose, its affiliates) for, any stamp duty or any registration, documentary, issuance, transfer, financial transaction or other similar taxes or duties (including, in each case, penalties and interest in relation thereto) with respect to the Shares arising in connection with the Transaction or related hedging activities.
- (vi) Survival. For the avoidance of doubt, parties’ obligations under this Confirmation or the Master Agreement to pay for or indemnify the other party for, or gross up, any taxes or duties (and any related amounts) shall survive any assignment or performance or termination of the Transaction.

(t) Initial Hedge Position Counterparties. Dealer agrees that it will use commercially reasonable efforts to establish its initial Hedge Positions, or portion thereof, with respect to the Transaction that consists of over-the-counter equity derivatives transactions relating to the Shares with one or more counterparties that Dealer believes in good faith to be a purchaser of the Convertible Notes at or around the time it agrees to enter into such transaction with such counterparty (it being understood that for the avoidance of doubt, following the establishment of such Hedge Positions, Dealer shall not be required to maintain any such Hedge Positions with any such counterparties).

(u) Payments by Counterparty. In the event that, following payment of the Prepayment Amount by Counterparty, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of Termination Event or an Event of Default and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Master Agreement (other than in relation to an Event of Default or Potential Event of Default arising under Section 5(a)(ii), 5(a)(iv) or 5(a)(vii) of the Agreement) or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, in each case, such amount shall be deemed to be zero. For the avoidance of doubt, other than the payment of the Prepayment Amount by Counterparty and receipt by Counterparty of any payment pursuant to provisions under the heading “Dividends” in Section 2, nothing in this Confirmation shall be interpreted as requiring Counterparty to pay or receive cash, except in circumstances where payment or receipt of cash is within Counterparty’s control or in those circumstances in which holders of Shares would also receive cash.

(v) Adjustments. For the avoidance of doubt, whenever the Calculation Agent or Determining Party is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent or Determining Party shall make such adjustment by reference to the effect (including the effect of any taxes) of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(w) Shares to be Delivered. Without otherwise limiting Dealer’s rights under any other provision of the Agreement, Dealer covenants that any Shares to be delivered by Dealer to Counterparty pursuant to this Confirmation will be purchased by Dealer or its affiliates (i) from the open market, (ii) from a person or entity that received such

Shares upon conversion of Convertible Notes or (iii) from a person or entity that, at the time such person or entity is identified by Dealer for such purchase, already holds such Shares, and that represents to Dealer that it did not receive such Shares as a result of the “Maxeon spin-off” (as defined in the Offering Memorandum).

[Signatures to follow on separate page]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

MERRILL LYNCH INTERNATIONAL

By: /s/ Roman Meyer
Name: Roman Meyer
Title: Managing Director

Confirmed as of the date first
above written:

MAXEON SOLAR TECHNOLOGIES, LTD.

By: /s/ Joanne Solomon
Name: Joanne Solomon
Title: Chief Financial Officer

Merrill Lynch International
Merrill Lynch Financial Centre
2 King Edward Street
London EC1A 1HQ

July 17, 2020

To: Maxeon Solar Technologies, Ltd. 8 Marina Boulevard #05-02
Marina Bay Financial Centre
018981, Singapore
Attn: General Counsel

Re: Physical Delivery Share Forward Transaction
(Transaction Reference Number: [_____])

Dear Sir / Madam:

The purpose of this letter agreement (this “**Confirmation**”) is to set forth certain terms and conditions of the transaction entered into between Merrill Lynch International (“**Dealer**”) and Maxeon Solar Technologies, Ltd. (“**Counterparty**”) on the Trade Date specified below (the “**Transaction**”). This Confirmation shall constitute a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2006 ISDA Definitions (the “**Swap Definitions**”) and the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”) and together with the Swap Definitions, the “**Definitions**”) in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties’ entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete binding agreement between Counterparty and Dealer as to the terms of the Transaction to which this Confirmation relates. This Confirmation (notwithstanding anything to the contrary herein) shall be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Master Agreement**”) as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (1) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine), (2) the election of US Dollars (“**USD**”) as the Termination Currency, and (3) (a) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Master Agreement shall apply to Dealer with a “Threshold Amount” of three percent of the shareholders’ equity of Dealer as of the Trade Date, (b) the phrase “, or becoming capable at such time of being declared,” shall be deleted from clause (1) of such Section 5(a)(vi), (c) the term “Specified Indebtedness” shall have the meaning specified in Section 14 of the Master Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer’s (or its subsidiaries’) banking business and (d) the following language shall be added to the end thereof:

”Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Business Days of such party’s receipt of written notice of its failure to pay.”) on the Trade Date. In the event of any inconsistency between the provisions of the Master Agreement, this Confirmation, the Swap Definitions, and the Equity Definitions, the following will prevail for purposes of the Transaction in the order of precedence indicated: (i) this Confirmation, (ii) the Equity Definitions, (iii) the Swap Definitions and (iv) the Master Agreement.

2. The Transaction constitutes a Share Forward for purposes of the Equity Definitions. Set forth below are the general terms and conditions related to the particular Transaction which shall govern the Transaction.

General Terms.

Trade Date:	July 17, 2020
Effective Date:	The first day of the “note valuation period” (as defined in the Offering Memorandum dated July 9, 2020 (the “ Offering Memorandum ”) relating to the 6.50% Convertible Senior Notes due 2025 issued by Counterparty pursuant to an Indenture dated July 17, 2020 between Counterparty and Deutsche Bank Trust Company Americas, as trustee (the “ Convertible Notes ”), subject to cancellation of the Transaction as provided in Section 7(c) “Early Unwind” below.
Seller:	Dealer
Buyer:	Counterparty
Shares:	The ordinary share of Counterparty (Exchange Symbol: “MAXN”).
Number of Shares:	A number of Shares equal to the number of Shares sold pursuant to the underwriting agreement (the “ Underwriting Agreement ”) to be dated on or around the Exchange Business Day immediately prior to the first day of the “note valuation period” (as defined in the Offering Memorandum), between Counterparty and BofA Securities, Inc. and other underwriter(s) party thereto (the “ Underwriters ”), pursuant to which Counterparty shall issue approximately US\$60.0 million worth of Shares in Counterparty to the Underwriters for no consideration in a registered offering under the U.S. Securities Act of 1933, as amended (the “ Securities Act ”) <i>provided</i> that the Number of Shares (in aggregate with number of Shares to be repurchased in connection with the prepaid forward share purchase transaction dated July 17, 2020 entered into between Dealer and Counterparty (the “ Prepaid Forward Transaction ”) be no more than 20% of the total number of ordinary Shares in the capital of Counterparty ascertained as at the date of the Counterparty Shareholder Purchase Approval (as defined below).
VWAP Price:	In respect of any Scheduled Trading Day, the volume-weighted average price per Share based on transactions executed in the United States on such Scheduled Trading Day, as determined by the Calculation Agent by reference to Bloomberg Page “MAXN <equity> AQR <Go>” (or any successor page thereto), in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time of the Exchange on such Scheduled Trading Day; <i>provided</i> that if such price is not so reported for any reason or is manifestly erroneous, such Relevant Price determined by the Calculation Agent in good faith and in a commercially reasonable manner using, if practicable, a volume-weighted average. The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
VWAP Payment Amount:	An amount, whether positive or negative, equal to the arithmetic average of the VWAP Prices for each Scheduled Trading Day during the “note valuation period” (as defined in the Offering Memorandum) <i>minus</i> the volume-weighted average price at which the Underwriters (as defined below) consummate the sale of the Underwritten Securities (as defined in the Underwriting Agreement) pursuant to the terms and conditions set forth in the Underwriting Agreement, as determined by the Calculation Agent in its commercially reasonable discretion.
VWAP Payment Amount Settlement:	<p>If (i) the VWAP Payment Amount is a positive number, Counterparty shall pay to Dealer an amount in USD equal to the product of (a) VWAP Payment Amount and (b) the Number of Shares, and (ii) if the VWAP Payment Amount is a negative number, Dealer shall pay to Counterparty an amount in USD equal to the absolute value of the product of (a) VWAP Payment Amount and (b) the Number of Shares, in each case on the VWAP Payment Amount Settlement Date.</p> <p>On the Scheduled Trading Day immediately following the end of the note valuation period, Dealer shall provide Counterparty written notice of (1) the arithmetic average of the VWAP Prices for each Scheduled Trading Day during the note valuation period, (2) the Number of Shares</p>

and (3) the volume-weighted average price at which the Underwriters consummate the sale of the Underwritten Securities under the Underwriting Agreement that have been used by the Dealer to calculate the VWAP Payment Amount.

VWAP Payment Amount Settlement Date:	The date that is one Settlement Cycle following the last day of the “note valuation period” (as defined in the Offering Memorandum).
Forward Price:	USD0.00.
Prepayment:	Not Applicable.
Exchange:	The NASDAQ Global Select Market.
Related Exchange(s):	All Exchanges; <i>provided</i> that Section 1.26 of the Equity Definitions shall be amended to add the word “United States” before the word “exchange” in the tenth line of such section.
Calculation Agent:	<p>Dealer, subject to the following:</p> <p>The Calculation Agent is Dealer, whose judgments, determinations and calculations as Calculation Agent shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent shall promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email to the email address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary or confidential data or information or any proprietary or confidential models used by it for such determination or calculation.</p>

Settlement Terms:

Settlement Method Election:	Not Applicable.
Share Recipient:	If Counterparty has provided to Dealer evidence of a valid Counterparty Shareholder Purchase Approval allowing Physical Settlement on the Settlement Date pursuant to Section 6(r) below, Counterparty; otherwise, automatically the Designated Third Party and pursuant to Section 6(r) below.
Designated Third Party:	To be provided by Counterparty, including any third party trustee appointed by Counterparty to hold the Shares for the purpose of Counterparty’s employee share scheme. For the avoidance of doubt, such third party shall not hold the Shares for the benefit of the Counterparty.
Counterparty Shareholder Purchase Approval:	A special resolution by the shareholders of Counterparty authorizing a selective off-market purchase of the Number of Shares to be redelivered to Counterparty under this Confirmation (in aggregate with number of Shares to be repurchased in connection with the Prepaid Forward Transaction be no more than 20% of the total number of ordinary Shares in the

capital of Counterparty ascertained as at the date of the Counterparty Shareholder Purchase Approval) for nil consideration in accordance with the terms of this Transaction pursuant to s.76D of the Companies Act, Chapter 50 of Singapore (as amended, supplemented and re-enacted from time to time) (“**Companies Act**”) to be passed each year prior to the date of the expiry of the then existing Counterparty Shareholder Purchase Approval so as to renew the shareholders’ approval under s.76D of the Companies Act for the selective off-market purchase annually (“**annual buy-back mandate renewal**”). Within five Business Days following the receipt of each annual buy-back mandate renewal, Counterparty and Dealer will enter into a supplemental confirmation of the Transaction in form and substance reasonably satisfactory to Dealer and Counterparty pursuant to such annual buy-back mandate renewal, setting out the maximum Number of Shares to be redelivered to Counterparty under this Confirmation (in aggregate with number of Shares to be repurchased in connection with the Prepaid Forward Transaction be no more than 20% of the total number of ordinary Shares in the capital of Counterparty calculated based on then existing Share capital of Counterparty ascertained as at the date of such subsequent Counterparty Shareholder Purchase Approval) that is authorized to be purchased pursuant to such annual buy-back mandate renewal. Dealer shall, and shall procure that its associated persons shall, abstain from voting on the initial Counterparty Shareholder Purchase Approval and subsequent Counterparty Shareholder Purchase Approvals sought at any general meeting of Counterparty in respect of the renewal of the annual buy-back mandate renewal in accordance with s.76D of the Companies Act.

Physical Settlement:	In lieu of Section 9.2(a)(iii) of the Equity Definitions, Dealer will deliver to the Share Recipient the Number of Shares on the Settlement Date.
Valuation Date:	July 15, 2025.
Settlement Date:	The date that is one Settlement Cycle following the Valuation Date.
Market Disruption Event:	<p>The definition of “Market Disruption Event” in Section 6.3(a) of the Equity Definitions is hereby amended (A) by deleting the words “at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” and inserting the words “at any time on any Valuation Date” after the word “material,” in the third line thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”</p> <p>Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.</p>
Regulatory Disruption:	Any event that Dealer, in its reasonable discretion and in good faith, based on advice of legal counsel, determines that it is advisable with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures applicable to Dealer (<i>provided</i> that such requirements, policies and procedures relate to legal and regulatory issues and are generally applicable in similar situations and applied in a consistent manner in similar transactions), including any requirements, policies or procedures relating to Dealer’s commercially reasonable hedging activity hereunder, to refrain from or decrease any

market activity in connection with the Transaction. Dealer shall notify Counterparty as reasonably practicable (but in no event later than two Scheduled Trading Days) that a Regulatory Disruption has occurred and the Valuation Date affected by it, and Dealer shall promptly notice Counterparty of any termination of such Regulatory Disruption.

Dividends:

- Dividend Payment: In lieu of Section 9.2(a)(iii) of the Equity Definitions, Dealer will pay to Counterparty the Dividend Amount on the second Currency Business Day immediately following the Dividend Payment Date.
- Dividend Amount: (a) 100% of the per Share amount of any cash dividend declared by Counterparty to holders of record of a Share on any record date occurring during the period from, and including, the Effective Date to, but excluding, the Settlement Date (net of any applicable deductions by reason of taxes), *multiplied by* (b) the Number of Shares on such record date (after giving effect to any reduction on such record date, if such record date is a Settlement Date).
- Dividend Payment Date: Each date on which the relevant Dividend Amount is paid by Counterparty to shareholders of record.

Share Adjustments:

- Method of Adjustment: Calculation Agent Adjustment; *provided* that the parties agree that (x) open market Share repurchases at prevailing market price and (y) Share repurchases through a dealer pursuant to accelerated share repurchases, forward contracts or similar transactions (including, without limitation, any discount to average VWAP prices) that are entered into at prevailing market prices and in accordance with customary market terms for transactions of such type to repurchase the Shares shall not be considered Potential Adjustment Events; *provided, further*, that, the entry into any such accelerated share repurchase transaction, forward contract or similar transaction described in the immediately preceding proviso shall constitute a Potential Adjustment Event to the extent that, after giving effect to such transaction, the aggregate number of Shares repurchased during the term of the Transaction pursuant to all such transactions described in the immediately preceding proviso would exceed 20% of the number of Shares outstanding as of the Effective Date, as determined by Calculation Agent; *provided further* that Section 11.2(e)(vii) of the definition of Potential Adjustment Event is hereby amended by adding the term “corporate” after the word “other” and before the word “event” in such section. For the avoidance of doubt, the payment of any cash dividend or distribution on the Shares shall not constitute a Potential Adjustment Event but instead be governed by the provisions set forth under the heading “Dividends” above.

Extraordinary Events:

- New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) shall be deleted in its entirety and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)”.

Consequences of Merger Events:

Share-for-Share:	Calculation Agent Adjustment
Share-for-Other:	Calculation Agent Adjustment or Cancellation and Payment, at the commercially reasonable election of Dealer
Share-for-Combined:	Calculation Agent Adjustment or Cancellation and Payment, at the commercially reasonable election of Dealer

Consequences of Tender Offers:

Tender Offer	Applicable; <i>provided</i> that the definition of “Tender Offer” in Section 12.1 of the Equity Definitions will be amended by replacing the phrase “greater than 10% and less than 100% of the outstanding voting shares of the Counterparty” in the third and fourth line thereof with “greater than 20% and less than 100% of the outstanding Shares of the Counterparty”.
Share-for-Share:	Calculation Agent Adjustment
Share-for-Other:	Calculation Agent Adjustment
Share-for-Combined:	Calculation Agent Adjustment

Calculation Agent Adjustment:	If, with respect to a Merger Event or a Tender Offer, the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation or is not organized under the laws of Singapore or the United States, any State thereof or the District of Columbia, then Cancellation and Payment may apply at Dealer’s sole election.
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Composition of Combined Consideration:	Not Applicable
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Nationalization, Insolvency or Delisting:	Cancellation and Payment; <i>provided</i> that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange. For purposes of this Confirmation (x) the phrase “will be cancelled” in the first line of Section 12.6(c)(ii) of the Equity Definitions shall be replaced with the phrase “may be cancelled by Dealer in its commercially reasonable discretion” and (y) the words “if so cancelled” shall be inserted immediately following the word “and” in the second line of Section 12.6(c)(ii) of the Equity Definitions.
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Additional Disruption Events:

Change in Law:	Applicable; <i>provided</i> that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the
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formal or informal interpretation”, (ii) replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position” and (iii) replacing the parenthetical beginning after the word “regulation” in the second line thereof the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”.

Failure to Deliver:	Applicable
Hedging Disruption:	Applicable; <i>provided</i> that (1) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption,” and (2) Section 12.9(a) of the Equity Definitions is hereby amended by inserting (i) the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (ii) the following at the end of such Section: “Such inability described in clause (A) or (B) above shall not constitute a “Hedging Disruption” if such inability results solely from the Hedging Party’s creditworthiness or financial position”.
Increased Cost of Hedging:	Applicable; <i>provided</i> that for purposes of this Confirmation (1) (x) the comma immediately preceding “(B)” in the seventh line of Section 12.9(b)(vi) of the Equity Definitions shall be replaced with the word “or”, (y) clause (C) of Section 12.9(b)(vi) of the Equity Definitions shall be deleted and (z) the words “either party” in the twelfth line of Section 12.9(b)(vi) of the Equity Definitions shall be replaced with the words “the Hedging Party” and (2) such increased cost described in Section 12.9(a)(vi) of the Equity Definitions shall not constitute an “Increased Cost of Hedging” if such increased costs results from solely the Hedging Party’s creditworthiness or financial position.
Loss of Stock Borrow:	Not Applicable
Increased Cost of Stock Borrow:	Not Applicable
Hedging Party:	For all applicable Additional Disruption Events, Dealer who, in such capacity, shall make all determinations and calculations in good faith and in a commercially reasonable manner.
Determining Party:	<p>For all Extraordinary Events, Dealer, in each case subject to the following:</p> <p>The Determining Party is Dealer, whose judgments, determinations and calculations as Determining Party shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Determining Party hereunder, upon a written request by Counterparty, the Determining Party shall promptly (but in any event within five Scheduled Trading Days) provide to Counterparty by email to the email address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Determining Party shall not be obligated to disclose any proprietary or confidential data or information or any proprietary or confidential models used by it for such determination or calculation.</p>

Non-Reliance: Applicable

Agreements and Acknowledgments
Regarding Hedging Activities: Applicable

Additional Acknowledgements: Applicable

3. Account Details:

(a) Account for payments to Counterparty:

To be provided by Counterparty.

Account for delivery of Shares to Counterparty:

To be provided by Counterparty.

(b) Account for payments to Dealer:

Beneficiary Bank: Bank of America

ABA: 026-009-593

SWIFT: BOFAUS3N

Acct #: 65504-60511

Acct Name: Merrill Lynch International Equity Derivatives, London

SWIFT: MLILGB2A

Account for delivery of Shares from Dealer:

To be provided by Dealer.

4. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of Dealer for the Transaction is: London.

5. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Maxon Solar Technologies, Ltd.

8 Marina Boulevard #05-02

Marina Bay Financial Centre

018981, Singapore

Attn: General Counsel

(b) Address for notices or communications to Dealer:

Merrill Lynch Financial Centre

2 King Edward Street

London EC1A 1HQ

with a copy to:

BofA Securities, Inc.
One Bryant Park
New York, NY 10036
Attn: Chris Hutmaker, Managing Director; Robert Stewart, Assistant General Counsel
Telephone: 646-855-8907; 646-855-0711
Email: chris.hutmaker@bofa.com; rstewart4@bofa.com

6. Representations, Warranties and Agreements.

All of the representations and warranties of Counterparty set forth in the Underwriting Agreement are true and correct and are hereby deemed to be made to and repeated to Dealer as if set forth herein. Furthermore, in addition to the representations set forth in the Master Agreement, Counterparty represents and warrants to, and agrees with, Dealer, on the Trade Date, that:

- (a) (i) It is not entering into the Transaction on behalf of or for the accounts of any other person or entity, and will not transfer or assign its obligations under the Transaction or any portion of such obligations to any other person or entity except in compliance with applicable laws and the terms of the Transaction; (ii) it understands that the Transaction is subject to complex risks which may arise without warning and may at times be volatile, and that losses may occur quickly and in unanticipated magnitude; (iii) it is authorized to enter into the Transaction and such action does not violate any laws of its jurisdiction of incorporation, organization or residence (including, but not limited to, any applicable position or exercise limits set by any self-regulatory organization, either acting alone or in concert with others) or the terms of any agreement to which it is a party; (iv) it has consulted with its legal advisor(s) and has reached its own conclusions about the Transaction, and any legal, regulatory, tax, accounting or economic consequences arising from the Transaction; (v) it has concluded that the Transaction is suitable in light of its own investment objectives, financial condition and expertise; and (vi) neither Dealer nor any of its affiliates has advised it with respect to any legal, regulatory, tax, accounting or economic consequences arising from the Transaction, and neither Dealer nor any of its affiliates is acting as agent, or advisor for Counterparty in connection with the Transaction.
- (b) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least \$50 million.
- (c) The reports and other documents filed by Counterparty with the U.S. Securities and Exchange Commission (“SEC”) pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading. Counterparty is not in possession of any material nonpublic information regarding the business, operations or prospects of Counterparty or the Shares.
- (d) Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (e) Counterparty shall not from the fifth Scheduled Trading Day immediately prior to the Effective Date until the end of the “note valuation period” (as defined in the Offering Memorandum), engage in a distribution, as such term is used in Regulation M under the Exchange Act of any securities of Counterparty, other than (i) a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M or (ii) the offering pursuant to the Underwriting Agreement. Counterparty shall not, during the period beginning on, and including, the 61st Scheduled Trading Day immediately preceding July 15, 2025 and ending on, and including, the second Scheduled Trading Day immediately following the “Maturity Date” (as defined in the Offering Memorandum) (the “**Prohibited Period**”), engage in any such distribution, other than a distribution meeting the requirements of one of the exceptions set forth in Rule 101(b) and Rule 102(b) of Regulation M.

(f) The Transaction was approved by the board of directors of Counterparty, and Counterparty is entering into the Transaction solely for the purposes stated in such board resolution. There is no internal policy of Counterparty, whether written or oral, that would prohibit Counterparty from entering into any aspect of the Transaction, including, but not limited to, the receipt of Shares pursuant hereto.

(g) Subject to the Counterparty Shareholder Purchase Approvals for Physical Settlement of this Transaction to be obtained pursuant to Section 6(r)(ii) below, Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of the Transaction and the Counterparty Shareholder Purchase Approval for Physical Settlement of this Transaction valid until the next annual general meeting of Counterparty following the Trade Date; such execution, delivery and performance have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.

(h) On and immediately after the Effective Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature, and (D) Counterparty is not, and will not be, "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")).

(i) Counterparty has made, and will make, all filings required to be made by it with the SEC, any securities exchange or any other regulatory body with respect to the Transaction contemplated hereby.

(j) Neither the execution and delivery of this Confirmation nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of (i) the constitution (or any equivalent documents) of Counterparty other than the requirement to obtain the Counterparty Shareholder Purchase Approval relating to Physical Settlement of this Transaction pursuant to Section 6(r)(ii) below, or (ii) any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or (iii) any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under, or result in the creation of any lien under, any such agreement or instrument, except in the case of clauses (ii) and (iii), as would not reasonably be expected to have a material adverse effect on the ability of Counterparty to meet its obligations under the Transaction.

(k) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act, or state securities laws.

(l) Counterparty is not and, after giving effect to the transactions contemplated in this Confirmation, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(m) Each of the Counterparty and the Dealer is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).

(n) No state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares, *provided* that Counterparty makes no representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer or any of its affiliates solely as a result of it or any of such affiliates being financial institutions or broker-dealers.

(o) On the Effective Date and on any day during the Prohibited Period, neither Counterparty nor any “affiliated purchaser” (each as defined in Rule 10b-18 under the Exchange Act) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares.

(p) Counterparty and Dealer acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(a)(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(q) Counterparty (x) represents and warrants that it has not, as of the Trade Date and will not have as of the Effective Date, applied for or received a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”)) or other investment, or any financial assistance or relief under any program or facility (collectively “Financial Assistance”) that (a) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (b) (i) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that Counterparty comply with a requirement not to, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty, and that it has not, as of the date specified in the condition, made a capital distribution or will make a capital distribution, or (ii) for which the terms of the Transaction would cause Counterparty to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance and (y) acknowledges that entering into the Transaction may limit its ability to receive such loan, loan guarantee, direct loan.

(r) Counterparty (i) has, as of the Trade Date, obtained the initial Counterparty Shareholder Purchase Approval that is valid until the next annual general meeting of Counterparty following the Trade Date, (ii) shall (x) use its reasonable best efforts to obtain a Counterparty Shareholder Purchase Approval at a general meeting of Counterparty to be held each year prior to the expiry of the then Counterparty Shareholder Purchase Approval during the term of this Transaction and (y) provide a copy of each such annual buy-back mandate renewal to Dealer within five Business Days after each such general meeting of Counterparty, and (iii) if the annual buy-back mandate renewal is not obtained at any general meeting of Counterparty to be held during the term of this Transaction, shall (A) on the close of such general meeting inform Dealer that the Counterparty Shareholder Purchase Approval has lapsed and (B) provide to Dealer, by the fifth Business Day prior to the first day of the Prohibited Period, (x) a settlement instruction with details of the Designated Third Party to whom the Number of Shares are to be delivered on the Settlement Date and (y) evidence that such Designated Third Party has been duly authorized by Counterparty to take such delivery.

7. Other Provisions.

(a) Opinions. (i) On or prior to the Trade Date, Counterparty shall deliver to Dealer an opinion of Singapore counsel, dated as of the Trade Date, and (ii) on or prior to the Effective Date, Counterparty shall deliver to Dealer an opinion of New York counsel, dated as of the Effective Date, in form and substance reasonably satisfactory to Dealer, with respect to the matters set forth in Section 6(g), Section 6(j), Section 6(k) and Section 6(l) of this Confirmation. Delivery of such opinion to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Master Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Master Agreement.

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the Notice Percentage as determined on such day is greater than 1.0%. The “**Notice Percentage**” as

of any day is the fraction, expressed as a percentage, the numerator of which is the number of Shares subject to such repurchase and the denominator of which is the number of Shares outstanding immediately prior to such repurchase. Counterparty agrees to indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable, out-of-pocket fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this paragraph that is in respect of which any Indemnified Person is a party and indemnity has been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.

(c) Early Unwind. In the event (i) the “distribution date for the Maxeon spin-off” (as described in the Offering Memorandum) does not occur on or before the “Maxeon spin-off deadline date” (as defined in the Offering Memorandum) or (ii) the sale of the “Underwritten Securities” (as defined in the Underwriting Agreement) is not consummated with the Underwriters for any reason pursuant to the terms and conditions of the Underwriting Agreement (the date of such occurrence, the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”) on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.

(d) Transfer or Assignment.

(i) Dealer may transfer or assign (a “**Transfer**”) all or any part of its rights or obligations under the Transaction (A) without Counterparty’s consent to any affiliate of Dealer, but, only if (1) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment, (2) as a result of such Transfer, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Master Agreement, as applicable, greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment and (3) such affiliate of Dealer (x) has a rating for its long term, unsecured and unsubordinated indebtedness that is equal to or better than Dealer’s credit rating at the time of such Transfer or (y) whole obligations hereunder will be guaranteed, pursuant to terms of a customary guarantee in a form used by Dealer generally for similar transactions by Dealer, or (B) with Counterparty’s consent (whose consent shall not be unreasonably withheld) (1) to any other third party with a rating for its long term, unsecured and

unsubordinated indebtedness (or to any other third party whose obligations are guaranteed by an entity with a rating for its long term, unsecured and unsubordinated indebtedness) equal to or better than the lesser of (1) the credit rating of Dealer at the time of the transfer and (2) A- by Standard and Poor's Rating Group, Inc. or its successor ("**S&P**"), or A3 by Moody's Investor Service, Inc. ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer and (2) as a result of such Transfer, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Master Agreement, as applicable, greater than the amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Dealer shall provide prior written notice to Counterparty of any such Transfer.

If at any time at which (A) the Section 16 Percentage exceeds 8.5%, (B) the Forward Equity Percentage exceeds 14.5%, or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of a portion of the Transaction to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), such that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment (or if applicable, in accordance with and subject to Section 7(f), delivery) shall be made pursuant to Section 6 of the Master Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Shares equal to the number of Shares underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 7(f) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 16 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and each person subject to aggregation of Shares with Dealer under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder directly or indirectly beneficially own (as defined under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) and (B) the denominator of which is the number of Shares outstanding. The "**Forward Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the Number of Shares and (B) the denominator of which is the number of Shares outstanding. The "**Share Amount**" as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity or making the Shares subject to redemption) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in its reasonable discretion, minus (B) 1% of the number of Shares outstanding.

(ii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee shall assume such obligations (a "**Dealer Affiliated Entity**"). Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance by such Dealer Affiliated Entity of Dealer's obligations hereunder.

(e) Staggered Settlement. If upon advice of counsel with respect to any legal, regulatory or self-regulatory requirements or related policies or procedures applicable to Dealer, including any requirements, policies or procedures relating to Dealer's hedging activities hereunder that would be customarily applicable to transactions of this type by Dealer, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to such Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Daily Number of Shares otherwise deliverable on such Nominal Settlement Date on two or more dates (each, a "**Staggered Settlement Date**") or at two or more times on a Nominal Settlement Date as follows:

- (1) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to the twentieth (20th) Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date or delivery times;
- (2) the aggregate number of Shares that Dealer will deliver to Counterparty or the Designated Third Party hereunder on all such Staggered Settlement Dates or delivery times will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and
- (3) the Physical Settlement terms will apply on each Staggered Settlement Date, except that the Daily Number of Shares otherwise deliverable on such Nominal Settlement Date will be allocated among such Staggered Settlement Dates or delivery times as specified by Dealer in the notice referred to in clause (1) above.

Notwithstanding anything herein to the contrary, solely in connection with a Staggered Settlement Date, Dealer shall be entitled to deliver Shares to Counterparty from time to time prior to the date on which Dealer would be obligated to deliver them to Counterparty or Designated Third Party pursuant to the Physical Settlement terms set forth above, and Counterparty agrees to credit all such early deliveries against Dealer's obligations hereunder in the direct order in which such obligations arise. No such early delivery of Shares will accelerate or otherwise affect any of Counterparty's obligations to Dealer hereunder.

(f) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event, and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) of the Master Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a "**Payment Obligation**"), then Dealer shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below).

Share Termination Alternative:

Subject to the Counterparty Shareholder Purchase Approvals for Physical Settlement of this Transaction being obtained and in force, if applicable, Dealer shall deliver to Counterparty (or, the Designated Third Party if the Counterparty Shareholder Purchaser Approval with respect to Physical Settlement is not in force) the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the relevant Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Master Agreement, as applicable (the "**Share Termination Payment Date**"), in satisfaction of such Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation, *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price:

The value to Dealer of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially

reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation. For the avoidance of doubt, the parties agree that in determining the Share Termination Delivery Unit Price the Calculation Agent may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property or the per Share unwind price of any Share-linked Hedge Positions, as the case may be.

Share Termination Delivery Unit:

One Share or, if the Shares have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent.

Failure to Deliver:

Applicable

Other applicable provisions:

If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that the Share Termination Alternative is applicable to the Transaction.

(g) Securities Contract, Swap Agreement. The parties hereto intend for (i) the Transaction to be a “securities contract” and a “swap agreement” as defined in the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 546(e), 546(g), 555 and 560 of the Bankruptcy Code, (ii) a party’s right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default, Early Termination Event, Extraordinary Event or Additional Disruption Event under this Confirmation with respect to the other party to constitute a “contractual right” as described in the Bankruptcy Code, and (iii) each payment and delivery of cash, securities or other property hereunder to constitute a “margin payment” or “settlement payment” and a “transfer” as defined in the Bankruptcy Code.

(h) No Collateral, Netting or Setoff. Notwithstanding any provision of the Master Agreement, or any other agreement between the parties, to the contrary, no collateral is transferred in connection with the Transaction. Obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Master Agreement) against any other obligations of the parties, whether arising under the Master Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Master Agreement) against obligations under the Transaction, whether arising under the Master Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment.

(i) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of ordinary shareholders of Counterparty in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further*, that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transactions other than the Transaction.

(j) Governing Law. This Confirmation will be governed by, and construed in accordance with, the laws of the State of New York (without reference to choice of law doctrine).

(k) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(l) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(m) Right to Extend. Dealer may postpone or add, in whole or in part, the Valuation Date and Settlement Date, or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Number of Shares hereunder, if Dealer reasonably determines, in its discretion, based on advice of counsel, that such action is necessary or appropriate to preserve Dealer's hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases of Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements or related policies and procedures applicable to Dealer, including any requirements, policies or procedures relating to Dealer's hedging activities hereunder; *provided* that such requirements, policies and procedures are generally applicable in similar situations and applied in a consistent manner in similar transactions); provided further that in no event shall Dealer have the right to postpone or add Settlement Dates or any other date of valuation, payment or delivery beyond the 80th Scheduled Trading Day immediately following the Valuation Date.

(n) Further Assurance. Each party shall, and shall use its best endeavours to, procure that any necessary third party shall, from time to time execute such documents and do all such acts and things as the other party may reasonably require to give effect to the transactions contemplated herein and to comply with the requirements under s. 76D of the Companies Act (including without limitation the entry into any confirmations of and/or supplementals to this Confirmation).

(o) Wall Street Transparency and Accountability Act. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("WSTAA"), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party's otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Master Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Master Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Master Agreement)).

(p) Notice. Counterparty shall, upon obtaining knowledge of the occurrence of any event that would, with the giving of notice, the passage of time or the satisfaction of any condition, constitute an Event of Default in respect of which it would be the Defaulting Party, a Termination Event in respect of which it would be an Affected Party, a Potential Adjustment Event or an Extraordinary Event (including without limitation an Additional Disruption Event), notify Dealer within one Scheduled Trading Day of the occurrence of obtaining such knowledge.

(q) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Valuation Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market

for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Transaction; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares in a manner that may be adverse to Counterparty.

(r) [Reserved].

(s) Tax Matters.

- (i) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Indemnifiable Tax”, as defined in Section 14 of the Master Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Master Agreement. Counterparty shall provide to Dealer tax forms and documents required to be delivered pursuant to Sections 1471(b) or Section 1472(b)(1) of the Code promptly upon request by Dealer and any other tax forms and documents it is legally able to provide that are reasonably requested by Dealer.
- (ii) HIRE Act. “Tax” and “Indemnifiable Tax”, each as defined in Section 14 of the Master Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder.
- (iii) Tax documentation. Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-8BEN-E, or any successor thereto, (i) on or before the date of execution of this Confirmation and (ii) promptly upon learning that any such tax form previously provided by Counterparty has become obsolete or incorrect. Additionally, Counterparty shall, promptly upon request by Dealer, provide such other tax forms and documents reasonably requested by Dealer.
- (iv) Tax Representations. Counterparty represents to Dealer that: it is a “non-U.S. branch of a foreign person” for purposes of section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and a “foreign person” for purposes of section 1.6041-4(a)(4) of the United States Treasury Regulations.
- (v) Stamp Tax. Counterparty shall pay, and indemnify Dealer (including for this purpose, its affiliates) for, any stamp duty or any registration, documentary, issuance, transfer, financial transaction or other similar taxes or duties (including, in each case, penalties and interest in relation thereto) with respect to the Shares arising in connection with the Transaction or related hedging activities.
- (v) Survival. For the avoidance of doubt, parties’ obligations under this Confirmation or the Master Agreement to pay for or indemnify the other party for, or gross up, any taxes or duties (and any related amounts) shall survive any assignment or performance or termination of the Transaction.

(t) Initial Hedge Position Counterparties. Dealer agrees that it will use commercially reasonable efforts to establish its initial Hedge Positions, or portion thereof, with respect to the Transaction that consists of over-the-counter equity derivatives transactions relating to the Shares with one or more counterparties that Dealer believes in good faith to be a purchaser of the Convertible Notes at or around the time it agrees to enter into such transaction with such counterparty (it being understood that for the avoidance of doubt, following the establishment of such Hedge Positions, Dealer shall not be required to maintain any such Hedge Positions with any such counterparties).

(u) Adjustments. For the avoidance of doubt, whenever the Calculation Agent or Determining Party is called upon to make an adjustment pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent or Determining Party shall make such adjustment by reference to the effect (including the effect of any taxes) of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(v) Shares to be Delivered. Without otherwise limiting Dealer's rights under any other provision of the Agreement, Dealer covenants that any Shares to be delivered by Dealer to Counterparty pursuant to this Confirmation will be purchased by Dealer or its affiliates (i) from the open market, (ii) from a person or entity that received such Shares upon conversion of Convertible Notes or (iii) from a person or entity that, at the time such person or entity is identified by Dealer for such purchase, already holds such Shares, and that represents to Dealer that it did not receive such Shares as a result of the "Maxeon spin-off" (as defined in the Offering Memorandum).

[Signatures to follow on separate page]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Confirmation and returning it to Dealer.

Yours sincerely,

MERRILL LYNCH INTERNATIONAL

By: /s/ Roman Meyer
Name: Roman Meyer
Title: Managing Director

Confirmed as of the date first
above written:

MAXEON SOLAR TECHNOLOGIES, LTD.

By: /s/ Joanne Solomon
Name: Joanne Solomon
Title: Chief Financial Officer

MAXEON SOLAR TECHNOLOGIES, PTE. LTD.
SUNPOWER PHILIPPINES MANUFACTURING LTD.
AS BORROWERS

MAXEON SOLAR TECHNOLOGIES, PTE. LTD.
SUNPOWER SYSTEMS SARL
SUNPOWER ENERGY SOLUTIONS FRANCE S.A.S.
SUNPOWER CORPORATION MEXICO, S. DE R.L. DE C.V.
AS ORIGINAL GUARANTORS

THE FINANCIAL INSTITUTIONS SET OUT AT SCHEDULE 1
AS ORIGINAL LENDERS

DBS BANK LTD.
AS INTERCREDITOR AGENT

DBS BANK LTD.
DBS BANK LTD.
DBS BANK LTD.
AS FACILITY AGENTS

DBS BANK LTD.
AS OFFSHORE SECURITY AGENT

COMMON TERMS AGREEMENT

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THIS AGREEMENT is dated 14 July 2020 and made between:

- (1) **MAXEON SOLAR TECHNOLOGIES, PTE. LTD.**, a company incorporated in Singapore with registered number 201934268H and its registered address at 8 Marina Boulevard #05-02, Marina Bay Financial Centre, 018981, Singapore, as borrower in respect of the Maxeon Term Facility and the Working Capital Facility (the “**Company**”);
- (2) **SUNPOWER PHILIPPINES MANUFACTURING LTD.**, an exempted company incorporated in the Cayman Islands with registration number 125924 and its registered office address at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands, as borrower in respect of the SP Philippines Facility (“**SunPower Philippines**”, and together with the Company, the “**Borrowers**”);
- (3) **MAXEON SOLAR TECHNOLOGIES, PTE. LTD.**, **SUNPOWER SYSTEMS SARL** (the “**Swiss Guarantor**”), **SUNPOWER ENERGY SOLUTIONS FRANCE S.A.S.** (the “**French Guarantor**”) and **SUNPOWER CORPORATION MEXICO, S. DE R.L. DE C.V.** (the “**Mexican Guarantor**”) as guarantors (the “**Original Guarantors**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part I of Schedule 1 as lenders under the SP Philippines Facility (the “**Original SP Philippines Facility Lenders**”);
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 as lenders under the Maxeon Term Facility (the “**Original Maxeon Term Facility Lenders**”);
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part III of Schedule 1 as lenders under the Working Capital Facility (the “**Original Working Capital Lenders**”);
- (7) **DBS BANK LTD.** as intercreditor agent of the Finance Parties (other than itself) (the “**Intercreditor Agent**”);
- (8) **DBS BANK LTD.** as agent of the SP Philippines Facility Finance Parties (other than itself) (the “**SP Philippines Facility Agent**”);
- (9) **DBS BANK LTD.** as agent of the Maxeon Term Facility Finance Parties (other than itself) (the “**Maxeon Term Facility Agent**”);
- (10) **DBS BANK LTD.** as agent of the Working Capital Finance Parties (other than itself) (the “**Working Capital Facility Agent**”, and together with the SP Philippines Facility Agent and the Maxeon Term Facility Agent, the “**Facility Agents**”); and
- (11) **DBS BANK LTD.** as offshore Security Agent for the Secured Parties (the “**Offshore Security Agent**”).

IT IS AGREED as follows:

SECTION 1
INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceleration Event**” means a Facility Agent exercising any of its rights under clause 20.17 (*Acceleration*).

“**Accession Letter**” means a document substantially in the form set out in Schedule 8 (*Form of Accession Letter*).

“**Accession Undertaking**” means a creditor accession undertaking substantially in the form set out in schedule 2 (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

“**Account Charge**” means the account charge dated on or after the date hereof in respect of the SP Philippines DSRA executed by SunPower Philippines in favour of the Philippines Onshore Security Agent.

“**Additional Guarantor**” means the HK Guarantor.

“**Administrative Party**” means the Intercreditor Agent, each of the Facility Agents and each of the Security Agents.

“**Affected Finance Party**” means any Finance Party (but, for the avoidance of doubt, only to the extent the Intercreditor Agent has been notified in accordance with this Agreement) that has notified the Intercreditor Agent that it is an “Affected Finance Party” with respect to the relevant sanctions provisions within this Agreement.

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**APLMA**” means the Asia Pacific Loan Market Association Limited.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor, assignee and the relevant Facility Agent.

“**Authorisation**” means:

- (a) an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, lodgement or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

“Availability Period” means:

- (a) in relation to the SP Philippines Facility, the period from and including the date of Financial Close to and including the date falling 12 Months after Financial Close;
- (b) in relation to the Maxeon Term Facility, the period from and including the date of Financial Close to and including the date falling 12 Months after Financial Close; and
- (c) in relation to the Working Capital Facility, the period from and including the date of Financial Close to and including the date falling one Month prior to the Termination Date.

“Available Commitment” means, in relation to a Facility, a Lender’s Commitment under that Facility minus:

- (a) its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date,

other than, in relation to any proposed Utilisation under the Working Capital Facility, that Lender’s participation in any Working Capital Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

“Available Facility” means, in relation to a Facility, the aggregate for the time being of each Lender’s Available Commitment in respect of that Facility.

“Base Case Financial Model” means the financial model in respect of the Group agreed between the Company and the Facility Agents (acting on the instructions of the Lenders) and delivered pursuant to paragraph 9(b) (*Other documents and evidence*) of Schedule 2 (*Conditions Precedent*).

“Blocking Regulation” means:

- (a) any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom); and
- (b) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*).

“Break Costs” means the amount (if any) by which:

- (a) the interest (excluding Margin (as defined in the relevant Facility Agreement)) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday or gazetted holiday) on which banks are open for general business in Singapore, the Philippines, London (in relation to fixing of an interest rate) and New York (in relation to any date for payment or purchase of US Dollars).

“**Capex Certificate**” shall have the meaning given to it in Clause 19.25 (*Capital expenditure*).

“**Charged Property**” means all of the assets of the Obligors, the other members of the Group and any other person which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Chinese Joint Venture**” means Huansheng Photovoltaic (Jiangsu) Co., Ltd.

“**Chinese JV Supply Contract**” means the business activities framework agreement dated 22 February 2017 between, among others, the Chinese Joint Venture, TZS and the HK Guarantor, as amended from time to time.

“**Code**” means the US Internal Revenue Code of 1986.

“**Commitment**” means an SP Philippines Facility Commitment, a Maxeon Term Facility Commitment or a Working Capital Commitment.

“**Compliance Certificate**” means a certificate delivered pursuant to Clause 17.2 (*Compliance Certificate*) and signed by a Director of the Company in form and substance satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Parties).

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:

- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 32 (*Confidential Information*);
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate.

“Confidentiality Undertaking” means a confidentiality undertaking substantially in a recommended form of the APLMA or in any other form agreed between the Company and the Facility Agent.

“Contaminated Land” means any land in such a condition, by reason of Environmental Contaminants in, or under the land, that:

- (a) significant harm is being caused or there is a significant possibility of harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be caused.

“Convertible Bonds” means the unsecured convertible senior notes due 2025 to be issued by the Company in a maximum principal amount of \$201,250,000.

“Data Site” means the electronic data room set up with Datasite (formerly Merrill Datasite) with data room name SunPower Technologies.

“Data Site Documents” means the documents concerning the Group which were made available by way of the Data Site to selected financial institutions before the date of this Agreement.

“Default” means an Event of Default or any event or circumstance specified in Clause 20 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“Delegate” means any delegate, agent, attorney or co-trustee appointed by a Security Agent.

“Disposal” means a sale, lease, licence, transfer, loan or other disposal by a member of the Group of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) other than such disposal made in the ordinary course of business.

“Disruption Event” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; and
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

“DSRA” means each of the SP Philippines DSRA and the Maxeon DSRA.

“DSRA Required Balance” means, at any time:

- (a) in respect of the SP Philippines DSRA, an amount equal to the principal and interest projected by the relevant Facility Agent to accrue in the following six (6) Months under the SP Philippines Facility Loans then outstanding; and
- (b) in respect of the Maxeon DSRA, an amount equal to the principal and interest projected the relevant Facility Agent to accrue in the following six (6) Months under the Maxeon Term Facility Loans then outstanding,

in each case:

- (i) assuming no prepayments or repayments of the relevant Term Loans will occur in such six (6) Month period (other than scheduled repayments provided for under the relevant Facility Agreement);
- (ii) assuming no change to LIBOR in such six (6) Month period; and
- (iii) taking into account interest rate hedging then in place in respect of the relevant Term Loans, if applicable.

“Eligible Equipment” has the meaning given to it in Clause 3.1(a) (*Purpose*).

“Environmental Claim” means any claim, proceeding or investigation by any person in respect of any Environmental Law.

“Environmental Contaminants” means any substance (whether a solid, liquid or gas and whether or not combined with one or more other substances) which may cause harm to the health of living organisms or other interference with the ecological systems of which they form part (together the Environmental Contaminants).

“Environmental Law” means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

“Environmental Permits” means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

“Event of Default” means any event or circumstance specified as such in Clause 20 (*Events of Default*).

“Facility” means the SP Philippines Facility, the Maxeon Term Facility or the Working Capital Facility.

“Facility Agreement” means the SP Philippines Facility Agreement, the Maxeon Term Facility Agreement or the Working Capital Facility Agreement.

“Facility Office” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

“FATCA Deduction” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“FATCA Exempt Party” means a Party that is entitled to receive payments free from any FATCA Deduction.

“Fee Letter” means any letter or letters referring to this Agreement or the Facilities between one or more Finance Parties and an Obligor setting out any of the fees referred to in Clause 9 (*Fees*).

“Finance Document” means:

- (a) this Agreement;
- (b) the SP Philippines Facility Agreement;
- (c) the Maxeon Term Facility Agreement;
- (d) the Working Capital Facility Agreement;
- (e) the Intercreditor Agreement;
- (f) each Security Document;
- (g) each Utilisation Request;
- (h) any Fee Letter;
- (i) any Transfer Certificate or Assignment Agreement;
- (j) any Accession Undertaking;
- (k) any Accession Letter;
- (l) any Hedging Agreement; and
- (m) any other document designated as such by the Intercreditor Agent and the Company,

provided that where the term “Finance Document” is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (i) the definition of “Default”;
- (ii) the definition of “Material Adverse Effect”;
- (iii) paragraph (a)(iii) of Clause 1.2 (*Construction*);
- (iv) Clause 15 (*Guarantee and Indemnity*); and
- (v) Clause 20 (*Events of Default*) (other than Clause 20.17 (*Acceleration*)).

“Finance Party” means the Intercreditor Agent, each Facility Agent, each Security Agent, each Lender and each Hedge Counterparty **provided that** where the term “Finance Party” is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) paragraph (a)(i) of Clause 1.2 (*Construction*);
- (b) paragraph (c) of the definition of “Material Adverse Effect”;
- (c) Clause 15 (*Guarantee and Indemnity*); and
- (d) Clause 12.3 (*Conduct of business by the Finance Parties*).

“Financial Close” means the date on which each Facility Agent has confirmed to the Borrowers that each of conditions precedent to the first Utilisation of the Facilities listed in Clause 4.1 (*Initial conditions precedent*) has been fulfilled or, as the case may be, delivered to it (to the extent they have not been waived in accordance with this Agreement and the Intercreditor Agreement).

“Financial Indebtedness” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing or otherwise classified as borrowings in accordance with GAAP;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above, provided that (for the avoidance of doubt) amounts payable by the Company under the Polysilicon Purchase Contract, the physical delivery forward transaction and the privately negotiated prepaid forward share purchase transaction entered into in connection with the Convertible Bonds shall not constitute Financial Indebtedness.

“Foreign Public Official” means an individual who:

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory);
- (b) exercises a public function:
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory); or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision); or
- (c) is an official or agent of a public international organisation.

“Funding Rate” means any individual rate notified by a Lender to the relevant Facility Agent pursuant to the provisions of the relevant Facility Agreement.

“GAAP” means:

- (a) in respect of the Company or the Group on a consolidated basis, generally accepted accounting principles in the United States of America; and
- (b) in respect of SunPower Philippines, generally accepted accounting principles in the Philippines.

“Governmental Agency” means any government or any governmental agency, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory organisation established under statute).

“Group” means the Company and its Subsidiaries from time to time.

“Guarantors” means the Original Guarantors and the Additional Guarantor upon its accession to this Agreement pursuant to Clause 22.3 (*Accession of an Additional Guarantor*).

“Hedge Counterparty” means any entity which has become a party to the Intercreditor Agreement as a “Hedge Counterparty” in accordance with the provisions of the Intercreditor Agreement.

“Hedging Agreement” means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Borrower and a Hedge Counterparty

for the purpose of hedging the types of liabilities and/or risks in relation to the Facilities which are permitted to be hedged pursuant to the terms of the Intercreditor Agreement.

“HK Guarantor” means SunPower Systems International Limited.

“HK Guarantor JV Agreement” means the joint venture agreement dated 22 February 2017 and entered into between SunPower Energy Corporation Limited, Dongfang Electric Corporation and TZS, together with all deeds of adherence thereto, in respect of the establishment of the HK Guarantor.

“HLPV” means Huanli Photovoltaic (Jiangsu) Co., Ltd.

“Holding Company” means, in relation to a person, any other person in respect of which it is a Subsidiary.

“Indirect Tax” means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

“Instructing Parties” has the meaning given to it in the Intercreditor Agreement.

“Intellectual Property” means any patents, trade marks, service marks, designs, business and trade names, copyrights, database rights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets.

“Intercreditor Agreement” means the intercreditor agreement dated on or about the date of this Agreement between the financial institutions named therein as lenders, the entities named therein as hedge counterparties, the Borrowers, the Guarantors, the companies listed therein as intra-group lenders, the companies listed therein as subordinated creditors, the subsidiaries of the Company listed therein as debtors, the Intercreditor Agent, the Offshore Security Agent, the SP Philippines Facility Agent, the Maxeon Term Facility Agent and the Working Capital Facility Agent.

“Interest Period” means, in relation to a Loan or an Unpaid Sum, each interest period determined in accordance with the relevant Facility Agreement.

“Lender” means an SP Philippines Facility Lender, a Maxeon Term Facility Lender or a Working Capital Lender.

“Loan” means an SP Philippines Facility Loan, a Maxeon Term Facility Loan or a Working Capital Loan.

“London Business Day” means a day (other than a Saturday or Sunday) on which commercial banks are open for general business, including dealings in interbank deposits in London.

“Majority Lenders” has the meaning given to it in the Intercreditor Agreement.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, assets, property, financial condition or prospects of the Obligors; (b) the ability of any of the Obligors to perform its payment and other material obligations under the Finance Documents; or (c) the validity or enforceability of, or the rights or remedies of any Finance Party under, the Finance Documents.

“Material Contract” means:

- (a) the Polysilicon Purchase Contract;
- (b) the Chinese JV Supply Contract; and
- (c) each SP Malaysia Intra-Group Loan.

“Maxeon DSRA” means the interest bearing debt service reserve account maintained by the Company with DBS Bank Ltd. and charged in favour of the Offshore Security Agent.

“Maxeon Rooster HoldCo, Ltd.” means Maxeon Rooster HoldCo, Ltd., an exempted company incorporated with limited liability in Bermuda with company registration number 55442.

“Maxeon Term Facility” means the term loan facility made available under the Maxeon Term Facility Agreement.

“Maxeon Term Facility Agreement” means the term loan facility agreement dated on or about the date hereof between (among others) the Company (as Borrower) and the Original Maxeon Term Facility Lenders.

“Maxeon Term Facility Commitment” means:

- (a) in relation to an Original Maxeon Term Facility Lender, the amount set opposite its name under the heading “Maxeon Term Facility Commitment” in Part II of Schedule 1 (*The Original Maxeon Term Facility Lenders*) and the amount of any other Maxeon Term Facility Commitment transferred to it under the Maxeon Term Facility Agreement; and
- (b) in relation to any other Maxeon Term Facility Lender, the amount of any Maxeon Term Facility Commitment transferred to it under the Maxeon Term Facility Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“Maxeon Term Facility Finance Parties” means the Maxeon Term Facility Agent and the Maxeon Term Facility Lenders.

“Maxeon Term Facility Lender” means:

- (a) any Original Maxeon Term Facility Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Maxeon Term Facility Lender in accordance with Clause 21 (*Changes to the Lenders*) and the Maxeon Term Facility Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement.

“Maxeon Term Facility Loan” means a loan made or to be made under the Maxeon Term Facility or the principal amount outstanding for the time being of that loan.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“New Lender” has the meaning given to that term in Clause 21 (*Changes to the Lenders*).

“Obligors” means each of the Borrowers and the Guarantors.

“Obligors’ Agent” means the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligors’ Agent*).

“Original Lenders” means the Original SP Philippines Facility Lenders, the Original Maxeon Term Facility Lenders and the Original Working Capital Lenders.

“Original Financial Statements” means:

- (a) in relation to the Company:
 - (i) the audited carve-out financial statements for the Company for the financial year ending 31 December 2019; and
 - (ii) the unaudited carve-out financial statements for the Company for the three (3) month period ending 29 March 2020 / pro forma balance sheet as of 29 March 2020 and income statement for the three (3) month period ending 29 March 2020; and
- (b) in relation to SunPower Philippines, its audited financial statements for its financial year ended 31 December 2019; and
- (c) in relation to each other Obligor, its unaudited management financial statements for the financial year ending 31 December 2019.

“Party” means a party to this Agreement.

“Philippines Charged Accounts Control Agreement” means each control agreement between, amongst others, SunPower Philippines and the Philippines Onshore Security Agent in respect of the accounts held by SunPower Philippines and which are subject to the Transaction Security, substantially in the form set out in the Philippines Omnibus Security Agreement, including the Philippines Control Agreement.

“Philippines Control Agreement” means the control agreement between SunPower Philippines, the Philippines Onshore Security Agent and the Philippines Onshore Account Bank in respect of the SP Philippines DSRA substantially in the form set out in the Account Charge.

“Philippines Onshore Account Bank” means Standard Chartered Bank, Philippines Branch as account bank in respect of the SP Philippines DSRA.

“Philippines Onshore Security Agent” means the financial institution which has acceded to the terms of this Agreement pursuant to an Accession Letter.

“Philippines Security Documents” means:

- (a) the Philippines Omnibus Security Agreement;
- (b) the SPML Land Security Documents; and
- (c) the Philippines Charged Accounts Control Agreements, the Philippines Share Charge Control Agreements, and such other agreements that are executed between SunPower Philippines and the Philippines Onshore Security Agent, among other parties (as applicable) pursuant to the Philippines Omnibus Security Agreement.

“Philippines Share Charge Control Agreement” means each control agreement between, amongst others, SunPower Philippines and the Philippines Onshore Security Agent in respect of the charged shares in SPML Land owned by SunPower Philippines (and, as applicable, such other company whose issued shares are owned by SunPower Philippines and are subject to the Transaction Security), substantially in the form set out in the Philippines Omnibus Security Agreement.

“Polysilicon Purchase Contract” means the agreement to be entered into between SunPower Corporation and the Company relating to the long-term supply agreement entered into between SunPower Corporation and Hemlock Semiconductor, LLC, on 6 January 2009, as amended from time to time, relating to the purchase of polysilicon by SunPower Corporation on a fixed price, take or pay basis.

“Polysilicon Purchase Contract Payment Profile” means the payment profile in respect of the Polysilicon Purchase Contract as set out in Schedule 12 (*Polysilicon Purchase Contract Payment Profile*).

“Post-Spin Off Group Structure Chart” means the group structure chart showing:

- (a) all members of the Group, including, if known, the name and company registration number, its jurisdiction of incorporation and/or its jurisdiction of establishment and a list of shareholders (except that a list of the shareholders in the Company will not be required to be included); and

- (b) any person in which any member of the Group will hold shares in its issued share capital or equivalent ownership interest of such person,

in each case following the completion of the Spin Off.

“Promissory Note” means the promissory note issued by Maxeon Solar Pte. Ltd. in favour of SunPower Corporation in an amount not in excess of USD 100,000,000, and as further described in paragraph 1 of Schedule 9 (*Existing Financial Indebtedness and Security*).

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

“Related Fund”, in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

“Relevant Market” means the London interbank market.

“Repeating Representations” means each of the representations set out in Clauses 16.1 (*Status*) to 16.6 (*Governing law and enforcement*) (inclusive), 16.9 (*No default*), 16.11(a) and (b) (*Financial statements*), 16.14 (*Authorised signatures*), 16.17 (*Contaminated Land*), 16.20 (*Anti-corruption law*), 16.21 (*Sanctions*), 16.23 (*Ranking of Security*), 16.25 (*Legal and beneficial owner*) to 16.28 (*Land ownership*) (inclusive), 16.30(b) (*Financial Indebtedness*) and 16.32 (*Chinese Joint Venture*) (excluding Clause 16.32(c)).

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Resignation Letter” means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

“Restricted Obligations” has the meaning given to such term in Clause 15.12 (*Swiss Up-Stream and Cross-Stream Limitation and Withholding Tax*).

“Restricted Party” means a person that is:

- (a) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) otherwise a Target of Sanctions.

“Sanctions” means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom;
- (e) the Cayman Islands;
- (f) Singapore;
- (g) the Philippines;
- (h) Mexico;
- (i) Hong Kong;
- (j) Switzerland; and
- (k) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**“OFAC”**), the United States Department of State and Her Majesty’s Treasury (**“HMT”**) (together the **“Sanctions Authorities”**).

“Sanctions List” means any of the lists of specifically designated nationals or designated persons or entities (or equivalent, including but without limitation the “Specially Designated Nationals and Blocked Persons” list and the “Sectoral Sanctions Identifications and Foreign Sanctions Evaders” list maintained by OFAC, the “Consolidated List of Financial Sanctions Targets” and the “Investment Ban List” maintained by HMT) held by any Sanctions Authority (each as amended, supplemented or substituted from time to time in relation to Sanctions) or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Security Agent” means each of the Offshore Security Agent and (on and from its accession to this Agreement) the Philippines Onshore Security Agent.

“Security Documents” means:

- (a) when executed, the all-asset security agreement dated on or after the date hereof and entered into by the Company in favour of the Offshore Security Agent (including, without limitation, security over the Maxeon DSRA);

- (b) when executed, the omnibus security agreement dated on or after the date hereof and entered into by SunPower Philippines in favour of the Philippines Onshore Security Agent including (for the avoidance of doubt) share security in respect of all of the shares held by SunPower Philippines in SPML Land (the “**Philippines Omnibus Security Agreement**”);
- (c) when executed, the all-asset security agreement dated on or after the date hereof and entered into by Maxeon Rooster HoldCo, Ltd. in favour of the Offshore Security Agent;
- (d) when executed, the SPML Land Security Documents;
- (e) each Share Charge;
- (f) when executed, each Philippines Charged Accounts Control Agreement;
- (g) when executed, each Philippines Share Charge Control Agreement;
- (h) when executed, the Account Charge; and
- (i) when executed, any other Philippines Security Document.

“**Security Provider**” means each counterparty to the Security Documents which has granted part of the Transaction Security.

“**Selection Notice**” means a notice substantially in the form set out in Part II (*Selection Notice*) of Schedule 3 (*Requests*) given in accordance with the relevant Facility Agreement in relation to the Term Facilities.

“**Share Charge**” means each of:

- (a) the share charge dated on or after the date of this Agreement and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in the French Guarantor;
- (b) the share charge dated on or after the date of this Agreement and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in Maxeon Rooster HoldCo, Ltd.;
- (c) the share charge dated on or after the date of this Agreement and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Energy Corporation Limited;
- (d) the share charge dated on or after the date of this Agreement and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Corporation Limited;
- (e) the share charge dated on or after the date of this Agreement and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Manufacturing Corporation Limited;

- (f) the equitable share mortgage dated on or after the date of this Agreement and entered into by SunPower Technology Ltd. in favour of the Offshore Security Agent in respect of all of the shares held by SunPower Technology Ltd. in SunPower Philippines; and
- (g) the Philippines Omnibus Security Agreement.

“**SPML Land**” means SPML Land, Inc..

“**SPML Land Real Property**” means:

- (a) the parcel of land covered by Transfer Certificate of Title No. T-433155 issued by the Register of Deeds for the Province of Laguna, Calamba Branch, with an area of 88,705 square meters more or less, located in Binan, Laguna, Philippines, including the building standing on the Land, with a floor area of Twenty Thousand (20,000) square metres and covered by Tax Declaration No. 03-010-08334 of Binan, Laguna, Philippines, dated 01 January 2009; and
- (b) the parcel of land covered by Transfer Certificate of Title No. T-103232 issued by the Register of Deeds of Tanaun, Batangas, Philippines, with an area of 86,456 square meters more or less, located in Sta. Anastacia. Sto. Tomas, Batangas, Philippines, including the building standing on the Land, with a floor area of Thirty-One Thousand Nine Hundred Sixty (31,960) square metres and covered by Declaration of Real Property No. T-13257 of Tanauan, Batangas, Philippines, for tax year 2010.

“**SPML Land Security Documents**” means the following security documents to be executed by SPML Land in favour of the Philippines Onshore Security Agent in respect of the SPML Land Real Property:

- (a) the accession agreement executed by SPML Land; and
- (b) the Philippines Omnibus Security agreement to which SPML Land accedes as a Security Provider in respect of the SPML Land Real Property.

“**Specified Time**” means a day or time determined in accordance with Schedule 10 (*Timetables*).

“**Spin Off**” means the separation and distribution of the Company from SunPower Corporation as described in steps 1 to 25 of the Steps Plan.

“**SP Malaysia Intra-Group Loans**” means loans made by members of the Group to SunPower Malaysia (including, without limitation, any on-loan of the proceeds of the issuance of the Convertible Bonds by the Company).

“**SP Philippines DSRA**” means the interest bearing debt service reserve account maintained by SunPower Philippines with the Philippines Onshore Account Bank and charged in favour of the Philippines Onshore Security Agent.

“**SP Philippines Facility**” means the term loan facility made available under the SP Philippines Facility Agreement.

“SP Philippines Facility Agreement” means the term loan facility agreement dated on or about the date hereof between (among others) SunPower Philippines (as Borrower) and the Original SP Philippines Facility Lenders.

“SP Philippines Facility Commitment” means:

- (a) in relation to an Original SP Philippines Facility Lender, the amount set opposite its name under the heading “SP Philippines Facility Commitment” in Part I of Schedule 1 (*The Original SP Philippines Facility Lenders*) and the amount of any other SP Philippines Facility Commitment transferred to it under the SP Philippines Facility Agreement; and
- (b) in relation to any other SP Philippines Facility Lender, the amount of any SP Philippines Facility Commitment transferred to it under the SP Philippines Facility Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“SP Philippines Facility Finance Parties” means the SP Philippines Facility Agent, the SP Philippines Facility Lenders and the Philippines Onshore Security Agent.

“SP Philippines Facility Lender” means:

- (a) any Original SP Philippines Facility Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as an SP Philippines Facility Lender in accordance with Clause 21 (*Changes to the Lenders*) and the SP Philippines Facility Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement.

“SP Philippines Facility Loan” means a loan made or to be made under the SP Philippines Facility or the principal amount outstanding for the time being of that loan.

“Steps Plan” means the steps plan prepared by Ernst and Young and delivered to the Facility Agent pursuant to paragraph 8(c) (*Separation, Distribution and Spin-off of the Company*) of Schedule 2 (*Conditions Precedent*).

“Subsidiary” means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“SunPower Malaysia” means Sunpower Malaysia Manufacturing Sdn Bhd, a company incorporated in Malaysia with registered number 824246-W and its registered address at 49-B, Jalan Melaka Raya 8, Taman Melaka Raya, 75000 Melaka.

“Swiss Obligor” has the meaning given to such term in Clause 15.12 (*Swiss Up-Stream and Cross-Stream Limitation and Withholding Tax*).

“Target of Sanctions” means a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities.

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Tax Deduction” has the meaning given to such term in Clause 10.1 (*Tax definitions*).

“Term Facility” means the Maxeon Term Facility or the SP Philippines Facility.

“Term Loan” means either or both (as the context may require) of a Maxeon Term Facility Loan or a SP Philippines Facility Loan.

“Termination Date” means the date falling 36 months after the date of this Agreement.

“Total Solar” means Total Solar INTL SAS.

“Total Commitments” means at any time the aggregate of the Total SP Philippines Facility Commitments, the Total Maxeon Term Facility Commitments and the Total Working Capital Commitments (being USD 125,000,000 at the date of this Agreement).

“Total Facility Commitments” means, in respect of a Facility, the aggregate of the Commitments under that Facility.

“Total Maxeon Term Facility Commitments” means the aggregate of the Maxeon Term Facility Commitments (being USD 20,000,000 at the date of this Agreement).

“Total SP Philippines Facility Commitments” means the aggregate of the SP Philippines Facility Commitments (being USD 55,000,000 at the date of this Agreement).

“Total Working Capital Commitments” means the aggregate of the Working Capital Commitments (being USD 50,000,000 at the date of this Agreement).

“Transaction Security” means the Security created or expressed to be created in favour of the Security Agents pursuant to the Security Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Company.

“Transfer Date” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“TZS” means Tianjin Zhonghuan Semiconductor Co., Ltd.

“TZS Equity Contribution” means USD 298,000,000.

“TZS Equity Subscription Agreement” means the Investment Agreement dated 8 November 2019 between the Company, SunPower Corporation, Total Solar and TZS under which TZS agreed to invest the TZS Equity Contribution in the Company by way of subscription of ordinary shares in the Company.

“Unpaid Sum” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“US” means the United States of America.

“US Tax Obligor” means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“Utilisation” means a utilisation of a Facility.

“Utilisation Date” means the date of a Utilisation, being the date on which the relevant Loan is to be made.

“Utilisation Request” means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

“Valuation Report” means the valuation report prepared by Colliers International in respect of the SPML Land Real Property delivered to the Facility Agents pursuant to paragraph 5 (*Real Estate*) of Schedule 2 (*Conditions Precedent*).

“Working Capital Commitment” means:

- (a) in relation to an Original Working Capital Lender, the amount set opposite its name under the heading “Working Capital Commitment” in Part III of Schedule 1 (*The Original Working Capital Lenders*) and the amount of any other Working Capital Commitment transferred to it under the Working Capital Facility Agreement; and

- (b) in relation to any other Working Capital Lender, the amount of any Working Capital Commitment transferred to it under the Working Capital Facility Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“Working Capital Facility” means the revolving loan facility made available under the Working Capital Facility Agreement.

“Working Capital Facility Agreement” means the revolving loan facility agreement dated on or about the date hereof between the Company (as Borrower) and the Original Working Capital Lenders.

“Working Capital Finance Parties” the Working Capital Facility Agent and the Working Capital Lenders.

“Working Capital Lender” means:

- (a) any Original Working Capital Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Working Capital Lender in accordance with Clause 21 (*Changes to the Lenders*) and the Working Capital Facility Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement.

“Working Capital Loan” means a loan made or to be made under the Working Capital Facility or the principal amount outstanding for the time being of that loan.

“Working Capital Rollover Loan” means one or more Working Capital Loans:

- (a) made or to be made on the same day that a maturing Working Capital Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Working Capital Loan;
- (c) in the same currency as the maturing Working Capital Loan; and
- (d) made or to be made to the Company for the purpose of refinancing that maturing Working Capital Loan.

1.2

Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) any **“Administrative Party”**, a **“Facility Agent”**, a **“Security Agent”**, any **“Finance Party”**, any **“Lender”**, any **“Obligor”** or any **“Party”** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;

- (ii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (iv) “**including**” shall be construed as “including without limitation” (and cognate expressions shall be construed similarly);
 - (v) a “**group of Lenders**” includes all the Lenders;
 - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) a Lender’s “**participation**” in a Loan or Unpaid Sum includes an amount (in the currency of such Loan or Unpaid Sum) representing the fraction or portion (attributable to such Lender by virtue of the provisions of this Agreement) of the total amount of such Loan or Unpaid Sum and the Lender’s rights under this Agreement in respect thereof;
 - (viii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a “**relevant Facility Agent**” in respect of a Facility, a Lender or a Borrower is a reference to the Facility Agent appointed in respect of that Facility, that Lender or that Borrower under the relevant Facility Agreement;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xii) a time of day is a reference to Singapore time.
- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- (e) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied (to the extent capable of remedy) or waived and an Event of Default is “**continuing**” if it has not been remedied (to the extent capable of remedy) or waived, provided that in each case no Acceleration Event has occurred at the time of remedy.
- (f) Where this Agreement specifies an amount in a given currency (the “**specified currency**”) “**or its equivalent**”, the “**equivalent**” is a reference to the amount of any other currency which, when converted into the specified currency utilising the relevant Facility Agent’s spot rate of exchange (or, if the relevant Facility Agent does not have an available spot rate of exchange, any publicly available spot rate of exchange selected by the relevant Facility Agent (acting reasonably)) for the purchase of the specified currency with that other currency at or about 11 a.m. on the relevant date, is equal to the relevant amount in the specified currency.

1.3 **Currency symbols and definitions**

“\$”, “USD” “US\$” and “US dollars” denote the lawful currency of the US.

1.4 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.5 **Intercreditor Agreement**

The Finance Documents are subject to the terms and conditions of the Intercreditor Agreement. In the event of any inconsistency between the terms and conditions of the Finance Documents and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

SECTION 2
THE FACILITIES

2. THE FACILITIES

2.1 The Facilities

Subject to the terms of this Agreement and the Facility Agreements, the Lenders make available to the respective Borrowers the Maxeon Term Facility, the Working Capital Facility and the SP Philippines Facility in a maximum aggregate principal amount not exceeding the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.3 Obligors' Agent

- (a) Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.
- (c) Solely for the purpose of Mexican law, the Mexican Guarantor shall grant to the Company, before a Mexican notary public, an irrevocable power of attorney for ownership acts (*poder para actos de dominio*), administrative acts (*poder para actos de administración*) and lawsuits and collections (*poder para pleitos y cobranzas*) governed by the laws of Mexico. Until such power of attorney has been granted, the provisions of this Clause 2.3(c) and Clause 36.2 (*Service of Process*) shall not apply to the Mexican Guarantor

3. PURPOSE

3.1 Purpose

- (a) The Company shall apply all amounts borrowed by it under the Working Capital Facility towards:
 - (i) the purchase of; or
 - (ii) on-lending amounts borrowed to any person who is a member of the Group for such member of the Group to apply towards the purchase of,

solar panels, modules and cells from other members of the Group and the Chinese Joint Venture (such solar panels, modules and cells being the "**Eligible Equipment**") for onward sale by any member of the Group to wholesale purchasers (other than members of the Group) of such Eligible Equipment.
- (b) The Company shall apply all amounts borrowed by it under the Maxeon Term Facility towards capex maintenance, working capital and general corporate purposes, provided that the Company shall not apply any amounts towards capital expenditure in relation to Maxeon 7 technology.
- (c) SunPower Philippines shall apply all amounts borrowed by it under the SP Philippines Facility towards capex maintenance, working capital and general corporate purposes, provided that SunPower Philippines shall not apply any amounts towards capital expenditure in relation to Maxeon 7 technology.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) No Borrower may deliver a Utilisation Request unless the Facility Agents have received all of the documents and other evidence listed in and appearing to comply with the requirements of Schedule 2 (*Conditions Precedent*). Each Facility Agent shall notify the Borrowers and the relevant Lenders upon receipt of such documents and evidence.
- (b) Other than to the extent that the Majority Lenders in respect of a Facility notify the relevant Facility Agent in writing to the contrary before that Facility Agent gives the notification described in paragraph (a) above, the Lenders under each Facility authorise (but do not require) the relevant Facility Agent to give that notification. No Facility Agent shall be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 **Further conditions precedent**

The Lenders will only be obliged to participate in the Utilisation of a Facility in accordance with the relevant Facility Agreement if:

- (a) in respect of any Utilisation of the SP Philippines Facility that relates to capital expenditure, SunPower Philippines has provided to the SP Philippines Facility Agent documentary evidence and/or invoices in form and substance satisfactory to the SP Philippines Lenders evidencing such eligible capital expenditure, and demonstrating to the SP Philippines Facility Lenders' satisfaction that the amount requested in the relevant Utilisation Request is not greater than 90% of the amount of such capital expenditure;
- (b) in respect of any Utilisation of the Maxeon Term Facility that relates to capital expenditure, the Company has provided to the Maxeon Term Facility Agent documentary evidence and/or invoices in form and substance satisfactory to the Maxeon Term Facility Lenders evidencing such eligible capital expenditure, and demonstrating to the Maxeon Term Facility Lenders' satisfaction that the amount requested in the relevant Utilisation Request is not greater than 90% of the amount of such capital expenditure; and
- (c) on the date of the Utilisation Request and on the proposed Utilisation Date:
 - (i) in the case of a Working Capital Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and
 - (ii) the Repeating Representations to be made by each Obligor are true in all material respects.

- (a) The Borrowers shall use reasonable commercial efforts to deliver to the Facility Agents the following documents:
- (i) a notarised copy of SPML Land's secretary's certificate certifying the following as true, complete and up-to-date:
 - (A) a copy of the certificate of incorporation of SPML Land;
 - (B) a copy of the articles of incorporation of SPML Land as amended to date, specifically including, among other things, the power to provide security for the obligations of a stockholder or of any other corporation as among its corporate purposes;
 - (C) a copy of the by-laws of SPML Land as amended to date;
 - (D) a copy of a resolution of the board of directors of SPML Land:
 - (1) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, or ratifying the execution of (as applicable), the Finance Documents to which it is a party;
 - (2) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (3) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (4) confirming that the execution and performance by it of the Finance Documents to which it is a party and its obligations under the Finance Documents to which it is a party are in furtherance of its corporate interest, and that it derives direct and indirect economic and other corporate benefit from the arrangements contemplated in the Finance Documents to which it is a party; and
 - (E) a notarised copy of SPML Land's secretary's certificate certifying that holders of the issued shares in SPML Land representing at least 2/3 of its outstanding capital stock have approved the grant by SPML Land of the security over its assets for the obligations of the Obligors under the Finance Documents, and the terms of, and the transactions contemplated by, the Finance Documents to which it is a party;
 - (ii) duly executed originals of the SPML Land Security Documents;

- (iii) evidence that the perfection steps set out in the SPML Land Security Documents have been completed;
- (iv) a copy of SPML Land's latest:
 - (A) General Information Sheet as filed with the Securities and Exchange Commission of the Philippines;
 - (B) Audited Financial Statements as filed with the Bureau of Internal Revenue of the Philippines; and
 - (C) Income Tax Returns as filed with the Bureau of Internal Revenue of the Philippines; and
- (v) a legal opinion of SyCip Salazar Hernandez & Gatmaitan in respect of SPML Land and the SPML Land Security Documents.
- (b) Within sixty (60) days of Financial Close, the Obligors shall provide to the Facility Agents:
 - (i) evidence that, in respect of each Obligor, all risk insurance has been placed with an insurer acceptable to the Intercreditor Agent, and that such policies of insurance have been endorsed to include the relevant Security Agent as assignee / loss payee; and
 - (ii) evidence of insurance coverage in respect of the assets of the Group (excluding SunPower Malaysia) for an amount no less than the higher of (i) the Total Commitments as at the date of this Agreement and (ii) the value of the land and buildings disclosed in the Valuation Report, including, without limitation, volcano risk and natural disaster insurance, each listing the relevant Security Agent as sole loss payee, together with a formal report from Aon as insurance adviser to the Finance Parties confirming the sufficiency of coverage of such insurance.
- (c) Within fifteen (15) Business Days of the date of this Agreement, the Mexican Guarantor shall provide to the Intercreditor Agent the signed execution copies of the public deeds containing the powers of attorney described in Clause 2.3(c) (*Obligors' Agent*) and 36.2(c) (*Service of process*).

4.4 **Maximum number of Loans**

- (a) A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation:
 - (i) four (4) or more SP Philippines Facility Loans would be outstanding;
 - (ii) four (4) or more Maxeon Term Facility Loans would be outstanding; or
 - (iii) ten (10) or more Working Capital Facility Loans would be outstanding (or such higher number of Working Capital Facility Loans as the Working Capital Facility Agent may agree (acting on the instructions of the Working Capital Facility Lenders)).

- (b) A Borrower may not request that a Term Loan be divided if, as a result of the proposed division, four (4) or more Term Loans under the relevant Facility would be outstanding.
- (c) A Borrower may not request that a Working Capital Loan be divided.

5. UTILISATION

5.1 Delivery of a Utilisation Request

- (a) Subject to paragraph (b) below, a Borrower may utilise a Facility during the relevant Availability Period by delivery to the relevant Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Company shall ensure that for a period of not less than five (5) consecutive Business Days in each Twelve-month Period no Working Capital Loans are outstanding under the Working Capital Facility.
- (c) For the purpose of this Clause 5.1, a “**Twelve-month Period**” means the period starting on 2 January in each calendar year and ending on 1 January of the following calendar year, **provided that**:
 - (i) the first Twelve-month Period shall start on 2 January 2021; and
 - (ii) the final Twelve-month Period shall end on the last occurring 1 January prior to the Termination Date.
- (d) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.2 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with the provisions of the relevant Facility Agreement.
- (e) Only one Loan may be requested in each Utilisation Request.

5.2 Currency and amount

- (a) The currency specified in a Utilisation Request must be US dollars.
- (b) The amount of the proposed Loan must be an amount which is:
 - (i) not more than the Available Facility; and

(ii) a minimum of:

- (A) US\$10,000,000 (and integral multiples of US\$5,000,000) in the case of any Utilisation of a Term Facility; or
- (B) US\$2,000,000 in the case of any Utilisation of the Working Capital Facility,

(or in each case such other amount as the relevant Lenders under the relevant Facility may agree) or, if less, the Available Facility in respect of that Facility.

5.3 **Lenders' participation**

- (a) If the conditions set out in this Clause 5 (*Utilisation*) and Clause 4 (*Conditions precedent*) have been met, and subject to clause 2 (*Repayment of Working Capital Loans*) of the Working Capital Facility Agreement (in the case of a Utilisation of the Working Capital Facility), each Lender in respect of the relevant Facility shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each relevant Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment in respect of the relevant Facility to the Available Facility in respect of the relevant Facility immediately prior to making the Loan.
- (c) The relevant Facility Agent shall notify each relevant Lender of the amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 25.1 (*Payments to the Facility Agents*) in each case by the Specified Time.

5.4 **Cancellation of Commitment**

The Commitments under a Facility which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for that Facility.

5.5 **First Utilisation**

No Borrower shall deliver a Utilisation Request, and no Facility Agent shall accept a Utilisation Request, until the Company has provided evidence that:

- (a) the Convertible Bonds have been issued, and the net proceeds of such issuance have been received in full by the Company;
- (b) the Spin-Off has been completed;
- (c) the TZS Equity Contribution has been made in full;
- (d) the Promissory Note has been repaid in full; and
- (e) the following documents have been delivered to the Intercreditor Agent in respect of the HK Guarantor:

- (i) an Accession Letter executed by the HK Guarantor acceding to this Agreement;
- (ii) a copy of the constitutional documents and statutory registers (if applicable) of the HK Guarantor (including the HK Guarantor JV Agreement);
- (iii) a copy of a resolution of the board of directors of the HK Guarantor, passed by way of unanimous affirmative votes of all the directors of the HK Guarantor:
 - (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (D) resolving that it is in the best interests of the HK Guarantor to enter into the transactions contemplated by the Finance Documents to which it is a party, giving reasons;
- (iv) a specimen of the signature of each person authorised by the resolutions referred to in paragraph (iii) above;
- (v) a copy of a resolution signed by all the holders of the issued equity interest or shares (as applicable) in the HK Guarantor;
- (vi) a copy of a consent letter executed by the shareholders in the HK Guarantor and the Intercreditor Agent consenting to the terms of the Finance Documents for the purposes of the HK Guarantor JV Agreement;
- (vii) a certificate from the HK Guarantor confirming that borrowing, guaranteeing and/or securing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing, security or similar limit binding on it to be exceeded;
- (viii) a certificate of an authorised signatory of the HK Guarantor certifying that each copy document relating to it specified in this Clause 5.5(e) is correct, complete and in full force and effect as at a date no earlier than the date of the relevant Accession Letter; and
- (ix) legal opinions issued by Clifford Chance in respect of the HK Guarantor and the Accession Letter referred to in paragraph (i) above;

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- (f) the aggregate amount of (i) the proceeds of the Convertible Bonds; (ii) the Total Commitments and (iii) any undrawn amount of the facility limits under the trade finance facility in favour of SunPower Malaysia (as permitted by this Agreement) listed at item 2 in Schedule 9 (*Existing Financial Indebtedness and Security*) available to be drawn immediately after Closing (as defined under the TZS Equity Subscription Agreement) are greater than or equal to USD 325,000,000.

SECTION 3
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Maxeon Term Facility Loans

The Company shall repay the Maxeon Term Facility Loans in accordance with the Maxeon Term Facility Agreement.

6.2 Repayment of SP Philippines Facility Loans

SunPower Philippines shall repay the SP Philippines Facility Loans in accordance with the SP Philippines Facility Agreement.

6.3 Repayment of Working Capital Loans

The Company shall repay the Working Capital Loans in accordance with the Working Capital Facility Agreement.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or the relevant Facility Agreement or to fund or maintain its participation in any Loan or it is or will become unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the relevant Facility Agent upon becoming aware of that event;
- (b) upon the relevant Facility Agent notifying the Company, the Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 7.4 (*Right of prepayment and cancellation in relation to a single Lender*), each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the relevant Facility Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the relevant Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

7.2 Voluntary cancellation

A Borrower may, if it gives the relevant Facility Agent not less than ten (10) Business Days' (or such shorter period as the Majority Lenders for the relevant Facility may agree) prior notice, cancel the whole or any part (being a minimum amount of USD 10,000,000 (and integral multiples of USD 1,000,000 in excess thereof)) of an Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably under that Facility.

7.3 **Voluntary prepayment**

- (a) A Borrower to which a Loan has been made may, if it gives the relevant Facility Agent not less than ten (10) Business Days' (or such shorter period as the Majority Lenders for the relevant Facility may agree) prior notice, prepay the whole or any part of any such Loan (but, if in part, being an amount that reduces that Loan by a minimum amount of USD 5,000,000 (and integral multiples of USD 1,000,000 in excess thereof)).
- (b) A Borrower may partially prepay a Term Loan only after the end of the Availability Period in respect of the relevant Term Facility (provided that nothing in this paragraph (b) shall preclude the prepayment and cancellation of a Term Loan in full at any time).

7.4 **Right of prepayment and cancellation in relation to a single Lender**

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (a) of Clause 10.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Company under Clause 10.3 (*Tax indemnity*) or Clause 11.1 (*Increased Costs*),the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the relevant Facility Agent(s) notice of cancellation of the Commitment(s) of that Lender and its intention to procure the prepayment of that Lender's participation in the Loans or give the relevant Facility Agent(s) notice of its intention to replace that Lender in accordance with paragraph (d) below.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan is outstanding shall prepay that Lender's participation in that Loan and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender;
 - (ii) an Obligor becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender; or

(iii) a Lender becomes a Non-Consenting Lender (as defined in paragraph (g) below),

the Company may, on twenty (20) Business Days' prior notice to the relevant Facility Agent(s) and that Lender, replace that Lender (or, as the context may require, a portion of its Commitment) by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) and the relevant Facility Agreement(s):

(A) in the case of paragraph (d)(iii) above:

(1) where that Lender has split its Commitment in accordance with paragraph 3.1(c) (*Voting provisions*) of schedule 4 (*Voting and decision making*) of the Intercreditor Agreement, all (and not part only) of its rights and obligations under the Finance Documents which relate to the portion of its Commitment that is attributable to that Lender being a Non-Consenting Lender; and

(2) where that Lender has not split its Commitment in accordance with paragraph 3.1(c) (*Voting provisions*) of schedule 4 (*Voting and decision making*) of the Intercreditor Agreement and is a Non-Consenting Lender, all (and not part only) of its rights and obligations under the Finance Documents; or

(B) in the case of paragraphs (d)(i) or (d)(ii) above, all (and not part only) of its rights and obligations under the Finance Documents,

to a Lender or other bank, financial institution, trust, fund or other entity selected by the Company which (A) is not a member of the Group and (B) confirms its willingness to assume and does assume all the relevant obligations of the transferring Lender in accordance with Clause 21 (*Changes to the Lenders*) and the relevant Facility Agreement(s) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of (if applicable, the relevant portion of) such Lender's participation in the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

(e) The replacement of all or part of a Lender's Commitment pursuant to paragraph (d) above shall be subject to the following conditions:

(i) the Company shall have no right to replace the Intercreditor Agent, a Facility Agent or Security Agent;

(ii) no Facility Agent, Intercreditor Agent nor any Lender shall have any obligation to find a replacement Lender;

(iii) in the event of a replacement of all or part of a Non-Consenting Lender's Commitment such replacement must take place no later than ninety (90) days after the date on which that Lender is deemed to be a Non-Consenting Lender in respect of all or part of its Commitment;

- (iv) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) no Lender shall be obliged to execute a Transfer Certificate unless it is satisfied that it has completed all “know your customer” and other similar procedures that it is required (or deems desirable) to conduct in relation to the transfer to such replacement Lender.
- (f) A Lender shall perform the procedures described in paragraph (e)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Intercreditor Agent, the relevant Facility Agent(s) and the Company when it is satisfied that it has completed those checks.
- (g) In the event that:
- (i) an Obligor or the relevant Facility Agent (at the request of an Obligor) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all of the Lenders;
 - (iii) Lenders whose Commitments in respect of a Facility aggregate more than 75% of the Total Facility Commitments in respect of that Facility (or, if the relevant Total Facility Commitments have been reduced to zero, aggregated more than 75% of the Total Facility Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall (and if that Lender has split its Commitment in accordance with paragraph 3.1(c) (*Voting provisions*) of schedule 4 (*Voting and decision making*) of the Intercreditor Agreement, only in respect of the portion of its Commitment in respect of which it does not and continues not to consent or agree to such waiver or amendment) be deemed to be a “**Non-Consenting Lender**”.

7.5

Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

- (c) No Borrower may reborrow any part of a Term Facility which is prepaid.
- (d) Unless a contrary indication appears in this Agreement, any part of the Working Capital Facility which is repaid or prepaid may be reborrowed in accordance with the terms of this Agreement and the Working Capital Facility Agreement.
- (e) The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) If a Facility Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (h) If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

7.6 **Application of prepayments**

Any prepayment of a Loan pursuant to Clause 7.3 (*Voluntary Prepayment*) shall be applied *pro rata* to each Lender's participation in that Loan.

7.7 **Mandatory prepayment – Disposal Proceeds**

- (a) The Borrowers shall ensure that all Disposal Proceeds (other than Excluded Disposal Proceeds and Eligible Equipment Disposal Proceeds) are applied in prepayment of the outstanding Loans within five (5) Business Days of these proceeds ceasing to be Excluded Disposal Proceeds or at any earlier time when the Company determines that such proceeds are not Excluded Disposal Proceeds.
- (b) Subject to paragraph (c) below, the Company shall apply all Eligible Equipment Disposal Proceeds in prepayment of the Working Capital Facility Loans (or part thereof) that were Utilised for the purchase of such Eligible Equipment promptly (and in any event within ten (10) Business Days of receipt by the Company).
- (c) Paragraph (b) above shall not apply if a Default is continuing (other than a Default which relates to the Working Capital Facility only and which has been waived), unless (i) that Default ceases to be continuing without giving rise to an Event of Default; or (ii) if that Default gives rise to an Event of Default, by the date falling twenty (20) Business Days after that Event of Default first arising (or, if the Company exercises its Equity Cure Right pursuant to Clause 18.4 (*Equity Cure*), by the last day on which the Company may procure the provision of a Cure Amount), (and following the expiry of any Pre-Enforcement Standstill Period (as defined in the Intercreditor Agreement)) no Acceleration Event has occurred.

(d) In this clause 7.7:

- (i) **“Disposal Proceeds”** means the consideration receivable by any member of the Group (excluding SunPower Malaysia) for any Disposal made by any member of the Group (excluding SunPower Malaysia) after deducting:
 - (A) any reasonable expenses which are incurred by that member of the Group with respect to that Disposal to persons who are not members of the Group; and
 - (B) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance);
- (ii) **“Eligible Equipment Disposal Proceeds”** means the Disposal Proceeds received by any member of the Group in respect of the Disposal of Eligible Equipment, provided that:

- (A) for the purposes of the definition of “Disposal” and “Disposal Proceeds”, in calculating Eligible Equipment Disposal Proceeds, such definitions shall include the disposal of Eligible Equipment in the ordinary course of business; and
- (B) Eligible Equipment Disposal Proceeds shall include (without limitation) proceeds received by any member of the Group by way of advance payment for, or the proceeds of factoring receivables in respect of, the Disposal of Eligible Equipment,

and in all cases to the extent such disposed Eligible Equipment was purchased using the proceeds of Utilisation of the Working Capital Facility; and

- (iii) **“Excluded Disposal Proceeds”** means Disposal Proceeds which:
 - (A) are applied by the relevant member of the Group in reinvestment in assets used in the operations of that member of the Group within:
 - (1) eighteen (18) months of receipt of those Disposal Proceeds; or
 - (2) twelve (12) months of the relevant member of the Group making a binding commitment to the Facility Agents (such commitment being given within twelve (12) months of receipt of the relevant Disposal Proceeds) to reinvest such Disposal Proceeds); or

- (B) when aggregated with all other Disposal Proceeds received or receivable in the same rolling 12 month period by all of the members of the Group do not exceed USD 25,000,000.

7.8

Mandatory prepayment – Insurance Proceeds

- (a) The Borrowers shall apply all Total Loss Insurance Proceeds (other than Excluded Insurance Proceeds) in prepayment of the outstanding Loans within five (5) Business Days of these proceeds ceasing to be Excluded Insurance Proceeds or at any earlier time when the Company determines that such proceeds are not Excluded Insurance Proceeds.
- (b) In this clause 7.8:
 - (i) **“Total Loss Insurance Proceeds”** means all the proceeds received by a member of the Group (including the Chinese Joint Venture (subject to paragraph (B) below, but excluding SunPower Malaysia) in respect of claims for the total loss of one or more assets of that member of the Group or the Chinese Joint Venture (as applicable), made under contracts of insurance held and maintained by that member of the Group or the Chinese Joint Venture (as applicable) including:
 - (A) in the case of any members of the Group which are not wholly owned by other members of the Group (**“Company A”**), the proportionate share of insurance proceeds received by another member of the Group in its capacity as shareholder of Company A; and
 - (B) in the case of the Chinese Joint Venture, the proportionate share of insurance proceeds received by SunPower Manufacturing Corporation Limited in its capacity as shareholder of the Chinese Joint Venture; and
 - (ii) **“Excluded Insurance Proceeds”** means Total Loss Insurance Proceeds (other than Total Loss Insurance Proceeds received from the Chinese Joint Venture) which are reinvested or committed to be reinvested by the relevant member of the Group in the procurement of replacement assets substantially the same as those which were the subject of the total loss claim, such reinvestment to be completed within eighteen (18) months of the receipt of such Total Loss Insurance Proceeds.

7.9

Mandatory prepayment – Convertible Bonds

If at any time prior to the Termination Date the Company is required to pay any amount in respect of the Convertible Bonds (excluding the agreed interest (including any additional interest, special interest and supplemental interest) payable on the Convertible Bonds and payments in lieu of any fractional shares required to be issued on conversion, but including (without limitation) any cash payment in repayment, prepayment and/or redemption (in whole or in part) of the Convertible Bonds, any cash amount payable upon conversion of the Convertible Bonds (other than payments in lieu of fractional shares) or any amount payable as the result of an event of default

(howsoever defined) under the Convertible Bonds), the Borrowers shall prepay the outstanding Loans within five (5) Business Days. The Company shall procure that, in the circumstances described above, no payment shall be made under the Convertible Bonds unless and until the Loans have been discharged in full.

SECTION 4
COSTS OF UTILISATION

8. INTEREST AND INTEREST PERIODS

- (a) Subject to the provisions of this Agreement, each Borrower shall pay accrued interest on the Loans in accordance with the terms of the relevant Facility Agreement.
- (b) The Interest Period(s) in respect of a Loan shall be determined in accordance with the terms of the relevant Facility Agreement.

9. FEES

9.1 Commitment fee

The relevant Borrower shall pay to the relevant Facility Agent (for the account of each Lender) the applicable commitment fee specified in the relevant Facility Agreement.

9.2 Upfront fee

The relevant Borrower shall pay to each Original Lender (for its own account) an upfront fee in the amount and at the times agreed in one or more Fee Letters.

9.3 Intercreditor agency fee

The Company shall pay to the Intercreditor Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

9.4 Facility agency fee

The Company shall pay to each Facility Agent (for its own account) a facility agency fee in the amount and at the times agreed in one or more Fee Letters.

9.5 Security agency fee

The Company shall pay to each Security Agent (for its own account) a security agency fee in the amount and at the times agreed in one or more Fee Letters.

SECTION 5
ADDITIONAL PAYMENT OBLIGATIONS

10. **TAX GROSS-UP AND INDEMNITIES**

10.1 **Tax definitions**

In this Clause 10:

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means an increased payment made by an Obligor to a Finance Party under Clause 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

Unless a contrary indication appears, in this Clause 10 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

10.2 **Tax gross-up**

- (a) All payments to be made by an Obligor to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction unless such Obligor is required to make a Tax Deduction, in which case the sum payable by such Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the relevant Facility Agent(s) accordingly. Similarly, a Lender shall notify the relevant Facility Agent(s) on becoming so aware in respect of a payment payable to that Lender. If a Facility Agent receives such notification from a Lender it shall notify the Company and that Obligor.
- (c) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (d) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the relevant Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

Tax indemnity

- (a) Without prejudice to Clause 10.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Company shall, within three (3) Business Days of demand of the relevant Facility Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, **provided that** this Clause 10.3 shall not apply to:
- (i) any Tax imposed on and calculated by reference to the net income actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which such Finance Party is incorporated;
 - (ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of such Finance Party actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which its Facility Office is located; or
 - (iii) a FATCA Deduction required to be made by a Party.
- (b) A Finance Party intending to make a claim under paragraph (a) above shall notify the relevant Facility Agent of the event giving rise to the claim, whereupon the relevant Facility Agent shall notify the Company thereof.
- (c) A Finance Party shall, on receiving a payment from an Obligor under this Clause 10.3, notify the relevant Facility Agent.

Tax credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

Stamp taxes

The Company shall:

- (a) pay all stamp duty, registration and other similar Taxes payable in respect of any Finance Document; and
- (b) within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to any stamp duty, registration or other similar Tax paid or payable in respect of any Finance Document.

Indirect tax

- (a) All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by that Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.

FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor or the relevant Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten (10) Business Days of:
- (i) where a Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where a Borrower is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;
 - (iii) where a Borrower is not a US Tax Obligor, the date of a request from the relevant Facility Agent,
- supply to the relevant Facility Agent:
- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The relevant Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the relevant Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding

certificate, withholding statement, document, authorisation or waiver to the relevant Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the relevant Facility Agent). The relevant Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.

- (h) Each Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. No Facility Agent shall be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.

10.8 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

11. **INCREASED COSTS**

11.1 **Increased Costs**

- (a) Subject to Clause 11.3 (*Exceptions*) the Company shall, within three (3) Business Days of a demand by the relevant Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; or
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with, Basel III, CRD IV or Solvency II or any law or regulation that implements or applies Basel III, CRD IV or Solvency II.

The terms “law” and “regulation” in this paragraph (a) shall include any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.

- (b) In this Agreement:

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- (i) **“Increased Costs”** means:
- (A) a reduction in the rate of return from a Facility or on a Finance Party’s (or its Affiliate’s) overall capital (including as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Finance Party);
 - (B) an additional or increased cost; or
 - (C) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to the undertaking, funding or performance by such Finance Party of any of its obligations under any Finance Document or any participation of such Finance Party in any Loan or Unpaid Sum;
- (ii) **“Basel III”** means:
- (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;
- (iii) **“CRD IV”** means:
- (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
 - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and

- (iv) “**Solvency II**” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance.

11.2 **Increased Cost claims**

- (a) A Finance Party (other than a Facility Agent) intending to make a claim pursuant to Clause 11.1 (*Increased Costs*) shall notify the relevant Facility Agent of the event giving rise to the claim, following which the relevant Facility Agent shall promptly notify the Company.
- (b) Each Finance Party (other than a Facility Agent) shall, as soon as practicable after a demand by the relevant Facility Agent, provide a certificate confirming the amount of its Increased Costs.

11.3 **Exceptions**

Clause 11.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (a) of Clause 10.3 (*Tax indemnity*) applied);
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
- (e) attributable to the implementation or application of or compliance with the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) (“**Basel II**”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

12. **MITIGATION BY THE LENDERS**

12.1 **Mitigation**

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 10 (*Tax Gross-up and Indemnities*) or Clause 11 (*Increased Costs*), including:
- (i) providing such information as the Company may reasonably request in order to permit the Company to determine its entitlement to claim any exemption or other relief (whether pursuant to a double taxation treaty or otherwise) from any obligation to make a Tax Deduction; and

- (ii) in relation to any circumstances which arise following the date of this Agreement, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

12.2 **Limitation of liability**

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 12.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 12.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

12.3 **Conduct of business by the Finance Parties**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

13. **OTHER INDEMNITIES**

13.1 **Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against that Obligor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 **Other indemnities**

The Company shall (or shall procure that an Obligor will), within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) the Data Site Documents or any other information produced or approved by any Obligor being or being alleged to be misleading and/or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under this Agreement;
- (d) a failure by an Obligor to pay any amount due under a Finance Document on its due date or in the relevant currency, including any cost, loss or liability arising as a result of Clause 24 (*Sharing among the Finance Parties*);
- (e) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (f) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

13.3 **Indemnity to the Facility Agents and Intercreditor Agent**

The Company shall promptly indemnify the Intercreditor Agent and each Facility Agent against:

- (a) any cost, loss or liability incurred by that Intercreditor Agent or Facility Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and

- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Intercreditor Agent or the relevant Facility Agent (otherwise than by reason of the Intercreditor Agent's or the relevant Facility Agent's own gross negligence or wilful misconduct) in acting as Intercreditor Agent or Facility Agent under the Finance Documents.

13.4 **Indemnity to the Security Agents**

- (a) The Company shall within five (5) Business Days of demand indemnify each Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) acting or relying on any notice, request or instruction which it reasonably believes to be genuine and appropriately authorised;
 - (ii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iii) the exercise of any of the rights, powers, discretions and remedies vested in that Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (iv) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; and
 - (v) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 13.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.
- (c) The provisions of this Clause 13.4 shall survive in full force and effect notwithstanding the discharge of the Finance Documents, insofar as they relate to any act or omission of the relevant Security Agent (acting reasonably) prior to such discharge.

14. **COSTS AND EXPENSES**

14.1 **Transaction expenses**

The Company shall, within three (3) Business Days of demand, pay the Administrative Parties the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

- (a) this Agreement and any other documents referred to in this Agreement;

- (b) the Transaction Security; and
- (c) any other Finance Documents executed after the date of this Agreement.

14.2 **Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 25.9 (*Change of Currency*); or
- (c) any amendment or waiver is contemplated or agreed pursuant to clause 8 (*Replacement of Screen Rate*) of the SP Philippines Facility Agreement, clause 8 (*Replacement of Screen Rate*) of the Maxeon Term Facility Agreement and/or clause 9.2 (*Replacement of Screen Rate*) of the Working Capital Facility Agreement,

the Company shall, within three (3) Business Days of demand, reimburse each Facility Agent and each Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by that Facility Agent and that Security Agent (and in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with or implementing that request, requirement or contemplated agreement.

14.3 **Enforcement costs**

The Company shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

14.4 **Agent's management time and additional remuneration**

- (a) Any amount payable to the Intercreditor Agent, a Facility Agent or Security Agent under Clause 13.3 (*Indemnity to the Facility Agents and the Intercreditor Agent*) or Clause 13.4 (*Indemnity to the Security Agents*) and this Clause 14.4 shall include the cost of utilising its management time or other resources (where such time or resources relate to matters not included or envisaged under any relevant fee letter) and will be calculated on the basis of such reasonable daily or hourly rates as it may notify to the Company and the Finance Parties, and is in addition to any other fee paid or payable to it.
- (b) Without prejudice to sub-clause (a) above, in the event of:
 - (i) an Event of Default;
 - (ii) the Intercreditor Agent, a Facility Agent or a Security Agent being requested by the Company or the Finance Parties appoint it to undertake duties which such Intercreditor Agent, Facility Agent or Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of it under the Finance Documents; or

- (iii) the Intercreditor Agent, a Facility Agent or a Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Intercreditor Agent, the relevant Facility Agent or the relevant Security Agent (as applicable) any additional remuneration that may be agreed between them or determined pursuant to sub-clause (c) below.

- (c) If the Intercreditor Agent, the relevant Facility Agent or the relevant Security Agent and the Company fail to agree upon the nature of the duties, or upon the additional remuneration referred to in sub-clause (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Intercreditor Agent, the relevant Facility Agent or the relevant Security Agent and approved by the Company or, failing approval, nominated (on the application of the Intercreditor Agent, the relevant Facility Agent or the relevant Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

SECTION 6
GUARANTEE

15. GUARANTEE AND INDEMNITY

15.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Borrower of all that Borrower's obligations under the Finance Documents (or, in the case of the HK Guarantor only, the punctual performance by each Borrower of its payment obligations under the Finance Documents);
- (b) undertakes with each Finance Party that whenever a Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 15 if the amount claimed had been recoverable on the basis of a guarantee.

15.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

15.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, judicial management, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 15 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

15.4 Waiver of defences

The obligations of each Guarantor under this Clause 15 will not be affected by an act, omission, matter or thing which, but for this Clause 15, would reduce, release or prejudice any of its obligations under this Clause 15 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor, Security Provider or other person;
- (b) the release of any other Obligor, Security Provider or any other person under the terms of any composition or arrangement with any creditor of any member of the Group or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, any Obligor, Security Provider or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, Security Provider or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (g) any insolvency or similar proceedings; or
- (h) this Agreement or any other Finance Document not being executed by or binding upon any other party.

15.5 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 15. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

15.6 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 15.

15.7 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Intercreditor Agent otherwise directs, no Guarantor will exercise or otherwise enjoy the benefit of any right which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 15:

- (a) to be indemnified by an Obligor or Security Provider;
- (b) to claim any contribution from any other guarantor of or provider of security for any Obligor's or Security Provider's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor or Security Provider to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 15.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor or Security Provider; and/or
- (f) to claim or prove as a creditor of any Obligor or Security Provider in competition with any Finance Party.

If any Guarantor shall receive any benefit, payment or distribution in relation to any such right it shall hold that benefit, payment or distribution (or so much of it as may be necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be paid in full) on trust for the Finance Parties, and shall promptly pay or transfer the same to the Intercreditor Agent or as the Intercreditor Agent may direct for application in accordance with Clause 25 (*Payment Mechanics*).

15.8 **Release of Guarantors' right of contribution**

If any Guarantor (other than the Company) (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with Clause 22.2 (*Resignation of a Guarantor*) then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

15.9 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

15.10 **Guarantee limitations**

- (a) The obligations and liabilities of the French Guarantor under the Finance Documents and in particular under this Clause 15 shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Code de Commerce and/or would constitute a misuse of corporate assets within the meaning of article(s) L.242-6 and L.244-1 of the French Code de Commerce or any other law or regulation having the same effect, as interpreted by French courts and/or would infringe article L. 511-7 of the French Code monétaire et financier.
- (b) The obligations and liabilities of the French Guarantor under this Clause 15 for the obligations under the Finance Documents of any Borrower shall be limited, at any time to an amount equal to: (A) the payment obligations of such Borrower, but (B) not exceeding the aggregate of all amounts directly borrowed under the Finance Documents by such other Borrower to the extent directly or indirectly on-lent to the French Guarantor or its Subsidiaries under intercompany loan agreements and outstanding at the date a payment is to be made by the French Guarantor under this Clause 15; it being specified that any payment made by the French Guarantor under this Clause 15 in respect of the obligations of such Borrower shall reduce pro tanto the outstanding amount of the intercompany loans due by the French Guarantor under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Guarantor shall reduce pro tanto the amount payable under this Clause 15.
- (c) It is acknowledged that the French Guarantor is not acting jointly and severally with the other Guarantors and the French Guarantor shall therefore not be considered as “co-débiteur solidaire” as to its obligations pursuant to the guarantee given pursuant to this Clause 15.
- (d) For the purpose of paragraphs (b) and (c) above “Subsidiary” means, in relation to any company, another company which is controlled by it within the meaning of article L.233-3 of the French Code de commerce.

15.11 **Waivers by the Mexican Guarantor**

The Mexican Guarantor hereby unconditionally and irrevocable waives, to the fullest extent applicable, its rights granted to it under Articles 2813, 2814, 2815, 2816, 2817, 2818, 2820, 2821, 2836, 2839, 2840, 2845, 2846, 2847, 2848 and 2849 of the Federal Civil Code of Mexico (Código Civil Federal) and the corresponding provisions of the Civil Codes of the States of Mexico and the Federal District.

15.12 **Swiss Up-Stream and Cross-Stream Limitation and Withholding Tax**

- (a) If and to the extent an Obligor incorporated under the laws of Switzerland (the “**Swiss Obligor**”) becomes liable under this Agreement or any other Finance Document for obligations of any other Obligor, other than obligations of one of its direct or indirect subsidiaries (i.e. obligations of the Swiss Obligor’s direct or indirect parent companies (up-stream liabilities) or sister companies (cross-stream liabilities) or respective obligations of the Swiss Obligor or of any other party securing obligations of the Swiss Obligor’s direct or indirect parent companies (up-stream liabilities) or sister companies (cross-stream liabilities)) (the “**Restricted Obligations**”) and if complying with such obligations would constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*Gewinnausschüttung*) by such Swiss Obligor or would otherwise be restricted under Swiss law and practice then applicable, such Swiss Obligor’s aggregate liability for Restricted Obligations shall not exceed the amount of the Swiss Obligor’s freely disposable equity (*frei verfügbares Eigenkapital*) at the time it becomes liable including, without limitation, any statutory reserves which can be transferred into unrestricted, distributable reserves, in accordance with Swiss law, which amount shall (i) be determined on the basis of an audited balance sheet of the Swiss Obligor, to the extent required by Swiss law at the relevant time, (ii) be confirmed by the auditors of the Swiss Obligor as distributable amount and (iii) be duly approved as distribution by a duly convened meeting of the shareholders or quotaholders of the Swiss Obligor); provided further that such limitation (as may apply from time to time or not) shall not (generally or definitively) affect the obligations of the Swiss Obligor under this Agreement in excess thereof, but merely postpone the performance date of those obligations until such times as performance is again permitted notwithstanding such limitation.
- (b) To the extent that the fulfilment of an obligation in relation to a Restricted Obligation are subject to Swiss withholding tax, the Swiss Obligor:
 - (i) shall:
 - (A) procure that the fulfilment of any of its obligations hereunder can be made without deduction of Swiss withholding tax by discharging the liability of such tax by notification pursuant to applicable law rather than payment of the tax;
 - (B) if the notification procedure pursuant to sub-paragraph (A) above does not apply, deduct the Swiss withholding tax at such rate (1) as in force from time to time (being 35% on the date

- hereof) or (2) as provided by any applicable double tax treaties from any fulfilment of any of its obligation hereunder and promptly pay any such Swiss withholding tax deducted to the Swiss Tax Administration; and
- (C) notify the relevant Facility Agent that such notification or, as the case may be, deduction has been made, and provide such Facility Agent with evidence that such a notification of the Swiss tax administration has been made or, as the case may be, such Swiss withholding tax deducted has been paid to the Swiss Tax Administration;
- (ii) shall procure that any person who is entitled to a full or partial refund of the Swiss withholding tax deducted pursuant to this paragraph (b):
 - (A) request a refund of the Swiss withholding tax under applicable law as soon as possible; and
 - (B) pay to the relevant Facility Agent upon receipt any amount so refunded to cover any outstanding part of the Restricted Obligation; and
 - (iii) to the extent such a deduction is made, shall not be obliged to gross-up in accordance with the Finance Documents in relation to any such payment made by it in respect of Restricted Obligations unless grossing-up is permitted under the laws of Switzerland then in force.
- (c) If and to the extent requested by the relevant Facility Agent and if and to the extent this is from time to time required under Swiss law (restricting profit distributions), in order to allow such Facility Agent (and the Finance Party) to obtain a maximum benefit under this Agreement, the Swiss Obligor undertakes to promptly implement all such measures and/or to promptly obtain the fulfillment of all prerequisites allowing it to promptly make the requested payment(s) hereunder from time to time, including the following:
 - (i) the preparation of an up-to-date audited balance sheet of the Swiss Obligor;
 - (ii) the confirmation of the auditors of the Swiss Obligor that the relevant amount represents (the maximum of) freely distributable profits;
 - (iii) approval by a shareholder / quotaholder(s)' meeting of the Swiss Obligor of the resulting profit distribution;
 - (iv) to the extent permitted by applicable law, write up any of the assets of the Swiss Obligor that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets and provided that such write up would not have materially adverse tax consequences for the Swiss Obligor or any of its affiliates; and

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- (v) all such other measures necessary or useful to allow the Swiss Obligor to make the payments and perform the obligations hereunder with a minimum of limitations.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

16. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 16 to each Finance Party on the date of this Agreement (and in the case of an Additional Guarantor, on the date of accession of that Additional Guarantor to this Agreement).

16.1 Status

- (a) Both it and each Security Provider is a corporation, duly incorporated, validly existing and in good standing under the law of its respective jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

16.2 Binding obligations

The obligations expressed to be assumed by it and each Security Provider in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered in accordance with Clause 4 (*Conditions of Utilisation*) or Clause 22 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

16.3 Non-conflict with other obligations

The entry into and performance by it and each Security Provider of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents and (with effect from the date of accession of the HK Guarantor to this Agreement) the HK Guarantor JV Agreement; or
- (c) any agreement or instrument binding upon it or any of its assets, or constitute a default or termination event (however described) under any such agreement or instrument.

16.4 Power and authority

It and each Security Provider has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

16.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it and each Security Provider lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (b) to make the Finance Documents to which it and each Security Provider is a party admissible in evidence in its jurisdiction of incorporation; and
- (c) for it and its Subsidiaries to carry on its business, and which are material, have been obtained or effected and are in full force and effect.

16.6 **Governing law and enforcement**

- (a) The choice of governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation and in the jurisdiction of incorporation of each Security Provider.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its jurisdiction of incorporation and in the jurisdiction of incorporation of each Security Provider, provided that any statutory requirements for enforcement of such judgment under the laws of such Security Provider's jurisdiction of incorporation are met.

16.7 **Deduction of Tax**

Except for the Mexican Guarantor, it is not required under the law applicable where it is incorporated or resident or at the address specified in this Agreement to make any Tax Deduction from any payment it may make under any Finance Document.

16.8 **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except for:

- (a) any stamp duty payable in the Cayman Islands if any of the Finance Documents are executed in or brought to the Cayman Islands or produced before a court of the Cayman Islands;
- (b) the lodging of the Security Documents to which the Company is a party with the Accounting and Corporate Regulatory Authority in Singapore for registration within thirty (30) days after the date of creation of the charges constituted by such Security Documents;

- (c) any documentary stamp tax payable in the Philippines pursuant to the National Internal Revenue Code of the Philippines, as amended by the Tax Reform Acceleration and Inclusion Act of the Philippines; and
- (d) as contemplated by the Security Documents.

16.9 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

16.10 **No misleading information**

- (a) Any factual information contained in the Data Site Documents was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections contained in the Data Site Documents have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the Data Site Documents and no information has been given or withheld that results in the information contained in the Data Site Documents being untrue or misleading in any material respect.
- (d) All written information (other than the Data Site Documents) supplied by any member of the Group was true, complete and accurate in all material respects as at the date it was given and was not misleading in any respect.

16.11 **Financial statements**

- (a) Its financial statements most recently supplied to the Facility Agents (which, at the date of this Agreement, are its Original Financial Statements) were prepared in accordance with applicable GAAP consistently applied save to the extent expressly disclosed in such financial statements.
- (b) Its financial statements most recently supplied to the Facility Agents (which, at the date of this Agreement, are its Original Financial Statements) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition and operations (consolidated in the case of the Company) for the period to which they relate, save to the extent expressly disclosed in such financial statements.
- (c) There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group, in the case of the Company, or SunPower Philippines and its Subsidiaries, in the case of SunPower Philippines) since the date of the Original Financial Statements, except as has been disclosed by the Company or SunPower Corporation in any public press release or any filing made on the relevant stock exchange.

16.12	Pari passu ranking	Its payment obligations under the Finance Documents rank at least <i>pari passu</i> with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
16.13	No proceedings	<p>(a) No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it.</p> <p>(b) No judgment or order of a court, arbitral body or agency which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it.</p>
16.14	Authorised signatures	Any person specified as its authorised signatory under Schedule 2 (<i>Conditions Precedent</i>) or paragraph (g) of Clause 17.4 (<i>Information: miscellaneous</i>) is authorised to sign Utilisation Requests and other notices on its behalf.
16.15	Environmental compliance	Each member of the Group has performed and observed in all respects all Environmental Law, Environmental Permits and all other covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by any member of the Group or on which any member of the Group has conducted any activity where failure to do so might reasonably be expected to have a Material Adverse Effect.
16.16	Environmental Claims	No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against any member of the Group where that claim would be reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
16.17	Contaminated Land	No real estate currently or previously owned, leased, occupied or controlled by any member of the Group constitutes Contaminated Land where this might reasonably be expected to have a Material Adverse Effect.

- 16.18 **Taxation**
- (a) Each member of the Group has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties, where failure to do so would reasonably be expected to have a Material Adverse Effect.
 - (b) No member of the Group is materially overdue in the filing of any Tax returns.
 - (c) No claims are being or are reasonably likely to be asserted against any member of the Group with respect to Taxes.
- 16.19 **Solvency**
- (a) No corporate action, legal proceeding or other step described in Clause 20.7 (*Insolvency proceedings*) or creditors' process described in Clause 20.8 (*Creditors' process*) has been taken or, to its knowledge, threatened in relation to any member of the Group.
 - (b) None of the circumstances described in Clause 20.6 (*Insolvency*) apply in respect of any member of the Group.
- 16.20 **Anti-corruption law**
- (a) In connection with this Agreement, the Facilities and the use of the proceeds of the Facilities, no member of the Group nor any of their Subsidiaries nor, to the knowledge of any member of the Group, its directors, officers, agents or representatives, have, for the purpose of gaining or maintaining unlawful or improper benefits for the Group, directly or indirectly:
 - (i) violated applicable anti-corruption laws or made, undertaken, offered to make, promised to make or authorised the payment or giving of a prohibited payment;
 - (ii) used funds or other assets, or made any promise or undertaking in such regard, for the establishment or maintenance of a secret or unrecorded fund; or
 - (iii) made any false or fictitious entries in any books or records of any member of the Group relating to any prohibited payment.
 - (b) Each member of the Group has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.
- 16.21 **Sanctions**
- (a) No member of the Group nor any of their Subsidiaries or joint ventures, nor any of their respective directors or officers nor, to the knowledge of the Obligors, their employees or any persons acting on any of their behalf:
 - (i) is a Restricted Party; or

- (ii) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.
- (b) The representation in paragraph (a) shall be given by and apply to each Obligor for the benefit of each Finance Party, provided that no Affected Finance Party shall be entitled to the benefit of this representation when and to the extent that it is unenforceable under, or results in any violation of (i) the Blocking Regulation or (ii) any similar anti-boycott statute.
- 16.22 **Security**
- No Security exists over all or any of the present or future assets of any member of the Group other than any Security permitted under Clause 19.4 (*Negative pledge*).
- 16.23 **Ranking of Security**
- The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security, except as otherwise permitted under Clause 19.4 (*Negative pledge*).
- 16.24 **Transaction Security**
- Each Security Document to which it or a Security Provider is a party validly creates the Security which is expressed to be created by that Security Document and evidences the Security it is expressed to evidence.
- 16.25 **Legal and beneficial owner**
- Each member of the Group which is party to the Security Documents is the absolute legal owner and beneficial owner of the assets subject to the Transaction Security.
- 16.26 **Shares**
- The shares which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or on enforcement of the Transaction Security other than as expressly disclosed to the Intercreditor Agent prior to the date of this Agreement (and to the extent the Intercreditor Agent (acting on the instructions of the Instructing Parties) has agreed to the nature and scope of the disclosure made).
- 16.27 **Intellectual Property**
- (a) It is not aware of any adverse circumstance relating to validity, subsistence or use of any of Intellectual Property relating to manufacturing technology which is required by the Group which could reasonably be expected to have a Material Adverse Effect.
- (b) All material Intellectual Property relating to manufacturing technology which is required by the Group will be owned or licensed by Maxeon Solar, Pte. Ltd. on and from the completion of Spin Off.

16.28 **Land ownership**

- (a) SPML Land is:
 - (i) the legal and beneficial owner or leaseholder of the SPML Land Real Property set out in the Valuation Report; and
 - (ii) has good and marketable title to the SPML Land Real Property free from Security (other than those created by or pursuant to the SPML Land Security Documents) and restrictions and onerous covenants (other than those set out in the Valuation Report in relation to that property).
- (b) Except as disclosed in the Valuation Report relating to a property:
 - (i) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of that property;
 - (ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right, easement or other matter whatsoever adversely affecting that property;
 - (iii) all facilities necessary for the enjoyment and use of that property (including those necessary for the carrying on of its business at that property) are enjoyed by that property;
 - (iv) none of the facilities referred to in paragraph (iii) above are enjoyed on terms:
 - (A) entitling any person to terminate or curtail its use of that property; or
 - (B) which conflict with or restrict its use of that property;
 - (v) SPML Land has not received any notice of any adverse claim by any person in respect of the ownership of that property or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of that property; and
 - (vi) that property is held by SPML Land free from any lease or licence (other than those entered into in accordance with this Agreement).

16.29 **Group Structure**

- (a) Each Obligor (other than the Company and the HK Guarantor) is a wholly-owned Subsidiary of the Company. The Company legally and beneficially owns 80% of the shares in the HK Guarantor.
- (b) Following the Spin Off, the shareholding of the Group as set out in the Post-Spin Off Group Structure Chart will be true, complete and accurate as at the date it is provided.

16.30 **Financial Indebtedness**

- (a) The consolidated Financial Indebtedness of the Group (including subordinated and unsubordinated shareholder loans advanced to the Group) was USD 147,000,000 on 28 June 2020.
- (b) In connection with the Convertible Bonds:
 - (i) the physical delivery forward transaction entered into, is treated as equity on the balance sheet; and
 - (ii) the privately negotiated prepaid forward share purchase transaction entered into, is treated as an asset on the balance sheet, in each case, in accordance with applicable GAAP.

16.31 **Polysilicon Purchase Contract**

The aggregate maximum liability of all members of the Group under the Polysilicon Purchase Contract will not, when executed, exceed USD 153,000,000 following the completion of the Spin Off.

16.32 **Chinese Joint Venture**

- (a) The Company holds an indirect minority shareholding of 20% in the Chinese Joint Venture and allows it to exercise 20% of the voting rights in the Chinese Joint Venture, and has the right to appoint two (2) board members under the constitutional documents of the Chinese Joint Venture.
- (b) Under the Chinese JV Supply Contract, the Group has an option to purchase up to two thirds (2/3) of the goods (including Eligible Equipment) produced by the Chinese Joint Venture.
- (c) The Company represents that to the actual knowledge of the Company (after making due and careful enquiry):
 - (i) neither the Chinese Joint Venture nor any of its directors or officers is a Restricted Party;
 - (ii) it has not received notice of or is aware of any claim, action, suit, proceeding or investigation against the Chinese Joint Venture, its directors or officers with respect to Sanctions by any Sanctions Authority; and
 - (iii) neither the Chinese Joint Venture nor its directors or officers have, for the purpose of gaining or maintaining unlawful or improper benefits for the Chinese Joint Venture or any member of the Group, directly or indirectly:
 - (A) violated applicable anti-corruption laws or made, undertaken, offered to make, promised to make or authorised the payment or giving of a prohibited payment;

- (B) used funds or other assets, or made any promise or undertaking in such regard, for the establishment or maintenance of a secret or unrecorded fund; or
 - (C) made any false or fictitious entries in any books or records of the Chinese Joint Venture relating to any prohibited payment.
- (d) The representation in paragraph (c) above shall be given by the Company in respect of the Chinese Joint Venture for the benefit of each Finance Party provided that no Affected Finance Party shall be entitled to the benefit of this representation when and to the extent that it is unenforceable under, or results in any violation of (i) the Blocking Regulation or (ii) any similar anti-boycott statute.

16.33 **Repetition**

- (a) The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:
- (i) the date of each Utilisation Request;
 - (ii) the first day of each Interest Period; and
 - (iii) in the case of an Additional Guarantor, the day on which that Additional Guarantor accedes to this Agreement under an Accession Letter.
- (b) The representation in Clause 16.32(c) shall be deemed to be made by the Company by reference to the facts and circumstances then existing on each date falling 12 Months after the date of this Agreement.

17. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 17 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

17.1 **Financial statements**

The Company shall supply to each Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as the same become available, but in any event within 150 days after the end of each of its financial years:
- (i) its audited consolidated financial statements for that financial year; and
 - (ii) the audited standalone financial statements of SunPower Philippines for that financial year;

- (b) as soon as the same become available, but in any event within 120 days after the end of the first half of each of its financial years:
 - (i) its unaudited consolidated financial statements for that financial half year; and
 - (ii) the unaudited standalone financial statements of SunPower Philippines for that financial half year; and
- (c) as soon as the same become available, but in any event within 90 days after the end of each financial quarter of each of its financial years the unaudited management statements of each Obligor for that financial quarter.

17.2 Compliance Certificate

- (a) The Company shall supply to each Facility Agent, with each set of financial statements delivered pursuant to paragraph (a)(i) or (b)(i) of Clause 17.1 (*Financial statements*), a Compliance Certificate:
 - (i) confirming the account balance in each DSRA;
 - (ii) confirming that no Event of Default has occurred and is continuing; and
 - (iii) setting out (in reasonable detail) computations as to compliance with Clause 18 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate delivered together with the audited annual financial statements delivered pursuant to paragraph (a)(i) of Clause 17.1 (*Financial statements*) shall be signed by the Company's auditors.

17.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Company pursuant to Clause 17.1 (*Financial statements*) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of any such financial statements which are audited) or fairly representing (in the case of any such financial statements which are unaudited) its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Company shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 17.1 (*Financial statements*) is prepared using applicable GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agents that there has been a change in GAAP, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Facility Agents:
 - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and

- (ii) sufficient information as may be reasonably required by each Facility Agent, to enable the Lenders to determine whether Clause 18 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

17.4

Information: miscellaneous

The Company shall supply to each Facility Agent (in sufficient copies for all the Finance Parties, if any Facility Agent so requests):

- (a) all documents dispatched by an Obligor to its creditors generally at the same time as they are despatched;
- (b) all documents dispatched by the Company to its shareholders (or any class of them) generally at the same time as they are despatched;
- (c) promptly, any announcement, notice or other document relating specifically to the Company posted onto any electronic website maintained by any stock exchange on which shares in or other securities of the Company are listed or any electronic website required by any such stock exchange to be maintained by or on behalf of the Company;
- (d) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (e) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group, and which might have a Material Adverse Effect;
- (f) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the relevant Facility Agent) may reasonably request;
- (g) promptly, notice of any change in authorised signatories of any Obligor signed by a director or company secretary of such Obligor accompanied by specimen signatures of any new authorised signatories;
- (h) promptly, notice of a change by any Obligor in the date of its financial year end or any change of the auditors of any Obligor;
- (i) within twelve months of the date of the Valuation Report and each date falling twelve months thereafter, a desktop valuation update in respect of all properties included in the Valuation Report (and any other real property acquired by SPML Land after the date of this Agreement);

- (j) at the same time financial statements are delivered pursuant to clause 17.1 (*Financial statements*) production capacity data in respect of the Maxeon 3 line for the period covered by such financial statements; and
- (k) promptly upon becoming aware of any facts and circumstances that at any time would result in the representations given in Clause 16.32(c) (*Chinese Joint Venture*) being incorrect (if such representations were deemed to be given or repeated at that time).

17.5 **Notification of default**

- (a) Each Obligor shall notify each Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by a Facility Agent, the Company shall supply to that Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

17.6 **Use of Websites**

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting the information onto an electronic website designated by the Company and the Intercreditor Agent (the “**Designated Website**”) if:
 - (i) the Intercreditor Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Company and the Intercreditor Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Intercreditor Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Intercreditor Agent shall notify the Company accordingly and the Company shall supply the information to the Intercreditor Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Intercreditor Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Intercreditor Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Intercreditor Agent.

- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Intercreditor Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Intercreditor Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Intercreditor Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within ten (10) Business Days.

17.7 **Direct electronic delivery by Obligors**

Each Obligor may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 27.5 (*Electronic communication*) to the extent that Lender and the Facility Agent agree to this method of delivery.

17.8 **“Know your customer” checks**

- (a) Each Obligor shall promptly upon the request of any Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Facility Agent (for itself or on behalf of any Lender (including for any Lender on behalf of any prospective new Lender)) in order for that Facility Agent, such Lender or any prospective new Lender to conduct all “know your customer” and other similar procedures that it is required (or deems desirable) to conduct.
- (b) Each Lender shall promptly upon the request of the relevant Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Facility Agent (for itself) in order for that Facility Agent to conduct all “know your customer” and other similar procedures that it is required (or deems desirable) to conduct.

18. **FINANCIAL COVENANTS**

18.1 **Definitions**

The defined terms set out in Schedule 11 (*Financial Covenant Definitions*) shall have the same meaning in this Clause 18.

18.2 **Financial Condition**

The Company shall ensure that at all times while any amount is outstanding under the Finance Documents:

- (a) the ratio of Consolidated Total Net Debt to Consolidated Tangible Net Worth shall not exceed 0.5x;
- (b) the Consolidated Tangible Net Worth shall at all times be greater than USD 275,000,000;
- (c) the Consolidated Debt Service Coverage Ratio shall at all times be greater than 1.25x; and
- (d) the ratio of Consolidated Total Net Debt to Consolidated EBITDA shall not exceed:
 - (i) 3.5x for the Test Date falling on 30 September 2021;
 - (ii) 3.0x for the Test Date falling on 31 December 2021;
 - (iii) 2.5x for the Test Date falling on 30 June 2022; and
 - (iv) 2.25x for each Test Date thereafter.

18.3 **Financial testing**

- (a) The financial covenants set out in Clause 18.2 (*Financial condition*) shall be calculated in accordance with GAAP and tested by reference to each of the financial statements delivered pursuant to paragraphs (a)(i) and (b)(i) of Clause 17.1 (*Financial statements*) and, in the case of the period ending 30 September 2021, the financial statements delivered pursuant to paragraph (c) of Clause 17.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 17.2 (*Compliance Certificate*), commencing on the delivery of the financial statements for the period ending 30 September 2021.
- (b) Each date to which such financial statements are prepared shall be a “**Test Date**” for the purposes of this Clause 18.

18.4 **Equity Cure**

- (a) In the event that there is a breach of Clause 18.2 (*Financial condition*) for a Test Date (each such Test Date a “**Relevant Test Date**”, and any Relevant Period in respect of such Relevant Test Date being a “**Cure Relevant Period**”), the Company shall have the right (an “**Equity Cure Right**”) to procure the cure of such a breach in accordance with this Clause 18.4.

- (b) If the Company wishes to exercise an Equity Cure Right in respect of a Relevant Test Date and/or a Cure Relevant Period in relation to a breach of Clause 18.2 (*Financial condition*), it shall procure that after the Relevant Test Date but on or before the date falling 30 days after the date by which the Company is obliged to deliver a Compliance Certificate in respect of the Relevant Test Date to the Facility Agents pursuant to the terms of this Agreement, the Company receives an amount (the “**Cure Amount**”) of cash proceeds of either (i) a subscription for ordinary shares in the Company by its shareholders or (ii) the provision of subordinated loans by one or more shareholders of the Company (subordinated on terms acceptable to the Intercreditor Agent).
- (c) Following the provision of a Cure Amount, the financial covenants set out at Clause 18.2 (*Financial condition*) shall be recalculated, and:
 - (i) for the purposes of paragraphs (a) and (b) of Clause 18.2 (*Financial condition*), such Cure Amount shall be treated as having been added to the Consolidated Tangible Net Worth of the Company as at the Relevant Test Date;
 - (ii) for the purposes of paragraph (c) of Clause 18.2 (*Financial condition*), such Cure Amount shall be treated as having been added to the Cashflow of the Group for the Cure Relevant Period; and
 - (iii) for the purposes of paragraph (d) of Clause 18.2 (*Financial condition*), such Cure Amount shall be treated as having been deducted from the Consolidated Total Debt as at the Relevant Test Date,and if on such basis all such undertakings are satisfied, any breach of the same in respect of the Relevant Test Date shall be deemed to have been remedied.
- (d) The Company may not exercise an Equity Cure Right:
 - (i) in respect of two (2) successive Test Dates; or
 - (ii) on more than four (4) occasions.
- (e) Any Cure Amount provided to the Company pursuant to this Clause 18.4 shall promptly, and in any event within five (5) Business Days of receipt, be applied by the Company in prepayment of the outstanding Loans.

19.

GENERAL UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required to enable it and any Security Provider to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

Compliance with laws

Each Obligor shall, and shall procure that each Security Provider shall, comply in all respects with all laws to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

Pari passu ranking

Each Obligor shall ensure that its payment obligations under the Finance Documents rank and continue to rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

Negative pledge

In this Clause 19.4, “**Quasi-Security**” means an arrangement or transaction described in paragraph (b) below.

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group nor SPML Land (in respect of the SPML Land Real Property) will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Company shall ensure that no other member of the Group nor SPML Land (in respect of the SPML Land Real Property) will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into or permit to subsist any title retention arrangement;
 - (iv) enter into or permit to subsist any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (v) enter into or permit to subsist any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to:

- (i) the Transaction Security and any other Security or Quasi-Security created pursuant to any Finance Document;
- (ii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (iii) any payment or close-out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,excluding, in each case (and save as contemplated by the Finance Documents), any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
- (iv) any lien arising by operation of law and in the ordinary course of trading (including any lien in respect of Taxes which are not yet overdue) **provided that** the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
- (v) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (C) the Security or Quasi-Security is removed or discharged within six (6) months of that company becoming a member of the Group;
- (vi) any Security or Quasi-Security over or affecting any asset of any person which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that person becomes a member of the Group, if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that person;

- (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that person; and
 - (C) the Security or Quasi-Security is removed or discharged within six (6) months of that company becoming a member of the Group;
- (vii) any Security or Quasi-Security over or affecting any asset of a member of the Group arising after the date of this Agreement pursuant to an order of attachment or injunction restraining the disposal of assets or similar legal proceedings, which:
 - (A) is being contested in good faith by the relevant member of the Group prior to any order being made against it; and
 - (B) would not reasonably be expected to have a Material Adverse Effect or give rise to a Default;
- (viii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (ix) any Security or Quasi-Security over lease or rental deposits provided by a member of the Group in respect of property leased or licensed by that member of the Group, provided that such rental deposits do not exceed 12 months' rental payments for the property in question;
- (x) any Security or Quasi-Security existing at the date of this Agreement as set out in Schedule 9 (*Existing Financial Indebtedness and Security*), and any Security or Quasi-Security given by any member of the Group in connection with the refinancing (to the extent permitted by this Agreement) of any Financial Indebtedness secured by Existing Security as set out in Schedule 9 (*Existing Financial Indebtedness and Security*), except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated therein and provided that the Security or Quasi-Security is limited to the assets as set out in Schedule 9 (*Existing Financial Indebtedness and Security*);
- (xi) any Security or Quasi-Security which:
 - (A) is constituted by any transfer, sale or disposal of receivables or assignment of contracts by any member of the Group in relation to an asset on limited recourse terms; or
 - (B) is granted to a supplier of goods or equipment of recourse terms,

in each case in circumstances where that arrangement or transaction is entered into as a method of raising Financial Indebtedness or of financing the acquisition of that asset;

- (xii) any Security or Quasi-Security over goods or documents of title to goods arising or created in the ordinary course of business as security under letters of credit and similar instruments;
- (xiii) first ranking Security or Quasi-Security over the assets of SunPower Malaysia granted in favour of the lenders to SunPower Malaysia in respect of Financial Indebtedness permitted under Clause 19.12(b)(v) (*Financial Indebtedness*), and second ranking Security or Quasi-Security over all or part of the Charged Property granted in favour of the lenders to SunPower Malaysia in respect of Financial Indebtedness permitted under Clause 19.12(b)(v) (*Financial Indebtedness*) (**provided that** second ranking security over the assets of SunPower Malaysia is granted to the Offshore Security Agent as set out in Clause 19.12(b)(v) (*Financial Indebtedness*));
- (xiv) any Security or Quasi-Security required to be provided in favour of SunPower Corporation under the Polysilicon Purchase Contract, **provided that**:
 - (A) such Security or Quasi-Security ranks subordinate to the Transaction Security; and
 - (B) where such Security or Quasi-Security relates to an asset which is not part of the Transaction Security, first ranking Security in respect of that asset is first granted to the Offshore Security Agent (for the benefit of the Secured Parties);
- (xv) any Security or Quasi-Security over assets other than the Charged Property securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (i) to (xiv) above) does not exceed USD 5,000,000 (or its equivalent in another currency or currencies) per financial year; or
- (xvi) any other Security or Quasi -Security approved by the Intercreditor Agent.

19.5 Disposals

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group nor SPML Land (in respect of the SPML Land Real Property) will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) made pursuant to the sale by SunPower Energy Corporation Limited of its 4.6% interest in Hohhot HuanJu New Energy Development Co., Ltd.;
 - (iii) made pursuant to the disposal of the O&M Contracts;
 - (iv) of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose (other than an exchange of a non-cash asset for cash); or
 - (v) of assets which are not Charged Property, which is made on arm's length terms and where the consideration received (when aggregated with the consideration received for any other sale, lease, transfer or other disposal by members of the Group, other than any permitted under paragraphs (i) to (iv) above) does not exceed USD 25,000,000 (or its equivalent in another currency or currencies) in any financial year.
- (c) For the purposes of this Clause 19.5, "O&M Contracts" means:
 - (i) the operation and maintenance agreement by and between Mulilo Prieska PV (RF) Proprietary Limited and SunPower Energy Systems Southern Africa Proprietary Limited as operator thereunder, dated as of 11 December 2014, as well as all related contracts, including without limitation the original EPC contract; and
 - (ii) the operation and maintenance contract pertaining to the Herbert facility, by and between AE-AMD IPP 3, the operation and maintenance contract, dated as of 2nd November 2012 and the operation and maintenance contract pertaining to the Greefspan facility, by and between AE-AMD IPP 1 and SunPower Energy Systems Southern Africa Proprietary Limited, also dated as of 2nd November 2012, as well as all related contracts, including without limitation the original EPC contracts.

19.6 **Merger**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above does not apply to:
 - (i) any sale, lease, transfer or other disposal permitted pursuant to Clause 19.5 (*Disposals*); or
 - (ii) a solvent reorganisation or merger under which the relevant Obligor will be the surviving legal entity following such reorganisation or merger and the Intercreditor Agent is provided with evidence (including satisfactory legal opinions) that such Obligor's obligations under the Finance Documents are unaffected.

19.7 Change of business

The Company shall procure that no substantial change is made to the general nature of the business of the Obligors or the Group from that carried on at the date of this Agreement.

19.8 Environmental compliance

Each Obligor shall (and the Company shall ensure that each member of the Group will) comply in all respects with all Environmental Law and obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same where failure to do so might reasonably be expected to have a Material Adverse Effect.

19.9 Environmental Claims

Each Obligor shall inform the Facility Agent in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim which has been commenced or (to the best of such Obligor's knowledge and belief) is threatened against any member of the Group; or
- (b) any facts or circumstances which will or might reasonably be expected to result in any Environmental Claim being commenced or threatened against any member of the Group,

in each case where such Environmental Claim might reasonably be expected, if determined against that member of the Group, to have a Material Adverse Effect.

19.10 Acquisitions

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) acquire any company, business, assets or undertaking or make any investment.
- (b) Paragraph (a) above does not apply to any investments which are made into the Chinese Joint Venture or HLPV where such investment(s) do not exceed USD 15,000,000 in the aggregate.
- (c) Paragraph (a) above does not apply to an acquisition or investment:
 - (i) which is in the ordinary course of business and in respect of assets or businesses in the same nature and of the same scope as the Group's business as conducted on the date of this Agreement; and
 - (ii) the value of which acquisition or investment (when aggregated with the value of all other acquisitions and investments permitted under this paragraph (c) and made in the same financial year) does not exceed USD 10,000,000 (provided that, to the extent such amount is not used in full within any financial year the unused amount may be used in the subsequent financial year (but may not be carried forward beyond that subsequent financial year),

provided that such acquisition or investment does not result in a breach of any Authorisation or of any other provision of this Agreement.

19.11 **Loans and advances**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) make or allow to subsist any loans or (save in the ordinary course of business) grant any credit (except as required under any of the Finance Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to:
 - (i) any loans or advances to any other members of the Group (subject to paragraph (c) below); or
 - (ii) other loans or advances to any other person **provided that** the aggregate amount of such loans and advances plus the amount of Financial Indebtedness incurred by the Group pursuant to Clause 19.12(b)(viii) (*Financial Indebtedness*) does not exceed USD 25,000,000 (or its equivalent in another currency or currencies).
- (c) The Company shall ensure that:
 - (i) any SP Malaysia Intra-Group Loans are made only following the receipt by the relevant member of the Group of all relevant authorisations to (A) make such SP Malaysia Intra-Group Loan, and (B) grant the security described in paragraph (iii) below;
 - (ii) the aggregate principal amount outstanding of the SP Malaysia Intra-Group Loans at any time do not exceed the aggregate principal amount of the proceeds of issuance of the Convertible Bonds, less the amount of such proceeds used or expressed in a Capex Certificate to be intended to be used by the Group for capital expenditure in relation to the Maxeon 7 technology (or its equivalent in another currency or currencies);
 - (iii) all of the relevant member(s) of the Group's right and interest in each SP Malaysia Intra-Group Loan is assigned to the relevant Security Agent (for the benefit of the Secured Parties) on or prior to such loan being advanced to SunPower Malaysia, and that such security is perfected to the satisfaction of the Intercreditor Agent (acting on the instructions of the Instructing Parties); and
 - (iv) no SP Malaysia Intra-Group Loans are made while an Event of Default is continuing.

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) incur or permit to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) any Financial Indebtedness incurred pursuant to any Finance Documents or Hedging Agreements;
 - (ii) subject to paragraph (c) below, any Financial Indebtedness incurred pursuant to any derivative transactions entered into in the ordinary course of business and for non-speculative purposes only;
 - (iii) subject to paragraph (c) below, any Financial Indebtedness listed in Schedule 9 (*Existing Financial Indebtedness and Security*), or any refinancing of any such Financial Indebtedness, except to the extent that the amount of that Financial Indebtedness exceeds the facility limit stated in that Schedule, and provided that:
 - (A) no further Financial Indebtedness may be incurred in respect of the Promissory Note once it has been repaid pursuant to Clause 5.5(d) (*First Utilisation*); and
 - (B) no further Financial Indebtedness may be incurred under the instruments listed as items 3, 4 and 5 in Schedule 9 (*Existing Financial Indebtedness and Security*);
 - (iv) subject to paragraph (c) below, the Convertible Bonds, provided that:
 - (A) the Convertible Bonds are not secured by any Security; and
 - (B) the maturity of the Convertible Bonds is no earlier than three (3) years from Financial Close (and in any event no earlier than the Termination Date);
 - (v) subject to paragraph (c) below, any Financial Indebtedness incurred by SunPower Malaysia not already permitted in accordance with paragraph (iii) above, provided that:
 - (A) if and to the extent the relevant lenders to SunPower Malaysia are secured by any assets of the Group (which shall be limited to the assets of SunPower Malaysia), second ranking security in respect of those assets is granted in favour of the Offshore Security Agent (for the benefit of the Secured Parties (or, at the election of Goldman Sachs, the Secured Parties other than Goldman Sachs)), or an alternative arrangement for second ranking security is implemented, in each case on terms satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Parties) and the Company;

- (B) all relevant Authorisations for such Financial Indebtedness to be incurred (and for the security described in paragraph (A) above to be granted) have been obtained;
 - (vi) any Financial Indebtedness up to a maximum of USD 40,000,000 raised as part of:
 - (A) factoring arrangements in respect of any receivables of the Group on recourse terms in the ordinary course of business; or
 - (B) advance payments by purchasers in the ordinary course of business for goods to be supplied by the Group; and
 - (vii) any Financial Indebtedness in respect of which the relevant member of the group is a debtor and which has been advanced by another member of the Group (to the extent permitted by Clause 19.11 (*Loans and advances*));
 - (viii) any Financial Indebtedness the principal amount of which (when aggregated with (i) the principal amount of any other Financial Indebtedness incurred by any member of the Group except any permitted under paragraphs (i) to (vii) above and (ii) the principal amount of loans or advances made pursuant to Clause 19.11(b)(ii) (*Loans and advances*)) does not exceed USD 25,000,000 (or its equivalent in another currency or currencies), and subject at all times to compliance with the financial covenants set out at Clause 18.2 (*Financial condition*); and
 - (ix) any other Financial Indebtedness approved by the Intercreditor Agent.
- (c) The aggregate principal amount of Financial Indebtedness outstanding or committed under:
- (i) the Convertible Bonds;
 - (ii) the Facilities (including the Total Commitments whether or not utilised);
 - (iii) the Financial Indebtedness incurred pursuant to paragraph (b)(ii) above;
 - (iv) the Financial Indebtedness incurred pursuant to paragraph (b)(v) above;
 - (v) the trade finance facility in favour of SunPower Malaysia listed as item 2 in Schedule 9 (*Existing Financial Indebtedness and Security*); and
 - (vi) the operating leases listed as item 5 in Schedule 9 (*Existing Financial Indebtedness and Security*),
- shall not at any time exceed USD 425,000,000 (or its equivalent in another currency or currencies).

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and the Company shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.
- (c) In connection with the transactions contemplated by this Agreement and the Finance Documents, no Obligor will (and the Company shall ensure that no other member of the Group will), directly or indirectly, authorise, offer, promise, or make payments of anything of value, including but not limited to cash, cheques, wire transfers, tangible and intangible gifts, favours, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value to:
 - (i) an executive, official, employee or agent of a governmental department, agency or instrumentality;
 - (ii) a director, officer, employee or agent of a wholly or partially government-owned or controlled company or business;
 - (iii) a political party or official thereof, or candidate for political office;
 - (iv) a Foreign Public Official; or
 - (v) any other person,while knowing or having a reasonable belief that all or some portion will be used for the purpose of:
 - (A) influencing any act, decision or failure to act by any such person in his or her official capacity;
 - (B) inducing any such person to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity; or
 - (C) securing an unlawful advantage,in order to obtain, retain or direct business.

19.14 **Sanctions**

- (a) No member of the Group shall permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Loan or other transaction(s) contemplated by this Agreement or the Finance Documents to fund any trade, business or other activities:
 - (i) involving or for the benefit of any Restricted Party; or
 - (ii) in any other manner that would reasonably be expected to result in any member of the Group or any Lender being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Restricted Party.
- (b) The undertaking in paragraph (a) shall be given by each Obligor and shall apply to each member of the Group for the benefit of each Finance Party provided that no Affected Finance Party shall be entitled to the benefit of this undertaking when and to the extent that it is unenforceable under, or result in any violation of (i) the Blocking Regulation or (ii) any similar anti-boycott statute.

19.15 **Taxation**

Each Obligor shall (and the Company shall ensure that each member of the Group will) duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties where failure to do so would reasonably be expected to have a Material Adverse Effect.

19.16 **Repayment of related debt and Convertible Bonds**

- (a) No Obligor shall (and the Company shall ensure that no other member the Group will) make any payment in respect of loans made by any related company (which is not a member of the Group) (including shareholder loans) or any director or officer of any related company (which is not a member of the Group), but this paragraph (a) shall not apply to:
 - (i) any payment by the Company to Sunpower Corporation in respect of repayment of the Promissory Note; or
 - (ii) repayment of intra-group loans to members of the Group (subject to Clause 19.11(c) (*Loans and advances*)),in each case provided no Event of Default is continuing.
- (b) The Company may refinance the Convertible Bonds in full (and such refinancing shall not cause the Loans to be prepaid pursuant to Clause 7.9 (*Mandatory prepayment – Convertible Bonds*)) if the replacement financing:
 - (i) does not result in an increase in the principal amount;
 - (ii) results in no increase in overall pricing;

- (iii) does not have a shorter weighted average life; and
- (iv) does not incorporate any other changes which might reasonably be expected to be adverse to the interests of the Finance Parties, in each case as compared to the Convertible Bonds, and such replacement financing shall be treated in the same way as the Convertible Bonds for the purposes of this Agreement.

19.17 Dividends

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) pay, make or declare any dividend or other distribution in respect of any financial year of that member of the Group.
- (b) Paragraph (a) above shall not apply to:
 - (i) any declaration and payment of dividends or other distribution by any member of the Group to any other member of the Group (other than SunPower Malaysia or its Subsidiaries); or
 - (ii) any payment by the Company of the agreed interest (including any additional interest, special interest and supplemental interest) and any payments in lieu of fractional shares in respect of the Convertible Bonds,in each case provided that no Event of Default is continuing.

19.18 Preservation of assets

Each Obligor shall, and the Company shall ensure that each member of the Group will, maintain and preserve all of its assets that are necessary or desirable for the conduct of its business, as conducted at the date of this Agreement, in good working order and condition, where failure to do so might reasonably be expected to have a Material Adverse Effect.

19.19 Access

Each Obligor shall, and the Company shall ensure that each Security Provider and each member of the Group whose shares are the subject of the Transaction Security will:

- (a) on request of any Facility Agent, provide the Facility Agents and the Security Agents with any information any Facility Agent or any Security Agent may reasonably require about that company's business and affairs, the Charged Property and its compliance with the terms of the Security Documents;
- (b) permit each Security Agent, its representatives, delegates, professional advisers and contractors, free access at all reasonable times and on reasonable notice at the cost of the Obligors, (i) to inspect and take copies and extracts from the books, accounts and records of that company, and (ii) to view the Charged Property (without becoming liable as mortgagee in possession). Unless a Default is continuing, the rights under this paragraph (b) may only be exercised by a Security Agent once in each calendar year.

19.20 Further assurance

- (a) Each Obligor shall, and the Company shall ensure that each Security Provider and each member of the Group whose shares are the subject of the Transaction Security will, at the Company's expense, execute all documents and take all other actions as a Security Agent may reasonably require in order to:
 - (i) perfect and maintain in full force and effect and give effect to the Security Documents;
 - (ii) maintain and preserve the Transaction Security and the priority of such Security; and
 - (iii) do all things necessary to ensure that any assets acquired by the Obligors are made subject to the Security Documents.
- (b) If an Obligor becomes aware that a Security Document is not or is no longer valid and enforceable and/or does not or no longer creates the Transaction Security that it purports to create with the agreed priority in accordance with its terms, the relevant Obligor shall:
 - (i) immediately notify the Facility Agents and the Security Agents; and
 - (ii) take all actions required by any Security Agent in accordance with paragraph (a) above.

19.21 Debt Service Reserve Account

- (a) SP Philippines shall open, maintain and fund the SP Philippines DSRA, and the Company shall open, maintain and fund the Maxeon DSRA, in each case for as long as amounts are outstanding under the SP Philippines Facility and the Maxeon Term Facility.
- (b) No amount may be withdrawn from a DSRA except:
 - (i) to the extent the amount standing to the credit of that DSRA is in excess of the DSRA Required Balance (and such amount may be withdrawn by the relevant Borrower, as applicable); or
 - (ii) to be applied in payment of amounts outstanding under the relevant Term Facility to the extent the relevant Borrower has insufficient funds to make payment of such amounts.
- (c) Subject to paragraph (d) below, the relevant Borrower shall ensure that the amount standing to the credit of its DSRA is equal to or in excess of the relevant DSRA Required Balance.
- (d) In the event an amount is withdrawn from a DSRA to meet a shortfall in the payment of debt service under the relevant Term Facility, the relevant Borrower shall replenish that DSRA with sufficient funds to comply with paragraph (b) above within fourteen (14) Business Days of such withdrawal.

- 19.22 **Polysilicon Purchase Contract**
- The Company shall not:
- (a) increase its overall liability under the Polysilicon Purchase Contract to an amount greater than the liability outstanding on the date of the Polysilicon Purchase Contract, or otherwise pay amounts during the tenor of the Facilities which are in aggregate in excess of the liability outstanding on the date of the Polysilicon Purchase Contract; or
 - (b) change the profiling of the polysilicon payments under the Polysilicon Purchase Contract from the payment profile specified in the Polysilicon Purchase Contract Payment Profile,
- without the prior written consent of the Intercreditor Agent.
- 19.23 **Change of Chinese Joint Venture shareholdings**
- (a) The Company shall procure that none of its shares or partnership interests in the Chinese Joint Venture are disposed of.
 - (b) The Company shall procure that the Group shall maintain its shareholding in the Hong Kong Guarantor of at least 80% (eighty per cent.).
- 19.24 **Profit Margins**
- The proportion of profit margins booked between each of the Borrowers and SunPower Malaysia shall not deviate from the profit margins as set out in the Base Case Financial Model, except for deviations of no more than plus or minus five per cent. ($\pm 5\%$) required for tax or accounting purposes, unless the prior written consent of the Intercreditor Agent has been received.
- 19.25 **Capital Expenditure**
- (a) On or prior to Financial Close, and on each anniversary of Financial Close, the Company shall supply to the Intercreditor Agent a certificate setting out (in reasonable detail) the capital expenditure plans for the Group (including the sources of funding for such capital expenditure plans) for the following twelve months (the “**Capex Certificate**”).
 - (b) Each Capex Certificate delivered pursuant to paragraph (a) above shall be signed by a director, the chief executive officer or chief financial officer of the Company, and shall be in approved by the Intercreditor Agent (acting on the instructions of the Instructing Parties, acting reasonably) before such certificate is effective.
 - (c) The Obligors shall not, and the Company shall procure that no member of the Group shall, make any capital expenditure in the twelve months after the delivery of a Capex Certificate in excess of 10% of the amount planned for that capital expenditure as set out in the Capex Certificate without the prior written consent of the Intercreditor Agent.

- (d) The Company shall ensure that any capital expenditure made or proposed to be made by a member of the Group which is in excess of the amount planned for that capital expenditure as set out in contained in the Capex Certificate shall, except with the prior written consent of the Intercreditor Agent (acting on the instructions of all Lenders) be funded by the cash proceeds of either (i) a subscription for ordinary shares in the Company by its shareholders, or (ii) the provision of subordinated loans by one or more shareholders of the Company (subordinated on terms acceptable to the Intercreditor Agent).
- (e) Capital expenditure in respect of Maxeon 7 technology shall be funded either from (i) the proceeds of issuance of the Convertible Bonds; or (ii) a subscription for ordinary shares in the Company by its shareholders, or (iii) the provision of subordinated loans by one or more shareholders of the Company (subordinated on terms acceptable to the Intercreditor Agent).

19.26 **Listed company**

Following the completion of the Spin Off, the Company shall maintain its status as a company listed on the NASDAQ Global Select Market.

19.27 **Purchase of Eligible Equipment**

The Company shall ensure that any purchase of Eligible Equipment to be financed by a Utilisation of the Working Capital Facility is made on terms no less favourable to the Group than reasonable arm's length terms (including, but not limited to, the price paid for such Eligible Equipment and the payment terms in respect of such purchase).

19.28 **Insurance**

On and from the satisfaction of the condition subsequent in Clause 4.3(b) (*Conditions subsequent*), the Obligors will maintain (and procure that each member of the Group maintains) the insurance policies described in Clause 4.3(b) (*Conditions Subsequent*).

19.29 **Material Contracts**

- (a) No Obligor shall amend or agree to amend any Material Contract in any way which may be reasonably expected to be adverse to the interests of any Finance Party without the prior written consent of the Intercreditor Agent.
- (b) No Obligor shall assign or novate any of its rights or obligations under any Material Contract without the prior written consent of the Intercreditor Agent.

19.30 **Implementation of the Spin Off**

Notwithstanding anything to the contrary in this Clause 19 (*Undertakings*), any Obligor or member of the Group may take the following steps:

- (a) at any time prior to the completion of the Spin Off, take any of the steps necessary to implement the Spin Off as described in the Steps Plan;
- (b) following completion of the Spin Off, take the following steps as described in the Steps Plan:

-
- (i) the liquidation, winding-up, striking-off or other analogous procedure or step in any relevant jurisdiction, of each of:
- (A) Tenesol Venezuela Co.;
 - (B) SunPower Manufacturing (Pty) Ltd (South Africa);
 - (C) Kozani Energy Anonymi Energeiaki Etaireia;
 - (D) Photovoltaica Parka Veroia AEE;
 - (E) SPWR Solar Energeiaki Hellas Single Member EPE;
 - (F) SunPower Malta Limited;
 - (G) Sgula (East) Green Energies Ltd.;
 - (H) Kozani Energy Malta Limited;
 - (I) SunPower Corporation Israel Limited;
 - (J) Photovoltaic Park Malta Limited;
 - (K) SunPower Technology Ltd. (provided that on or prior to the transfer of the shares held by SunPower Technology Ltd. in SunPower Philippines to the Swiss Guarantor (i) a new Share Charge governed by Cayman law is executed in favour of the Offshore Security Agent in respect of the shares in SunPower Philippines, (ii) relevant perfection steps are taken in respect of such Security and (iii) satisfactory legal opinions are provided in respect of the foregoing, in each case promptly upon the completion of such transfer); and
 - (L) Sunpower Mühendislik İnşaat Enerji Üretim ve Ticaret A.Ş.;
- (ii) the distribution by SunPower Bermuda Holdings of its ownership interest in the Swiss Guarantor to each of Rooster Bermuda DRE LLC and Maxeon Rooster HoldCo, Ltd. in proportion to the percentage of each such entity's ownership interest in SunPower Bermuda Holdings;
- (iii) the distribution by Rooster Bermuda DRE LLC of its ownership interest in the Swiss Guarantor (received from SunPower Bermuda Holdings) and its ownership interest in SunPower Bermuda Holdings, to Maxeon Rooster HoldCo, Ltd.;
- (iv) the liquidation, winding-up, striking-off or other analogous procedure or step in any relevant jurisdiction, of SunPower Bermuda Holdings;
- (v) the liquidation, winding-up, striking-off or other analogous procedure or step in any relevant jurisdiction, of Rooster Bermuda DRE LLC;

- (vi) the redomiciliation of Maxeon Rooster HoldCo, Ltd. to Singapore (provided that (i) Maxeon Rooster Holdco, Ltd. executes a Singapore law governed debenture in favour of the Offshore Security Trustee, and (ii) a new Share Charge governed by Singapore law is executed in favour of the Offshore Security Agent in respect of the shares in Maxeon Rooster Holdco, Ltd., (iii) relevant perfection steps are taken in respect of such Security and (iv) satisfactory legal opinions are provided in respect of the foregoing, in each case promptly upon the completion of such redomiciliation); and
- (vii) the incorporation or formation of certain entities in Mexico by each of the Swiss Guarantor and Maxeon Rooster HoldCo, Ltd.; and
- (c) the physical delivery forward transaction and the privately negotiated prepaid forward share purchase transaction entered into in connection with the Convertible Bonds.

20. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in the following sub-clauses of this Clause 20 (other than Clause 20.17 (*Acceleration*)) is an Event of Default.

20.1 **Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within two (2) Business Days of its due date.

20.2 **Financial covenants**

Any requirement of Clause 18 (*Financial Covenants*) is not satisfied (subject to Clause 18.4 (*Equity Cure*)).

20.3 **Other obligations**

- (a) An Obligor or a Security Provider does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*) and Clause 20.2 (*Financial covenants*)).
- (b) Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations (including any procurement obligation) under, the Intercreditor Agreement.

- (c) No Event of Default under paragraphs (a) or (b) above will occur if the failure to comply is capable of remedy and is remedied within fifteen (15) days (or such longer period as the Intercreditor Agent may agree) of the earlier of (A) the relevant Facility Agent giving notice to the Company and (B) the relevant Obligor, Security Provider or party becoming aware of the failure to comply.
- (d) If within the fifteen (15) day period set out in paragraph (c) above the relevant Obligor, Security Provider or other party delivers a certificate signed by a Director of that Obligor, Security Provider or other party (A) specifying the steps being taken to remedy such failure to comply and (B) certifying that the Obligor, Security Provider or other party is diligently pursuing such remedial action, no Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within a further fifteen (15) days of the date of that certificate **provided that:**
 - (i) no more than two (2) such certificates may be delivered during the tenor of the Facilities; and
 - (ii) no more than one certificate may be provided in respect of a given failure to comply.

20.4

Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor or a Security Provider in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) Any representation or statement made or deemed to be made by a party to the Intercreditor Agreement (other than a Finance Party or an Obligor), including any representation or statement made on behalf of any other person, is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (c) No Event of Default under paragraphs (a) or (b) above will occur if circumstances giving rise to the misrepresentation are capable of remedy and are remedied within fifteen (15) days (or such longer period as the Intercreditor Agent may agree) of the earlier of (A) the relevant Facility Agent giving notice to the Company and (B) the relevant Obligor, Security Provider or other party becoming aware of the circumstances giving rise to the misrepresentation.
- (d) If within the fifteen (15) day period set out in paragraph (c) above the relevant Obligor, Security Provider or other party delivers a certificate signed by a Director of that Obligor, Security Provider or other party (A) specifying the steps being taken to remedy the circumstances giving rise to the misrepresentation and (B) certifying that the Obligor, Security Provider or other party is diligently pursuing such remedial action, no Event of Default under paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within a further fifteen (15) days of the date of that certificate **provided that:**
 - (i) no more than two (2) such certificates may be delivered during the tenor of the Facilities; and

(ii) no more than one certificate may be provided in respect of a given misrepresentation.

20.5 **Cross default**

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 20.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 25,000,000 or its equivalent in any other currency or currencies, **provided that** this paragraph (e) shall not apply in respect of Financial Indebtedness under (i) any of the Facilities; (ii) the Convertible Bonds; or (iii) Financial Indebtedness incurred pursuant to Clause 19.12(b)(v) (*Financial Indebtedness*).

20.6 **Insolvency**

- (a) An Obligor or a Security Provider is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor or Security Provider is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor or Security Provider.

Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or Security Provider;
- (b) a composition or arrangement with any creditor of any Obligor or Security Provider, or an assignment for the benefit of creditors generally of any Obligor or Security Provider or a class of such creditors;
- (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, judicial manager, provisional supervisor or other similar officer in respect of any Obligor or Security Provider or any of its assets; or
- (d) enforcement of any Security over any assets of any Obligor or Security Provider;
- (e) or any analogous procedure or step is taken in any jurisdiction.

Paragraph (a) above shall not apply to any winding-up petition which:

- (i) is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement; or
- (ii) is being contested in good faith by the affected Obligor or Security Agent, provided no order has been made against it.

Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Obligor or Security Provider having an aggregate value of not less than USD 25,000,000 and is not discharged within forty-five (45) days.

Ownership of the Obligors

- (a) An Obligor or a Security Provider (other than the Company) is not or ceases to be a wholly-owned Subsidiary of the Company (other than the HK Guarantor).
- (b) At any time the Company legal and beneficially owns less than 80% of the shares in the HK Guarantor.

Unlawfulness

It is or becomes unlawful for an Obligor, Security Provider or any other person (other than a Finance Party) that is party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents.

Repudiation

An Obligor, a Security Provider or any other person (other than a Finance Party) that is party to the Intercreditor Agreement repudiates a Finance Document or evidences an intention in writing to repudiate a Finance Document.

- 20.12 **Cessation of business**
- (a) The Company suspends or ceases (or threatens to cease) to carry on all or a material part of its business or of the business of the Group taken as a whole.
 - (b) Any Obligor (other than the Company) suspends or ceases (or threatens to cease) to carry on all or a material part of its business.
- 20.13 **Declared company**
- The Company is declared by the Minister for Finance of Singapore to be a company to which Part IX of the Companies Act, Chapter 50 of Singapore applies.
- 20.14 **Transaction Security**
- (a) At any time any of the Transaction Security or any subordination created under the Intercreditor Agreement is or becomes unlawful or is not, or ceases to be legal, valid, binding or enforceable or otherwise ceases to be effective.
 - (b) At any time, any of the Transaction Security fails to have first ranking priority or is subject to any prior ranking or *pari passu* ranking Security, except as expressly permitted in accordance with the Finance Documents, including Clause 19.4(c)(x) (*Negative pledge*).
- 20.15 **Termination of Material Contracts**
- A Material Contract is terminated, purported to be terminated or repudiated by any party thereto, or any party to a Material Contract threatens to terminate such contract or evidences and intention to repudiate such Material Contract.
- 20.16 **Litigation**
- Any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency are commenced against an Obligor or a Security Provider which, if adversely determined, might reasonably be expected to have a Material Adverse Effect.
- 20.17 **Acceleration**
- On and at any time after the occurrence of an Event of Default which is continuing each Facility Agent may, and shall if so directed by the Majority Lenders under the relevant Facility, by notice to the Company:
- (a) without prejudice to the participations of any Lender in any Loans then outstanding:
 - (i) cancel each Available Commitment of each Lender under such Facility, whereupon each such Available Commitment shall immediately be cancelled and such Facility shall immediately cease to be available for further utilisation; or
 - (ii) cancel any part of any Commitment (and reduce such Commitment accordingly) under the relevant Facility, whereupon the relevant part shall immediately be cancelled (and the relevant Commitment shall be immediately reduced accordingly); and/or

- (b) declare that all or part of the Loans under that Facility, together with accrued interest, and all other amounts accrued or outstanding in respect of that Facility under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans under that Facility be payable on demand, whereupon they shall immediately become payable on demand by the relevant Facility Agent on the instructions of the Majority Lenders under such Facility; and/or
- (d) apply amounts in the DSRA applicable to that Facility against the Secured Obligations owing under that Facility; and/or
- (e) exercise or direct the Security Agents to exercise any or all of their respective rights, remedies, powers or discretions under the Finance Documents.

**SECTION 8
CHANGES TO PARTIES**

21. CHANGES TO THE LENDERS

21.1 Assignments and transfers by the Lenders

Subject to this Clause 21, a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

21.2 Conditions of assignment or transfer

- (a) The consent of the Company is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of any Lender; or
 - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five (5) Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time.
- (c) Following receipt of the consent (or deemed consent) of the Company to the assignment or transfer, the Intercreditor Agent shall be given not less than five (5) Business Days written notice of the assignment or transfer.
- (d) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 10 (*Tax gross-up and indemnities*) or Clause 11 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of (i) an assignment or transfer made in

the ordinary course of the primary syndication of any Facility or (ii) an assignment or transfer from the Original Working Capital Lender to one of its affiliates (including Goldman Sachs International Bank) or any other assignment or transfer which is being entered into at the request of the Company or otherwise as agreed with the Company and the relevant Lenders.

- (e) A transfer will be effective only if the procedure set out in Clause 21.5 (*Procedure for transfer*) is complied with.
- (f) An assignment will be effective only if the procedure and conditions set out in Clause 21.6 (*Procedure for assignment*) are complied with.
- (g) An assignment or a transfer to a New Lender will be effective only if at the same time the New Lender delivers an Accession Undertaking to accede as a party to the Intercreditor Agreement as a Lender (if such New Lender is not a party to the Intercreditor Agreement as a Lender).

21.3 **Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to each relevant Facility Agent (for its own account) a fee of USD 5,000 excluding any applicable goods and services tax.

21.4 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or Security Provider of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 21; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or Security Provider of its obligations under the Finance Documents or otherwise.

21.5

Procedure for transfer

- (a) Subject to the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Intercreditor Agent and the relevant Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Intercreditor Agent and the relevant Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate and an Accession Undertaking each appearing on its face to comply with the terms of this Agreement and the Intercreditor Agreement and delivered in accordance with the terms of this Agreement and the Intercreditor Agreement, execute that Transfer Certificate and Accession Undertaking.
- (b) The Intercreditor Agent and the relevant Facility Agent shall not be obliged to execute a Transfer Certificate or an Accession Undertaking delivered to it by the Existing Lender and the New Lender unless it is satisfied that it has completed all “know your customer” and other similar procedures that it is required (or deems desirable) to conduct in relation to the transfer to such New Lender.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

- (iii) the New Lender and other Finance Parties (other than the Existing Lender) shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender and the other Finance Parties shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “Lender”.
- (d) The procedure set out in this Clause 21.5 shall not apply to any right or obligation under any Finance Document (other than this Agreement and the relevant Facility Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of transfer of such right or obligation or prohibit or restrict any transfer of such right or obligation, unless such prohibition or restriction shall not be applicable to the relevant transfer or each condition of any applicable restriction shall have been satisfied.

21.6 **Procedure for assignment**

- (a) Subject to the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*), an assignment may be effected in accordance with paragraph (c) below when the Intercreditor Agent and relevant Facility Agent executes an otherwise duly completed Assignment Agreement and Accession Undertaking delivered to it by the Existing Lender and the New Lender. The Intercreditor Agent and the relevant Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement and Accession Undertaking and the Intercreditor Agreement and delivered in accordance with the terms of this Agreement and the Intercreditor Agreement, execute that Assignment Agreement and Accession Undertaking.
- (b) The Intercreditor Agent and the relevant Facility Agent shall not be obliged to execute an Assignment Agreement or an Accession Undertaking delivered to it by the Existing Lender and the New Lender unless it is satisfied that it has completed all “know your customer” and other similar procedures that it is required (or deems desirable) to conduct in relation to the assignment to such New Lender.
- (c) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and

- (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 21.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 21.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*).
- (e) The procedure set out in this Clause 21.6 shall not apply to any right or obligation under any Finance Document (other than this Agreement and the relevant Facility Agreement) if and to the extent its terms, or any laws or regulations applicable thereto, provide for or require a different means of assignment of such right or release or assumption of such obligation or prohibit or restrict any assignment of such right or release or assumption of such obligation, unless such prohibition or restriction shall not be applicable to the relevant assignment, release or assumption or each condition of any applicable restriction shall have been satisfied.

21.7 **Copy of Transfer Certificate or Assignment Agreement to Company**

The Intercreditor Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Accession Undertaking, send to the Company a copy of that Transfer Certificate, Assignment Agreement or Accession Undertaking.

21.8 **Existing consents and waivers**

A New Lender shall be bound by any consent, waiver, election or decision given or made by the relevant Existing Lender under or pursuant to any Finance Document prior to the coming into effect of the relevant assignment or transfer to such New Lender.

21.9 **Exclusion of Intercreditor Agent’s and Facility Agent’s liability**

- (a) In relation to any assignment or transfer pursuant to this Clause 21, each Party acknowledges and agrees that the Intercreditor Agent and each relevant Facility Agent shall not be obliged to:
 - (i) enquire as to the accuracy of any representation or warranty made by a New Lender in respect of its eligibility as a Lender; or
 - (ii) enquire as to the receipt of consent from the Company as required by Clause 21.2(a).
- (b) In relation to any assignment or transfer pursuant to this Clause 21, each Party further acknowledges and agrees that the Intercreditor Agent and each relevant Facility Agent may, if it is satisfied in accordance with Clauses 21.5(a) and 21.6(a) that such documents comply with the terms of this Agreement, execute such Transfer Certificate and/or Assignment Agreement (as applicable) Accession Undertaking and process the transfer or assignment (as applicable) in accordance with this Clause 21 in the event of any dispute.

21.10 **Assignments and transfers to Obligor group**

A Lender may not assign or transfer to any Obligor or any Affiliate of any Obligor any of such Lender's rights or obligations under any Finance Document, except with the prior written consent of all the Lenders.

21.11 **Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 21, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

22. **CHANGES TO THE OBLIGORS**

22.1 **No change to the Obligors**

Subject to Clause 22.2 (*Resignation of a Guarantor*) below, no Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

22.2 **Resignation of a Guarantor**

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Intercreditor Agent a Resignation Letter.
- (b) The Intercreditor Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:

- (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case);
- (ii) the Intercreditor Agent is satisfied that the solar panel re-sale business of the relevant Guarantor has been permanently transferred to the Company or another Obligor; and
- (iii) all the Lenders have consented to the Company's request.

22.3 **Accession of an Additional Guarantor**

- (a) An Additional Guarantor may accede to this Agreement by delivering to the Intercreditor Agent a duly completed and executed Accession Letter in the form set out in Part I of Schedule 8 (*Accession Letter – Additional Guarantor*).
- (b) Delivery of an Accession Letter constitutes confirmation by the relevant Additional Guarantor that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

23. **ACCESSION OF A NEW FACILITY AGENT**

- (a) If any Facility Agent resigns under the Finance Documents, its resignation shall only be effective when the Intercreditor Agent has received an Accession Undertaking duly completed and executed by that Facility Agent's successor.
- (b) The Intercreditor Agent shall as soon as reasonably practicable after receipt by it of a duly completed and executed Accession Undertaking appearing on its face to comply with the terms of this Agreement and the Intercreditor Agreement and delivered in accordance with the terms of this Agreement and the Intercreditor Agreement execute that Accession Undertaking.
- (c) Upon the appointment of a successor, the resigning Facility Agent shall be discharged from any further obligation in its capacity as that Facility Agent in respect of the Finance Documents, provided that such resignation shall be without prejudice to any undischarged liabilities which that Facility Agent may have incurred as a result of its appointment and acting as such prior to its resignation. Its successor and each of the other parties to the Finance Documents shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party to the Finance Documents in that capacity.

SECTION 9
THE FINANCE PARTIES

24. SHARING AMONG THE FINANCE PARTIES

24.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers (whether by set-off or otherwise) any amount from an Obligor other than in accordance with Clause 25 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Intercreditor Agent;
- (b) the Intercreditor Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Intercreditor Agent and distributed in accordance with Clause 25 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Intercreditor Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Intercreditor Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 25.5 (*Partial payments*).

24.2 Redistribution of payments

The Intercreditor Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with 25.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

24.3 Recovering Finance Party’s rights

- (a) On a distribution by the Intercreditor Agent under Clause 24.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

24.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Intercreditor Agent, pay to the Intercreditor Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

24.5 **Exceptions**

- (a) This Clause 24 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 24, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

24.6 **Turnover Payments – reinstatement of Obligor’s obligations**

- (a) On a distribution by the Intercreditor Agent under clause 8 (*Turnover of receipts*) of the Intercreditor Agreement of a payment received by a Recovering Finance Party from an Obligor, as between that Obligor and the Recovering Finance Party, an amount of such payment equal to the Redistributed Amount will be treated as not having been paid by the Borrower.
- (b) If any redistribution of a Sharing Payment is reversed pursuant to clause 9.2 (*Reversal of redistribution*) of the Intercreditor Agreement, as between the relevant Obligor and the Recovering Finance Party, an amount equal to the redistributed amount will be treated as not having been paid by that Obligor.

SECTION 10
ADMINISTRATION

25. PAYMENT MECHANICS

25.1 Payments to the Facility Agents

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the relevant Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by that Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the relevant Facility Agent, in each case, specifies.

25.2 Distributions by the Facility Agents

- (a) Each payment received by the relevant Facility Agent under the Finance Documents for another Party shall, subject to Clause 25.3 (*Distributions to an Obligor*) and Clause 25.4 (*Clawback and pre-funding*) be made available by the relevant Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the relevant Facility Agent by not less than five (5) Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.
- (b) Each Facility Agent shall distribute payments received by it in relation to all or any part of a Loan to the Lender indicated in the records of that Facility Agent as being so entitled on that date **provided that** the relevant Facility Agent is authorised to distribute payments to be made on the date on which any transfer becomes effective pursuant to Clause 21 (*Changes to the Lenders*) to the Lender so entitled immediately before such transfer took place regardless of the period to which such sums relate.

25.3 Distributions to an Obligor

Each Facility Agent may (with the consent of the Obligor or in accordance with Clause 26 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

25.4 Clawback and pre-funding

- (a) Where a sum is to be paid to a Facility Agent under the Finance Documents for another Party, that Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- (b) Unless paragraph (c) below applies, if a Facility Agent pays an amount to another Party and it proves to be the case that that Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by that Facility Agent shall on demand refund the same to that Facility Agent together with interest on that amount from the date of payment to the date of receipt by the relevant Facility Agent, calculated by that Facility Agent to reflect its cost of funds.
- (c) If a Facility Agent has notified the relevant Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that that Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
 - (i) the relevant Facility Agent shall notify the Company of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to that Facility Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the relevant Facility Agent the amount (as certified by that Facility Agent) which will indemnify that Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

25.5 Partial payments

- (a) Subject to clause 8 (*Turnover of receipts*) and clause 16 (*Application of Proceeds*) of the Intercreditor Agreement, if a Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, that Facility Agent shall apply that payment towards the obligations of that Obligor under the relevant Finance Documents in the following order:
 - (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to any Administrative Party under the relevant Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, mark-up, fee (other than as provided in paragraph (i) above) or commission due but unpaid under the relevant Finance Documents;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under the relevant Facility Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the relevant Finance Documents.
- (b) The relevant Facility Agent shall, if so directed by the Intercreditor Agent in accordance with the Intercreditor Agreement, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.

(c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

25.6 **No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

25.7 **Business Days**

- (a) Subject to paragraph (b) below, any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) If the Termination Date falls on a day that is not a Business Day, any payments under the Finance Documents which is due to be made on the Termination Date shall be made on the preceding Business Day
- (c) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

25.8 **Currency of account**

- (a) Subject to paragraphs (b) and (c) below, US Dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than US Dollars shall be paid in that other currency.

25.9 **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the relevant Facility Agent (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the relevant Facility Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement and the relevant Facility Agreements will, to the extent the relevant Facility Agent(s) (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

25.10 **Disruption to payment systems etc.**

If a Facility Agent to whom a payment is required to be made under the Finance Documents determines (in its discretion) that a Disruption Event has occurred or any Facility Agent is notified by the Company that a Disruption Event has occurred:

- (a) the Facility Agents may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facilities as the Facility Agents may deem necessary in the circumstances;
- (b) the Facility Agents shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) each Facility Agent may consult with the relevant Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agents and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 31 (*Amendments and Waivers*);
- (e) no Facility Agent shall be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of that Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 25.10; and
- (f) the Facility Agents shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

26. **SET-OFF**

Subject to Clause 15.12 (*Swiss Up-Stream and Cross-Stream Limitation and Withholding Tax*) in connection with a Swiss Obligor, a Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

27. **NOTICES**

27.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

27.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of each Party on the date of this Agreement, that identified with its name below;
- (b) in the case of any person becoming a Party after the date of this Agreement, that notified to in writing to the Intercreditor Agent on or prior to the date on which it becomes a Party or, as the case may be, specified in the Accession Undertaking or Accession Letter pursuant to which it becomes a Party,

or any substitute address, fax number or department or officer as the Party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other Parties, if a change is made by the Intercreditor Agent) by not less than five (5) Business Days' notice.

27.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will be effective:
 - (i) if by way of fax, only when received in legible form (which shall be deemed to have occurred if the sender has obtained a transmission receipt showing successful delivery of the communication or document in legible form); or
 - (ii) if by way of letter, only when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Intercreditor Agent or a Facility Agent will be effective only when actually received by that Intercreditor Agent or Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with that Intercreditor Agent's or Facility Agent's signature below (or any substitute department or officer as the Intercreditor Agent or that Facility Agent shall specify for this purpose).

- (c) All notices from or to an Obligor shall be sent through the relevant Facility Agent or (otherwise) the Intercreditor Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 27 will be deemed to have been made or delivered to each of the Obligors.

27.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Intercreditor Agent shall notify the other Parties.

27.5 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any such electronic communication or delivery as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to a Facility Agent only if it is addressed in such a manner as that Facility Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 27.5.

English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by a Facility Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

Fax and Email Indemnity

Any Party, in transmitting instructions or any other communications to an Administrative by fax ("**Fax Communications**") and/or via electronic mail (including scanned copies of executed documents and other attachments) ("**Email Communications**"), agrees that:

- (a) the Administrative Parties shall be entitled to assume that Fax Communications and/or Email Communications (collectively the "**Communications**") originated from duly authorised persons of a Party and accept, rely and act solely on the Communications and shall be under no obligation to verify the authenticity, correctness or validity of the same or to verify the Communications against the original if received by the Administrative Parties;
- (b) all Email Communications shall only be sent to the Administrative Parties from the email address set out in Clause 27 (*Notices*);
- (c) it shall indemnify and hold the Administrative Parties harmless from and against all liabilities, claims, demands, actions, proceedings, losses, expenses and all other liabilities of whatsoever nature or description which may be suffered by the Administrative Parties as a result of, pursuant to or in connection with the Administrative Parties acting on or in reliance upon the Communications, excluding any losses, costs and damages, attributable to any gross negligence, fraud or wilful default on the part of the Administrative Parties;
- (d) the Administrative Parties shall not be liable or in any way responsible for any losses, damages, costs, expenses, claims, demands or proceedings whatsoever and howsoever incurred, suffered or sustained (whether arising directly or indirectly) by such Party or any other person as a result of, pursuant to or in connection with (i) the inability of the Administrative Parties to detect the inadequate authenticity of the signature(s) on any Fax Communications or any documents attached or sent using Email Communications; (ii) the Administrative Parties' agreement to accept and act on Communications (iii) any fraud, forgery or otherwise, (iv) any computer viruses or other malicious, destructive or corrupting code, agent, programme, macros or other software or hardware components designed to permit unauthorised access which have been

introduced by such Party and which affects or causes the Administrative Parties' hardware, software and/or other automated systems to fail or malfunction and such Party hereby waives all claims, actions or proceedings whatsoever which it may have in relation to or in connection with the Administrative Parties acting on the Communications save for any claims, actions or proceedings directly attributable to any gross negligence, fraud or wilful default on the part of the Administrative Parties;

- (e) the Administrative Parties shall not be obliged to rely on or act in accordance with all or any Communications given by such Party in the event that the relevant Administrative Party believes in good faith, that there is a discrepancy or ambiguity in such Communications or if the Administrative Parties receive contradictory, conflicting or otherwise inconsistent Communications and the Administrative Parties shall not be liable or in any way responsible to any Party for failing to act on such Communications but shall promptly notify such Party of such discrepancy or ambiguity or inconsistency;
- (f) for the avoidance of doubt, any delay in or omission to send the Administrative Parties the original of the Fax Communications or any document sent via Email Communications following dispatch or sending of such Communications shall not invalidate the notice, request, demand or other communication in such Communications; and
- (g) any Party using Email Communications agrees and acknowledges that Email Communications (i) may be altered, intercepted, tampered, manipulated or altered or sent without proper authorisation; and (ii) are not a secure means of delivery of information and equipment and software providers, service providers, network providers (including but not limited to telecommunications providers, internet browser providers or internet service providers) may have or be able to gain access to any information transmitted using Email Communications.

28. CALCULATIONS AND CERTIFICATES

28.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

28.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

28.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

29. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

30. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

31. **AMENDMENTS AND WAIVERS**

31.1 **Required consents**

- (a) Subject to the terms of the Intercreditor Agreement, any term of the Finance Documents may be amended or waived only with the consent of the Intercreditor Agent (acting in accordance with the instructions given to it pursuant to the Intercreditor Agreement) and the Obligors' Agent (in accordance with Clause 2.3 (*Obligors' Agent*) and paragraph (c) below) and any such amendment or waiver will be binding on all Parties.
- (b) The Intercreditor Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 31.
- (c) Without prejudice to the other provisions of this Agreement, each Obligor agrees to any such amendment or waiver permitted by this Clause 31 which is agreed to by the Obligors' Agent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Obligors.

32. **CONFIDENTIAL INFORMATION**

32.1 **Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (*Disclosure of Confidential Information*) and Clause 32.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

Any Finance Party (including its officers (as defined in the Banking Act, Chapter 19 of Singapore)) may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners, insurers, insurance brokers, service providers and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Intercreditor Agent, Facility Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (i) or (ii) above;
 - (v) to whom information is required or requested to be disclosed by any court or tribunal of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 21.11 (*Security over Lenders' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Company;
- (c) to any rating agency or direct or indirect provider of credit protection to a Finance Party (or its brokers),
- in each case, such Confidential Information as that Finance Party shall consider appropriate if:
- (A) in relation to paragraphs (b)(b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; or
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (d) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (d) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party.

Nothing in this Clause is to be construed as constituting an agreement between any Obligor and any Finance Party for a higher degree of confidentiality than that prescribed in Section 47 of, and in the Third Schedule to, the Banking Act, Chapter 19 of Singapore.

Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligor the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 35 (*Governing Law*);
 - (vi) the names of the Intercreditor Agent, the Facility Agents and the Security Agents;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facilities (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facilities;
 - (xi) type of Facilities;
 - (xii) ranking of Facilities;
 - (xiii) Termination Date for the Facilities;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Company,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

- (c) Each Obligor represents that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.

32.4 **Entire agreement**

This Clause 32 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

32.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 32.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32.

32.7 **Personal Data Protection Act**

- (a) If any Obligor provides the Finance Parties with personal data of any individual as required by, pursuant to, or in connection with the Finance Documents, that Obligor represents and warrants to the Finance Parties that it has, to the extent required by law, (i) notified the relevant individual of the purposes for which data will be collected, processed, used or disclosed; and (ii) obtained such individual's consent for, and hereby consents on behalf of such individual to, the collection, processing, use and disclosure of his/her personal data by the Finance Parties, in each case, in accordance with or for the purposes of the Finance Documents, and confirms that it is authorised by such individual to provide such consent on his/her behalf.
- (b) Each Obligor agrees and undertakes to notify the Facility Agents promptly upon its becoming aware of the withdrawal by the relevant individual of his/her consent to the collection, processing, use and/or disclosure by any Finance Party of any personal data provided by that Obligor to any Finance Party.

- (c) Any consent given pursuant to this Agreement in relation to personal data shall, subject to all applicable laws and regulations, survive death, incapacity, bankruptcy or insolvency of any such individual and the termination or expiration of this Agreement.
- (d) In this Clause 32.7, “personal data” has the meaning given to it in the Personal Data Protection Act 2012 of Singapore.

32.8 **Continuing obligations**

The obligations in this Clause 32 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

33. **CONFIDENTIALITY OF FUNDING RATES**

33.1 **Confidentiality and disclosure**

- (a) Each Facility Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) Each Facility Agent may disclose:
 - (i) any Funding Rate to the relevant Borrower pursuant to the relevant Facility Agreement; and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between that Facility Agent and the relevant Lender.
- (c) Each Facility Agent may disclose any Funding Rate, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;

- (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the relevant Lender.

33.2 **Related obligations**

- (a) Each Facility Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each Facility Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) Each Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 33.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 33.

33.3 **No Event of Default**

No Event of Default will occur under Clause 20.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 33.

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 11
GOVERNING LAW AND ENFORCEMENT

35. **GOVERNING LAW**

This Agreement and all non-contractual obligations arising out of or in connection with this Agreement are governed by English law.

36. **ENFORCEMENT**

36.1 **Jurisdiction of English courts**

- (a) Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of England to settle any dispute arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) or any non-contractual obligation arising out of or in connection with this Agreement (a “**Dispute**”). Each of the Parties irrevocably and unconditionally waives, to the fullest extent permitted by law, the jurisdiction of any other courts that may correspond by virtue of such Party’s domicile (present or future), the location of its assets or otherwise.
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions. Notwithstanding the foregoing, and solely for the purpose of ensuring compliance with Mexican law, the provisions contain in this paragraph shall not apply for the settlement of any dispute arising between any Finance Party the Mexican Guarantor or to the enforcement of the guarantee granted by the Mexican Guarantor pursuant to Clause 15 (*Guarantee and Indemnities*) hereto.

36.2 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints SunPower Corporation UK Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document, provided such appointment shall be made in accordance with the law applicable to each Obligor in its jurisdiction of incorporation;
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
- (c) solely for the purpose of ensuring compliance with Mexican law, the Mexican Guarantor shall grant to SunPower Corporation UK Limited, before a Mexican notary public, an irrevocable power of attorney for lawsuits and collections (*poder para pleitos y cobranzas*) governed by the laws of Mexico.

Each Obligor expressly agrees and consents to the provisions of this Clause 36.2.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
THE ORIGINAL LENDERS

PART I
THE ORIGINAL SP PHILIPPINES FACILITY LENDERS

Name of Original Lender	SP Philippines Facility Commitment
DBS Bank Ltd.	USD 30,000,000.00
Standard Chartered Bank, Philippines Branch	USD 25,000,000.00

PART II
THE ORIGINAL MAXEON TERM FACILITY LENDERS

Name of Original Lender	Maxeon Term Facility Commitment
DBS Bank Ltd.	USD 20,000,000.00

PART III
THE ORIGINAL WORKING CAPITAL LENDERS

Name of Original Lender	Working Capital Facility Commitment
Goldman Sachs Lending Partners LLC	USD 50,000,000.00

SCHEDULE 2
CONDITIONS PRECEDENT

1. Finance Documents

- (a) A duly executed copy of each of the following Finance Documents:
- (i) this Agreement;
 - (ii) the SP Philippines Facility Agreement;
 - (iii) the Maxeon Term Facility Agreement;
 - (iv) the Working Capital Facility Agreement;
 - (v) the Intercreditor Agreement;
 - (vi) each Fee Letter; and
 - (vii) the Philippines Control Agreement.
- (b) Duly executed copies of each of the following Security Documents:
- (i) the all-asset security agreement dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent (including, without limitation, security over the Maxeon DSRA);
 - (ii) the Philippines Omnibus Security Agreement;
 - (iii) the all-asset security agreement dated on or about the date hereof and entered into by Maxeon Rooster HoldCo, Ltd in favour of the Offshore Security Agent;
 - (iv) the share charge dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in the French Guarantor;
 - (v) the share charge dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in Maxeon Rooster HoldCo, Ltd.;
 - (vi) the share charge dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Energy Corporation Limited;
 - (vii) the share charge dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Corporation Limited;
 - (viii) the share charge dated on or about the date hereof and entered into by the Company in favour of the Offshore Security Agent in respect of all of the shares held by the Company in SunPower Manufacturing Corporation Limited;

- (ix) the equitable share mortgage dated on or about the date hereof and entered into by SunPower Technology Ltd in favour of the Offshore Security Agent in respect of all of the shares held by SunPower Technology Ltd in SunPower Philippines;
 - (x) the Philippines Control Agreement; and
 - (xi) the Account Charge.
- (c) Agreed forms of the following SPML Land Security Documents:
- (i) the accession agreement executed by SPML Land; and
 - (ii) the Philippines Omnibus Security agreement to which SPML Land accedes as a Security Provider in respect of the SPML Land Real Property.
- (d) The Intercreditor Agent has received and countersigned:
- (i) an Accession Letter in the form set out in Part II of Schedule 8 (*Accession Letter – Philippines Onshore Security Agent*) from the Philippines Onshore Security Agent; and
 - (ii) an Accession Undertaking from the Philippines Onshore Security Agent in respect of its accession to the Intercreditor Agreement.

2. **Corporate Documents**

- (a) A copy of the constitutional documents and statutory registers (if applicable) of each Obligor and each Security Provider. As regards any Swiss Obligor, a copy of the articles of associations and a recent commercial register excerpt of the Swiss Guarantor, each certified by the competent Swiss commercial register.
- (b) Evidence that the constitutional documents delivered pursuant to paragraph (a) above (including for entities in respect of which disclosure has been made pursuant to Clause 16.26 (*Shares*)) have been amended to the satisfaction of the Intercreditor Agent (acting on the instructions of the Instructing Parties) to remove restrictions and/or inhibitions on the transfer of shares on the creation or enforcement of the Transaction Security.
- (c) A recent certified copy of each Swiss Obligor's excerpt from the competent Swiss debt collection office.
- (d) A copy of a resolution of the board of directors (or, in the case of the Mexican Guarantor, equity holders) of each Obligor and each Security Provider:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;

- (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each of the Guarantors, resolving that it is in the best interests of that Guarantor to enter into the transactions contemplated by the Finance Documents to which it is a party (giving reasons if required by applicable law).
- (e) In addition to item (c) above as it relates to SunPower Philippines, a copy of a notarized and apostilled (or as appropriate, consularised) resolution of the board of directors of SunPower Philippines:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which its Philippines branch (acting on behalf of SunPower Philippines) is a party and resolving that its Philippines branch (acting on behalf of SunPower Philippines) execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (f) A specimen of the signature of each person authorised by the resolutions referred to in paragraphs (d) and (e) above.
- (g) Except in the case of the Company, a copy of a resolution signed by all the holders of the issued equity interest or shares (as applicable) in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which that Original Guarantor is a party.
- (h) A certificate from each Obligor and Security Provider (signed by a director) confirming that borrowing, guaranteeing and/or securing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing, security or similar limit binding on it to be exceeded.
- (i) A certificate of an authorised signatory of the relevant Obligor and Security Provider certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (j) A copy of a certificate of good standing issued by the Registrar of Companies in the Cayman Islands in respect of each of SunPower Philippines and SunPower Technology Ltd..
- (k) A copy of the License to Transact Business in the Philippines issued by the Securities and Exchange Commission of the Philippines in respect of the Philippines branch of SunPower Philippines.

- (l) A copy of a certificate of compliance issued by the Registrar of Companies in Bermuda in respect of Maxeon Rooster HoldCo, Ltd..

3. **Legal opinions**

- (a) Legal opinions addressed to each Facility Agent and the Original Lenders in relation to:

- (i) English law from Clifford Chance LLP;
- (ii) Singapore law from Clifford Chance Pte Ltd;
- (iii) Philippine Law from SyCip Salazar Hernandez & Gatmaitan;
- (iv) Cayman Islands law from Walkers (Singapore) Limited Liability Partnership;
- (v) French law from Clifford Chance Europe LLP;
- (vi) Mexican law from Ritch, Mueller, Heather y Nicolau, S.C.;
- (vii) Bermuda law from Walkers (Bermuda) Limited;
- (viii) Hong Kong law from Clifford Chance; and
- (ix) Swiss law from Baker McKenzie Geneva.

4. **Security**

- (a) Evidence of the discharge of any Security or guarantees granted by any member of the Group which is not permitted by Clause 19.4 (*Negative Pledge*) on or immediately prior to the date of this Agreement.
- (b) A copy of all notices required to be sent, and acknowledgments thereto required to be delivered, under any Security Document executed by the applicable parties as required by such Security Document (where such notices and acknowledgments are required to be delivered on the date of execution of such Security Document or otherwise prior to the delivery of the first Utilisation Request).
- (c) A letter of authorisation given to the Finance Parties' solicitors for the filing of particulars of the Security Documents to which the Company is a party with the Accounting and Corporate Regulatory Authority of Singapore.
- (d) Receipt of all conditions precedent to be provided pursuant to the terms of the Security Documents (other than the SPML Land Security Documents).

5. **Real Estate**

- (a) The Valuation Report, dated no more than six (6) months prior to Financial Close.
- (b) SunPower Philippines has given notice of the extension of the lease of land between SunPower Philippines and SPML Land.

6. **Accounts**

- (a) Evidence that the Philippines DSRA has been opened with the Philippines Onshore Account Bank, and account details for the Philippines DSRA.
- (b) Evidence that the Maxeon DSRA has been opened with DBS Bank Ltd., and account details for the Maxeon DSRA.
- (c) A notarized original of the Philippines Control Agreement.

7. **Shares**

- (a) All share certificates (if any) and share/stock transfer forms (including, where relevant, bought and sold notes) duly executed by the relevant Obligor or Security Provider in blank in relation to the shares subject to or expressed to be subject to the Share Charges together with all other deliverables (including, where relevant, undated letters of resignation of each director, undated written resolutions of the board of directors and letters of undertaking and authorisation executed by each director, in each case, of each member of the Group whose shares are expressed to be subject to the Share Charges) to the extent required to be delivered under the Share Charges.
- (b) A copy of the shareholders' register of each member of the Group, whose shares are subject to or expressed to be subject to the Share Charges.
- (c) A certified copy of the shareholders' registers of the French Guarantor, evidencing the Share Charge held by the Company and, if applicable, a certified copy of any shareholders' resolutions approving the Secured Parties as potential shareholders in the event of an enforcement of security.
- (d) A copy of the constitutional documents and register of directors and officers (if applicable) of each member of the Group whose shares are expressed to be subject to the Share Charges (to the extent not provided pursuant to paragraph (ii)(a) above) including, in respect of the French Guarantor, a certified copy of its articles of association and a K-Bis extract.
- (e) A copy of a resolution signed by all the holders of the issued shares of each member of the Group which is incorporated in Hong Kong whose shares are subject to or expressed to be subject to the Share Charges, approving certain amendments to the articles of association of such member of the Group to, among others, remove any restriction on transfer or registration of transfer of issued shares in such member of the Group pursuant to enforcement of Transaction Security granted over such shares in such member of the Group pursuant to the Share Charges.
- (f) A copy of the executed shareholders' agreement between, amongst others, Total Solar and TZS in respect of the shares held in the Company.

8. **Separation, Distribution and Spin-off of the Company**

- (a) A copy of the Post-Spin Off Group Structure Chart.
- (b) Evidence that the TZS Equity Subscription Agreement has been executed.
- (c) The Steps Plan.

9. **Other documents and evidence**

- (a) Receipt of a certificate from the Company confirming that:
 - (i) all conditions precedent under the Convertible Bonds have (except for any conditions precedent relating to satisfaction of the conditions precedent to Utilisations under this Agreement) been satisfied or waived; and
 - (ii) the Convertible Bonds have been or will be issued, and the proceeds of issuance of the Convertible Bonds have been or will be received into the escrow account (as required by the terms of the Convertible Bonds), and the expected date of issuance.
- (b) Receipt of the Base Case Financial Model.
- (c) Receipt of the first Capex Certificate.
- (d) A copy of the Polysilicon Purchase Contract (including the payment profile thereunder, consistent with the Polysilicon Purchase Contract Payment Profile).
- (e) Evidence that any process agent referred to in Clause 36.2 (*Service of process*) or any other Finance Document has accepted its appointment.
- (f) A copy of any other Authorisation or other document, opinion or assurance which a Facility Agent considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (g) The Original Financial Statements of each Obligor.
- (h) Notification to the Bermuda Monetary Authority in respect of the charge over shares in Maxeon Rooster HoldCo, Ltd. in favour of the Offshore Security Agent.
- (i) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 9 (*Fees*) and Clause 14 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date (including out of the proceeds of the first Utilisation).
- (j) Completion by each Finance Party of all necessary “know your customer” and other compliance checks or requirements in respect of the Obligors required by applicable laws and regulations.

**SCHEDULE 3
REQUESTS**

**PART I
UTILISATION REQUEST**

From: [Borrower]

To: [Facility Agent]

Dated:

**[Company] – Common Terms Agreement
dated [] (the “Agreement”)**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement (including by reference to another document) shall have the same meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day)
Facility to be utilised:	[SP Philippines Facility]/[Maxeon Term Facility]/[Working Capital Facility]*
Currency of Loan:	[USD]
Amount:	[] or, if less, the Available Facility
[First] Interest Period:	[]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) [and paragraphs (a) to (d) (inclusive) of Clause 5.5 (*First Utilisation*)] ** of the Agreement is satisfied on the date of this Utilisation Request.
4. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify the maturing Working Capital Loan*]/[The proceeds of this Loan should be credited to [*account*].]
5. [*Additional representations to be included as required by the relevant Facility Agreement*]

* Delete as appropriate.

** Include for the first Utilisation.

6. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[name of relevant Borrower]

PART II
SELECTION NOTICE

Applicable to a Term Loan

From: [Borrower]

To: [Facility Agent]

Dated:

**[SunPower Philippines Manufacturing Ltd] / [Maxeon Solar Technologies, Pte. Ltd.] –
Common Terms Agreement
dated [] (the “Agreement”)**

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement shall have the same meaning in this Selection Notice.
2. We refer to the following Loan[s] in [*identify currency*] with an Interest Period ending on []*
3. [We request that the above Loan[s] be divided into [] Loans with the following amounts and Interest Periods:]**
or
[We request that the next Interest Period for the above Loan[s] is []].***

* Insert details of the SP Philippines Facility Loans / Maxeon Term Facility Loans which have an Interest Period ending on the same date.
** Use this option if division of Loans is requested.
*** Use this option if sub-division is not required.

4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
[the Company on behalf of]
[*name of relevant Borrower*]

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

To: [] as Facility Agent

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated:

[Company] – [] Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to Clause 21.5 (*Procedure for transfer*) of the Agreement. This is a Transfer Certificate. Terms used in the Agreement shall have the same meaning in this Transfer Certificate.
2. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 21.5 (*Procedure for transfer*) of the Facility Agreement, all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
3. The proposed Transfer Date is [].
4. The Facility Office and address, fax number and attention particulars for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) of the Agreement are set out in the Schedule.
5. The New Lender expressly acknowledges:
 - (a) the limitations on the Existing Lender’s obligations set out in paragraphs (a) and (c) of Clause 21.4 (*Limitation of responsibility of Existing Lenders*) of the Facility Agreement; and
 - (b) that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Transfer Certificate or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
6. The New Lender confirms that it is a “New Lender” within the meaning of Clause 21.1 (*Assignments and transfers by the Lenders*) of the Facility Agreement.
7. The Existing Lender and the New Lender confirm that the New Lender is not an Obligor or an Affiliate of an Obligor.
8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

-
9. This Transfer Certificate and all non-contractual obligations arising out of or in connection with this Transfer Certificate are governed by English law.
 10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[the Existing Lender]

[the New Lender]

By:

By:

This Transfer Certificate is executed by the relevant Facility Agent and the Intercreditor Agent and the Transfer Date is confirmed as [].

[the Intercreditor Agent]

By:

[the relevant Facility Agent]

By:

Note: *It is the New Lender's responsibility to ascertain whether any other document is required, or any formality or other condition is required to be satisfied, to effect or perfect the transfer contemplated in this Transfer Certificate or to give the New Lender full enjoyment of all the Finance Documents.*

SCHEDULE 5
FORM OF ASSIGNMENT AGREEMENT

To: [[*Facility Agent*] as Facility Agent, [*Borrower*] as Borrower and [*Guarantor*] as Guarantor]
From: [*the Existing Lender*] (the “**Existing Lender**”) and [*the New Lender*] (the “**New Lender**”)
Dated: [*insert date*]

Maxon Solar Technologies, PTE. Ltd – [] Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 21.6 (*Procedure for assignment*) of the Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participations in Loans under the Facility Agreement(s) as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitment(s) and participations in Loans under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date, the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) of the Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges:
 - (a) the limitations on the Existing Lender’s obligations set out in paragraphs (a) and (c) of Clause 21.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement; and
 - (b) that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Assignment Agreement or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.

- 7. The New Lender confirms that it is a “New Lender” within the meaning of Clause 21.1 (*Assignments and transfers by the Lenders*) of the Agreement.
- 8. The Existing Lender and the New Lender confirm that the New Lender is not an Obligor or an Affiliate of an Obligor.
- 9. This Assignment Agreement acts as notice to the relevant Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*) of the Agreement, to the Company (on behalf of each Obligor and each Security Provider) of the assignment referred to in this Assignment Agreement.
- 10. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
- 11. This Assignment Agreement and all non-contractual obligations arising out of or in connection with this Assignment Agreement are governed by English law.
- 12. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[Insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the relevant Facility Agent and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Intercreditor Agent and the relevant Facility Agent constitutes confirmation by the Intercreditor Agent and the relevant Facility Agent of receipt of notice of the assignment referred to herein, which notice the Intercreditor Agent and the relevant Facility Agent receives on behalf of each relevant Finance Party.

[the Intercreditor Agent]

By:

[the relevant Facility Agent]

By:

Note: It is the New Lender's responsibility to ascertain whether any other document is required, or any formality or other condition is required to be satisfied, to effect or perfect the assignment/release/assumption of obligations contemplated in this Assignment Agreement or to give the New Lender full enjoyment of all the Finance Documents.

SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE

To: [] as Intercreditor Agent
[], [], [], [] and [] as Facility Agents

From: [Company]

Dated:

Maxeon Solar Technologies, PTE. Ltd – Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Compliance Certificate. Terms used in the Agreement shall have the same meaning in this Compliance Certificate.
2. We confirm that: *[Insert details of covenants to be certified including calculations]*
3. [We confirm that no Default is continuing.]*

Signed:
Director
of
[Company]

.....
Director
of
[Company]

.....
for and on behalf of
[name of auditors of the Company]] **

* If this statement cannot be made, the Compliance Certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the auditors. To be agreed with the Company’s auditors prior to signing the Agreement.

SCHEDULE 7
FORM OF RESIGNATION LETTER

To: [] as Intercreditor Agent

From: [resigning Obligor] and [Company]

Dated:

Maxeon Solar Technologies, PTE. Ltd – [] Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 22.2 (*Resignation of a Guarantor*) of the Agreement, we request that [resigning Guarantor] be released from its obligations as a Guarantor under the Facility Agreement.
3. We confirm that no Default is continuing or would result from the acceptance of this request.
4. This Resignation Letter, and all non-contractual obligations arising out of or in connection with this Resignation Letter, are governed by English law.

[Company]

[Subsidiary]

SCHEDULE 8
FORMS OF ACCESSION LETTERS

PART I
ACCESSION LETTER – ADDITIONAL GUARANTOR

To: [] as Intercreditor Agent

From: [Additional Guarantor]

Dated:

Maxeon Solar Technologies, PTE. Ltd – [] Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Additional Guarantor] agrees to become party to the Agreement as a Guarantor and to be bound by the terms of the Agreement as a Guarantor pursuant to Clause 22.3 (*Accession of an Additional Guarantor*) of the Agreement.
3. [Additional Guarantor]’s administrative details are as follows:
Address:
Fax No:
Attention:
4. This Accession Letter, and all non-contractual obligations arising out of or in connection with this Accession Letter, are governed by English law.
This Accession Letter is entered into by deed.
[Additional Guarantor]

PART II
ACCESSION LETTER – PHILIPPINES ONSHORE SECURITY AGENT

To: [] as Intercreditor Agent

From: [Philippines Onshore Security Agent]

Dated:

Maxeon Solar Technologies, PTE. Ltd – [] Common Terms Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Philippines Onshore Security Agent] agrees to become party to the Agreement as the Philippines Onshore Security Agent, and to be bound by the terms of the Agreement as the Philippines Onshore Security Agent.
3. The Philippines Onshore Security Agent’s administrative details are as follows:
Address:
Fax No:
Attention:
4. This Accession Letter, and all non-contractual obligations arising out of or in connection with this Accession Letter, are governed by English law.
This Accession Letter is entered into by deed.
[Philippines Onshore Security Agent]

Accepted by the Intercreditor Agent

for and on behalf of

[Insert full name of current Intercreditor Agent]

Date:

SCHEDULE 11
FINANCIAL COVENANT DEFINITIONS

1. **“Acceptable Bank”** means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P Global Ratings, a division of S&P Global Inc. or Fitch Ratings Ltd or A2 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.
2. **“Capital Expenditure”** means any expenditure or obligation in respect of expenditure which, in accordance with GAAP, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).
3. **“Cash”** means, in respect of any person or the Group (as applicable), at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of that person or a member of the Group (as applicable) with an Acceptable Bank and to which that person or a member of the Group (as applicable) is alone (or, in the latter case, together with other members of the Group) beneficially entitled and for so long as:
 - (i) that cash is repayable on demand;
 - (ii) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
 - (iii) there is no Security over that cash except for (A) the Transaction Security; or (B) any Security constituted by a netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements; and
 - (iv) the cash is freely and immediately available to be applied in repayment or prepayment of the Facilities.
4. **“Cash Equivalent Investments”** means, in respect of any person or the Group (as applicable), at any time:
 - (i) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
 - (ii) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, Singapore any member state of the European Economic Area or any Participating Member State by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
 - (iii) commercial paper not convertible or exchangeable to any other security:
 - (A) for which a recognised trading market exists;

- (B) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
- (C) which matures within one year after the relevant date of calculation; and
- (D) which has a credit rating of either A-1 or higher by S&P Global Ratings or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

- (iv) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P Global Ratings or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (i) to (iv) above and (c) can be turned into cash on not more than 30 days' notice; or
- (v) any other debt security approved by the Intercreditor Agent,

in each case either to which that person or any member of the Group (as applicable) is alone (or, in the latter case, together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security.

5. "**Cashflow**" means, in respect of any Relevant Period and in respect of any person or the Group, EBITDA for that person (or in the case of the Group, Consolidated EBITDA) for that Relevant Period after:

- (i) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;
- (ii) adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by that person or the Group (as applicable);
- (iii) adding (to the extent not already taken into account in determining EBITDA or Consolidated EBITDA, as applicable) the amount of any dividends or other profit distributions received in cash by that person or the Group (as applicable) during that Relevant Period from any entity which is itself not a member of the Group and deducting (to the extent not already deducted in determining EBITDA or Consolidated EBITDA, as applicable) the amount of any dividends paid in cash during the Relevant Period to any minority shareholders;
- (iv) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing EBITDA or Consolidated EBITDA, as applicable;

- (v) deducting the amount of any Capital Expenditure actually made (or due to be made) in cash during that Relevant Period by that person or any member of the Group (as applicable) to the extent funded from:
 - (A) Excluded Disposal Proceeds or Excluded Insurance Proceeds;
 - (B) the SP Philippines Loans;
 - (C) the Maxeon Term Facility Loans; or
 - (D) New Shareholder Injections,and so that no amount shall be added (or deducted) more than once.
- 6. **“Consolidated Debt Service Coverage Ratio”** means the ratio of Cashflow to Debt Service for the Group in respect of any Relevant Period.
- 7. **“Consolidated EBITDA”** means, in respect of any Relevant Period, EBIT for the Group for that Relevant Period after adding back any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group.
- 8. **“Consolidated Tangible Net Worth”** means at any time the aggregate of the amounts paid up or credited as paid up on the issued ordinary share capital of the Company and the aggregate amount of the reserves of the Group,
including:
 - (i) any amount credited to the share premium account;
 - (ii) any capital redemption reserve fund; and
 - (iii) any balance standing to the credit of the consolidated income statement of the Group,**but deducting:**
 - (iv) any debit balance on the consolidated income statement of the Group;
 - (v) (to the extent included) any amount shown in respect of goodwill (including goodwill arising only on consolidation) or other intangible assets of the Group;
 - (vi) any amount which is attributable to minority interests (but excluding any amount representing the Group’s share of Non-Group Entities);
 - (vii) (to the extent included) any amount set aside for taxation, deferred taxation or bad debts;
 - (viii) (to the extent included) any amounts arising from an upward revaluation of assets made at any time after the date of the Original Financial Statements; and

- (ix) any amount in respect of any dividend or distribution declared, recommended or made by any member of the Group to the extent payable to a person who is not a member of the Group and to the extent such distribution is not provided for in the most recent financial statements,
- and so that no amount shall be included or excluded more than once.
9. **“Consolidated Total Net Debt”** means at any time the aggregate outstanding principal, capital or nominal amount of all obligations of the Group for or in respect of Financial Indebtedness but:
- (i) **excluding** any such obligations to any other member of the Group;
- (ii) **excluding** any indebtedness in respect of any credit extended by a trade creditor and any acceptance of amounts owed to a trade creditor, in each case, in connection with the supply of goods and services in the ordinary course of business, including, for the avoidance of doubt, any advance payments received from customers of members of the Group; and
- (iii) **deducting** the aggregate amount of freely available Cash and Cash Equivalent Investments held by any member of the Group at that time,
- and so that no amount shall be included or excluded more than once.
10. **“Current Assets”** means, in respect of a person or the Group (as applicable), the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of that person or each member of the Group (as applicable) including prepayments in relation to operating items and sundry debtors (but excluding Cash and Cash Equivalent Investments (to which that person or member of the Group (as applicable) is alone beneficially entitled at that time and which is not subject to any security)) expected to be realised within twelve months from the date of computation but excluding amounts in respect of:
- (i) receivables in relation to Tax;
- (ii) Exceptional Items and other non-operating items;
- (iii) insurance claims; and
- (iv) any interest owing to any member of the Group.
11. **“Current Liabilities”** means, in respect of a person or the Group (as applicable), the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of a person or group of persons expected to be settled within twelve months from the date of computation but excluding amounts in respect of:
- (i) liabilities for Financial Indebtedness and Finance Charges;
- (ii) liabilities for Tax;
- (iii) Exceptional Items and other non-operating items;

-
- (iv) insurance claims; and
 - (v) liabilities in relation to dividends declared but not paid by that person or a member of the Group (as applicable) in favour of any person which is not a member of the Group.
12. **“Debt Service”** means, in respect of a person or the Group (as applicable) in respect of any Relevant Period, the aggregate of:
- (i) Finance Charges in respect of that person or the Group (as applicable) for that Relevant Period;
 - (ii) all scheduled repayments of Financial Indebtedness falling due and any voluntary prepayments made by that person or a member of the Group (as applicable) during that Relevant Period but excluding:
 - (A) any amounts falling due under any overdraft or revolving facility and which were available for simultaneous redrawing according to the terms of that facility;
 - (B) for the avoidance of doubt, any mandatory prepayment made pursuant to Clause 7.7 (*Mandatory Prepayment – Disposal Proceeds*) and Clause 7.8 (*Mandatory Prepayment – Insurance Proceeds*); and
 - (C) any such obligations owed to a member of the Group; and
 - (iii) the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by that person or any member of the Group (as applicable),
- and so that no amount shall be included more than once.
13. **“Debt Service Coverage Ratio”** means, in respect of a person for a Relevant Period, the ratio of Cashflow to Debt Service in respect of that person for that Relevant Period.
14. **“EBIT”** means, in respect of any person or the Group and in respect of any Relevant Period, the operating profit of that person or the Group (as applicable) before taxation (excluding the results from discontinued operations):
- (i) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by that person or any member of the Group (as applicable) (calculated on a consolidated basis) in respect of that Relevant Period;
 - (ii) not including any accrued interest owing to that person;
 - (iii) before taking into account any Exceptional Items;
 - (iv) plus or minus the that person’s or the Group’s (as applicable) share of the profits or losses (after finance costs and tax) of Non-Group Entities;

- (v) before taking into account any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
 - (vi) before taking into account any gain or loss arising from an upward revaluation of any other asset;
 - (vii) before taking into account any Pension Items; and
 - (viii) excluding the charge to profit represented by the expensing of stock options,
- in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of that person or the Group (as applicable) before taxation.
15. “**EBITDA**” means, in respect of a person and for any Relevant Period, EBIT for that person and for that Relevant Period after adding back any amount attributable to the amortisation, depreciation or impairment of assets of that person.
16. “**Exceptional Items**” means any exceptional, one off, non-recurring or extraordinary items, including:
- (i) restructuring charges;
 - (ii) expenses associated with issuance of equity, investment, acquisitions, recapitalization, modification or repayment of indebtedness,
 - (iii) costs or expenses associated with a management equity/stock option plan; and
 - (iv) one-time costs associated with the Spin Off and public company compliance.
17. “**Finance Charges**” means, in respect of a person or the Group (as applicable) and in respect of any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness paid or payable by that person or by any member of the Group (as applicable) (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period:
- (i) **excluding** any upfront fees or costs;
 - (ii) **including** the interest (but not the capital) element of payments in respect of Finance Leases;
 - (iii) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) that person or any member of Group (as applicable) under any interest rate hedging arrangement;
 - (iv) **excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;

- (v) if a Joint Venture is accounted for on a proportionate consolidation basis, after **adding** that person's or the Group's (as applicable) share of the finance costs or interest receivable of the Joint Venture; and
 - (vi) taking no account of any unrealised gains or losses on any financial instruments other than any derivative instruments which are accounted for on a hedge accounting basis,
- so that no amount shall be added (or deducted) more than once.
- 18. **"Finance Lease"** means any lease or hire purchase contract, a liability under which would, in accordance with GAAP, be treated as a balance sheet liability.
 - 19. **"Joint Venture"** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.
 - 20. **"New Shareholder Injections"** means the aggregate amount subscribed for by any person (other than a member of the Group) for ordinary shares in the Company or for subordinated loans advanced to the Company on terms acceptable to the Intercreditor Agent.
 - 21. **"Non-Group Entity"** means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.
 - 22. **"Pension Items"** means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.
 - 23. **"Relevant Period"** means each period of twelve months ending on a Test Date.
 - 24. **"Total Net Debt"** means, in respect of a person, the aggregate outstanding principal, capital or nominal amount of all obligations of that person for or in respect of Financial Indebtedness but:
 - (i) **excluding** any such obligations to any other member of the Group;
 - (ii) **excluding** any indebtedness in respect of any credit extended by a trade creditor and any acceptance of amounts owed to a trade creditor, in each case, in connection with the supply of goods and services in the ordinary course of business, including, for the avoidance of doubt, any advance payments received from customers of that person; and
 - (iii) **deducting** the aggregate amount of freely available Cash and Cash Equivalent Investments held by that person at that time,and so that no amount shall be included or excluded more than once.
 - 25. **"Working Capital"** means, on any date, Current Assets less Current Liabilities.

BORROWERS

Signed by Jeffrey W. Waters)
a duly authorised signatory)
for and on behalf of)
MAXEON SOLAR)
TECHNOLOGIES, PTE. LTD.) /s/ Jeffrey W. Waters
Signature _____

Address: 8 Marina Boulevard #05-02 Marina Bay Financial Centre Singapore 018985
Attention: CFO
Fax number: N/A
Email: Joanne.Solomon@sunpowercorp.com
Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

SIGNED for and on behalf of SUNPOWER)
PHILIPPINES MANUFACTURING LTD.:)
) /s/ Jeffery W. Waters
) Duly Authorised Signatory
)
)
)
) Name: Jeffrey W. Waters
)
)
)
) Title: Authorised Signatory
)

Address: 100 East Main Avenue, LTI, Biñan, Laguna, Philippines
Attention: CFO
Fax number: N/A
Email: Joanne.Solomon@sunpowercorp.com
Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

GUARANTORS

Signed by Jeffrey W. Waters)
a duly authorised signatory)
for and on behalf of)
MAXEON SOLAR)
TECHNOLOGIES, PTE. LTD.) /s/ Jeffrey W. Waters
Signature

Address: 8 Marina Boulevard #05-02 Marina Bay Financial Centre Singapore 018985
Attention: CFO
Fax number: N/A
Email: Joanne.Solomon@sunpowercorp.com
Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

SUNPOWER SYSTEMS SÀRL,
as Guarantor

By: /s/ Frederic Biollaz
Name: Frederic Biollaz
Title: Managing Officer

Address: 14 route de Pre-Bois, 1215 Geneva, Switzerland
Attention: CFO
Fax number: N/A
Email: Joanne.Solomon@sunpowercorp.com
Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

EXECUTION PAGES: COMMON TERMS AGREEMENT

SIGNED for and on behalf of **SUNPOWER**
ENERGY SOLUTIONS FRANCE SAS:

)
) /s/ Raphael von Raesfeldt
) Duly Authorised Signatory
)
)
)
) Name: Raphael von Raesfeldt
)
)
)
) Title: directeur general
)

Address: 12/14 allée du Levant parc d'Activités, 69890 La Tour de Salvagny, France

Attention: CFO

Fax number: N/A

Email: Joanne.Solomon@sunpowercorp.com

Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

EXECUTION PAGES: COMMON TERMS AGREEMENT

SUNPOWER CORPORATION MEXICO, S. DE R.L. DE C.V.,
as Guarantor

By: /s/ Carlos Eusebio Covarrubias Camacho
Name: Carlos Eusebio Covarrubias Camacho
Title: Director

Address: Blvd. Lázaro Cárdenas No. 3101, Cambridge Industrial Park, Baja California,
Mexicali, MX, Mexico

Attention: CFO

Fax number: N/A

Email: Joanne.Solomon@sunpowercorp.com

Copy to: Lindsey.Wiedmann@sunpower.com
LegalNoticeSunPower@sunpowercorp.com

EXECUTION PAGES: COMMON TERMS AGREEMENT

THE ORIGINAL SP PHILIPPINES FACILITY LENDERS

Signed by Ganesh Padmanabhan)
and _____)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Ganesh Padmanabhan _____
Signature

Address: 12 Marina Boulevard, Level 45, DBS Asia Central, Marina Bay Financial Centre Tower 3

Attention: Nicole Yuen / Naomi Ong

Fax number: 6224 7044

Email: nicoleyuen@dbs.com / naomiong@dbs.com

EXECUTION PAGES: COMMON TERMS AGREEMENT

Signed by Lynette V. Ortiz)
a duly authorised representative)
for and on behalf of)
STANDARD CHARTERED BANK,)
PHILIPPINES BRANCH) /s/ Lynette V. Ortiz
Signature _____

Address: 8/F Standard Chartered Bank, 6788 Sky Plaza Building, Ayala Avenue, Makati City, Philippines 1226
Attention: Sanky Quinto (Relationship Manager – Global Subsidiaries); Joseph De Lara (Head – Global Subsidiaries)
Fax number: N/A
Phone: +632 8878 2938; +632 8878 2857
Email: sanky.quinto@sc.com; Joseph.De-Lara@sc.com

EXECUTION PAGES: COMMON TERMS AGREEMENT

THE ORIGINAL MAXEON TERM FACILITY LENDERS

Signed by Ganesh Padmanabhan)
and _____)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Ganesh Padmanabhan
Signature

Address: 12 Marina Boulevard, Level 45, DBS Asia Central, Marina Bay Financial Centre Tower 3
Attention: Nicole Yuen / Naomi Ong
Fax number: 6224 7044
Email: nicoleyuen@dbs.com / naomiong@dbs.com

THE ORIGINAL WORKING CAPITAL LENDERS

Signed by Thomas M. Manning)
a duly authorised representative)
for and on behalf of)
GOLDMAN SACHS LENDING) /s/ Thomas M. Manning
PARNTERS LLC Signature
A Delaware limited liability company

Address: 200 West Street, New York NY 10282
Attention: Goldman Sachs Lending Partners LLC
Fax number: N/A
Email: N/A

THE INTERCREDITOR AGENT

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	/s/ Chan Kim Lim /s/ Noor Azizah Ador
	Signature	Signature

Address: 2 Changi Business Park Crescent, DBS Asia Hub Lobby B, #04-06 Singapore 486029

Attention: T&O – IBG Ops – Loan Agency

Fax number: +65 6324 4427

Email: laemailadmin@dbs.com

THE FACILITY AGENTS

THE SP PHILIPPINES FACILITY AGENT

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	<u>/s/ Chan Kim Lim</u> <u>/s/ Noor Azizah Ador</u>
		Signature Signature

Address: 2 Changi Business Park Crescent, DBS Asia Hub Lobby B, #04-06 Singapore 486029

Attention: T&O – IBG Ops – Loan Agency

Fax
number: +65 6324 4427

Email: laemailadmin@dbs.com

THE MAXEON TERM FACILITY AGENT

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	<u>/s/ Chan Kim Lim</u> <u>/s/ Noor Azizah Ador</u>
		Signature Signature

Address: 2 Changi Business Park Crescent, DBS Asia Hub Lobby B, #04-06 Singapore 486029

Attention: T&O – IBG Ops – Loan Agency

Fax number: +65 6324 4427

Email: laemailadmin@dbs.com

THE WORKING CAPITAL FACILITY AGENT

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	/s/ Chan Kim Lim /s/ Noor Azizah Ador
	Signature	Signature

Address: 2 Changi Business Park Crescent, DBS Asia Hub Lobby B, #04-06 Singapore 486029

Attention: T&O – IBG Ops – Loan Agency

Fax number: +65 6324 4427

Email: laemailadmin@dbs.com

THE OFFSHORE SECURITY AGENT

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	/s/ Chan Kim Lim /s/ Noor Azizah Ador
		Signature Signature

Address: 2 Changi Business Park Crescent, DBS Asia Hub Lobby B, #04-06 Singapore 486029

Attention: T&O – IBG Ops – Loan Agency

Fax number: +65 6324 4427

Email: laemailadmin@dbs.com

DATED 14 July 2020

MAXEON SOLAR TECHNOLOGIES, PTE. LTD.
AS THE BORROWER,

DBS BANK LTD.
AS THE FACILITY AGENT

and

THE FINANCIAL INSTITUTIONS SET OUT AT SCHEDULE 1
AS ORIGINAL LENDERS

MAXEON TERM FACILITY AGREEMENT

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THIS AGREEMENT is dated 14 July 2020 and is made between:

- (1) **MAXEON SOLAR TECHNOLOGIES, PTE. LTD.**, a company incorporated in Singapore with registered number 201934268H and its registered address at 8 Marina Boulevard #05-02, Marina Bay Financial Centre, 018981, Singapore, as borrower (the “**Borrower**”);
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as original lenders (the “**Original Lenders**”); and
- (3) **DBS BANK LTD.** as agent of the Finance Parties (other than itself) (the “**Facility Agent**”).

IT IS AGREED as follows:

1. **INTERPRETATION**

Except as otherwise defined in this Agreement or to the extent that the context requires otherwise, terms defined and references construed in the Common Terms Agreement shall have the same meaning and construction when used in this Agreement. For the purposes of this Agreement:

1.1 **Definitions**

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “**Commitment**” in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Common Terms Agreement.

“**Common Terms Agreement**” means the common terms agreement dated on or about the date of this Agreement and entered into between the Borrowers, the Original Guarantors, the Intercreditor Agent, the Facility Agents, the Security Agents and the financial institutions listed in schedule 1 therein as original lenders.

“**Facility**” the term loan facility made available under this Agreement as described in clause 2.1 (*The Facilities*) of the Common Terms Agreement.

“**Fallback Interest Period**” means one Month.

“**Finance Party**” means the Facility Agent or a Lender.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to paragraph (a)(ii) of Clause 6.3 (*Cost of funds*).

“Historic Screen Rate” means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interest Payment Date” means the last day of each Interest Period.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 5 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 4.3 (*Default interest*).

“Interpolated Historic Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interpolated Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for the currency of that Loan.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 21 (*Changes to the Lenders*) of the Common Terms Agreement and this Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of the Common Terms Agreement and this Agreement.

“LIBOR” means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or

(b) as otherwise determined pursuant to Clause 4.3 (*Default interest*) below, and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**Loan**” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“**London Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks are open for general business, including dealings in interbank deposits in London.

“**Margin**” means three point nine zero per cent. (3.90%) per annum.

“**Party**” means a party to this Agreement.

“**Quotation Day**” means:

- (a) in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)); or
- (b) in relation to any Interest Period the duration of which is selected by the Facility Agent pursuant to Clause 4.3 (*Default interest*), such date as may be determined by the Facility Agent (acting reasonably).

“**Repayment Date**” means:

- (a) the dates falling 18, 21, 24, 27, 30 and 33 months after the date of this Agreement; and
- (b) the Termination Date.

“**Screen Rate**” means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other entity or person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is to be made .

“Utilisation Request” means a notice substantially in the relevant form set out in part I of schedule 3 (*Requests*) of the Common Terms Agreement.

1.2 **Currency symbols and definitions**

“\$”, “US\$” and “US dollars” denote the lawful currency of the US.

1.3 **Principles of Construction**

In this Agreement, the principles of construction set forth in clause 1.2 (*Construction*) of the Common Terms Agreement shall apply to this Agreement.

1.4 **Supremacy**

The rights and obligations of the Parties are subject to:

- (a) the terms and conditions of the Common Terms Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Common Terms Agreement, the terms and conditions of the Common Terms Agreement shall prevail; and
- (b) the terms and conditions of the Intercreditor Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

1.5 **Designation**

This Agreement is designated as a Finance Document for the purposes of the Common Terms Agreement.

1.6 **Third Party Rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any third person who is not a Party is not required to rescind or vary this Agreement at any time.

2. **REPAYMENT**

2.1 **Repayment of Loans**

- (a) The Borrower shall repay the Loans made to it in instalments by repaying on each Repayment Date an amount which reduces the amount of the outstanding aggregate Loans by an amount equal to (i) all the Loans borrowed by the Borrower as at close of business in Singapore on the last day of the Availability Period, divided by (ii) the aggregate number of Repayment Dates (each such amount a “**Repayment Instalment**”).

- (b) If, in relation to a Repayment Date, the aggregate amount of the Loans made to the Borrower exceeds the Repayment Instalment to be repaid by the Borrower, the Borrower may, if it gives the Agent not less than five (5) Business Days' prior notice, select which of those Loans will be wholly or partially repaid so that the Repayment Instalment is repaid on the relevant Repayment Date in full. The Borrower may not make a selection if as a result more than one Loan will be partially repaid.
- (c) If the Borrower fails to deliver a notice to the Agent in accordance with paragraph (b) above, the Facility Agent shall select the Loans to be wholly or partially repaid.
- (d) The Borrower may not reborrow any part of the Facility which is repaid.

3. **PREPAYMENT AND CANCELLATION**

3.1 **Change of control**

If either TOTAL S.A or TZS ceases to beneficially own at least 20% each of outstanding ordinary shares of the Company, where the determination of the ordinary shares beneficially owned by TOTAL S.A or TZS and the total outstanding ordinary shares of the Company shall be on an as converted, exercised or exchanged basis excluding any ordinary shares of the Company that may be issuable upon conversion of any Convertible Bonds held by any person until such ordinary shares in the Company are actually issued, or any other individual shareholder (or group of shareholders acting in concert) has greater board appointment rights or shareholding in the Company than TOTAL S.A. or TZS:

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund a Utilisation; and
- (c) if a Lender so requires and notifies the Facility Agent within ten (10) Business Days of the Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than five (5) Business Days' notice to the Borrower, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents in relation to that Lender's participation(s) immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.

3.2 **Mandatory prepayment – Maxeon 3 Line**

- (a) Following the occurrence of a Review Event, the Borrower and the Lenders shall hold good faith discussions to reach a solution to resolve such Review Event for a period of no less than 15 Business Days (the “**Consultation Period**”) from the date such Review Event first arose. Following the expiry of the Consultation Period, if a solution has not been reached to the satisfaction of the

Lenders (in their sole discretion), the Borrower shall prepay the outstanding Loans within five (5) Business Days of the delivery of a notice by the Facility Agent under this Clause.

- (b) For the purposes of this Clause 3.2, a “**Review Event**” shall occur if, at any time, the weighted average monthly production capacity of the Maxeon 3 line for the previous 12 month period is less than 250 MW.

4. **INTEREST**

4.1 **Calculation of interest**

- (a) The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) LIBOR.
- (b) From the date of this Agreement until the date on which the documents set out in paragraph (a) of clause 4.3 (*Conditions Subsequent*) of the Common Terms Agreement are delivered to the satisfaction of the Intercreditor Agent, the Margin shall be increased by:
 - (i) 0.5% per annum for the period from the date of this Agreement to (and including) the date falling 90 days after Financial Close; and
 - (ii) 0.75% per annum thereafter.

4.2 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of its Interest Period (and, if the Interest Period is longer than six (6) Months, on the dates falling at six-monthly intervals after the first day of the Interest Period).

4.3 **Default interest**

- (a) If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below, two per cent. (2%) per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 4.3 shall be immediately payable by the Borrower on demand by the Facility Agent.
- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

- (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two per cent. (2%) per annum higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

4.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

5. INTEREST PERIODS

5.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Loan which has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, be three (3) Months.
- (d) Subject to this Clause 5, the Borrower may select an Interest Period of three (3) or six (6) Months or of any other period agreed between the Borrower, the Facility Agent and all the Lenders in relation to the relevant Loan. In addition the Borrower may select an Interest Period of a period of less than three (3) Months, if necessary to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if the Loan is a Loan which has already been made) on the last day of the preceding Interest Period of such Loan.

5.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

5.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.
- (b) Subject to clause 4.4 (*Maximum number of Loans*) and 5.2 (*Currency and amount*) of the Common Terms Agreement, if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

6. CHANGES TO THE CALCULATION OF INTEREST

6.1 Unavailability of Screen Rate

- (a) *Shortened Interest Period*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the Interest Period for that Loan shall (if it is longer than the Fallback Interest Period) be shortened to the Fallback Interest Period and the applicable LIBOR for that shortened Interest Period shall be determined pursuant to the definition of “LIBOR”.
- (b) *Shortened Interest Period and Historic Screen Rate*: If the Interest Period of a Loan is, after giving effect to paragraph (a) above, either the Fallback Interest Period or shorter than the Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR the applicable LIBOR shall be the Historic Screen Rate for that Loan.
- (c) *Shortened Interest Period and Interpolated Historic Screen Rate*: If paragraph (b) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
- (d) *Cost of funds*: If paragraph (c) above applies but it is not possible to calculate the Interpolated Historic Screen Rate there shall be no LIBOR for that Loan and Clause 6.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

6.2 Market disruption

- (a) If a Market Disruption Event occurs, then Clause 6.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) For the purposes of this Clause 6.2, “**Market Disruption Event**” means, before close of business in London on the Business Day immediately following the

Quotation Day for the relevant Interest Period, the Facility Agent has received notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five per cent. (35%) of that Loan) that the cost to it or them of funding its or their participation(s) in that Loan from whatever source it or they may reasonably select would be in excess of LIBOR.

6.3 Cost of funds

- (a) If this Clause 6.3 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by such Lender as soon as practicable, and in any event one Business Day prior to the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 6.3 applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 6.3 applies, the Facility Agent shall, as soon as is practicable, notify the Borrower.

6.4 Break Costs

- (e) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (f) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

7. FEES

7.1 Commitment fee

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee in US dollars computed at the rate of one per cent. (1%) per annum on that Lender's Available Commitment for the period starting on the earlier of the date of this Agreement and Financial Close, and ending on the last day of the Availability Period.

- (b) The accrued commitment fee is payable on the last day of each successive period of three (3) Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

7.2 Upfront fee

The Borrower shall pay to each Original Lender (for its own account) an upfront fee in the amount and at the times agreed in one or more Fee Letters.

8. REPLACEMENT OF SCREEN RATE

8.1 Amendments and waivers

- (a) Subject to the other terms of the Intercreditor Agreement, if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark; and
 - (ii)
 - (A) aligning any provision of this Agreement to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Obligors.

8.2 Definitions

In this Clause 8, the following terms shall have the following meanings:

“Majority Lenders” has the meaning given to that term in the Intercreditor Agreement in respect of this Agreement.

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Replacement Benchmark” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,
and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to a Screen Rate.

“Screen Rate Replacement Event” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Obligors materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than 1 month; or
- (d) in the opinion of the Majority Lenders and the Obligors, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

9. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

10. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

11. ENFORCEMENT

11.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding sub-clause (a) above, any Finance Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
THE ORIGINAL LENDERS

Name of Original Lender	Commitment
DBS Bank Ltd.	US\$ 20,000,000.00

Borrower

Signed by Jeffrey W. Waters)
a duly authorised signatory)
for and on behalf of)
MAXEON SOLAR)
TECHNOLOGIES, PTE. LTD.) /s/ Jeffrey W. Waters
Signature

Original Lender

Signed by Ganesh Padmanabhan)
and)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Ganesh Padmanabhan
Signature

Facility Agent

Signed by Chan Kim Lim and)
Noor Azizah Ador)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Chan Kim Lim /s/ Noor Azizah Ador
Signature Signature

DATED 14 July 2020

SUNPOWER PHILIPPINES MANUFACTURING LTD.
AS THE BORROWER,

DBS BANK LTD.
AS THE FACILITY AGENT

and

THE FINANCIAL INSTITUTIONS SET OUT AT SCHEDULE 1
AS ORIGINAL LENDERS

SUNPOWER PHILIPPINES FACILITY AGREEMENT

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THIS AGREEMENT is dated 14 July 2020 and is made between:

- (1) **SUNPOWER PHILIPPINES MANUFACTURING LTD.**, an exempted company incorporated in the Cayman Islands with registered number 125924 and its registered address at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands, as borrower (the “**Borrower**”);
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as original lenders (the “**Original Lenders**”); and
- (3) **DBS BANK LTD.** as agent of the Finance Parties (other than itself) (the “**Facility Agent**”).

IT IS AGREED as follows:

1. **INTERPRETATION**

Except as otherwise defined in this Agreement or to the extent that the context requires otherwise, terms defined and references construed in the Common Terms Agreement shall have the same meaning and construction when used in this Agreement. For the purposes of this Agreement:

1.1 **Definitions**

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “**Commitment**” in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Common Terms Agreement.

“**Common Terms Agreement**” means the common terms agreement dated on or about the date of this Agreement and entered into between the Borrowers, the Original Guarantors, the Intercreditor Agent, the Facility Agents, the Security Agents and the financial institutions listed in schedule 1 therein as original lenders.

“**Facility**” the term loan facility made available under this Agreement as described in clause 2.1 (*The Facilities*) of the Common Terms Agreement.

“**Fallback Interest Period**” means one Month.

“**Finance Party**” means the Facility Agent or a Lender.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to paragraph (a)(ii) of Clause 6.3 (*Cost of funds*).

“Historic Screen Rate” means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interest Payment Date” means the last day of each Interest Period.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 5 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 4.3 (*Default interest*).

“Interpolated Historic Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interpolated Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
 - (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of the Specified Time for the currency of that Loan.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 21 (*Changes to the Lenders*) of the Common Terms Agreement and this Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of the Common Terms Agreement and this Agreement.

“LIBOR” means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or

(b) as otherwise determined pursuant to Clause 4.3 (*Default interest*),
and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**Loan**” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“**London Business Day**” means a day (other than a Saturday or Sunday) on which commercial banks are open for general business, including dealings in interbank deposits in London.

“**Margin**” means three point nine zero per cent. (3.90%) per annum.

“**Party**” means a party to this Agreement.

“**Quotation Day**” means:

- (a) in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)); or
- (b) in relation to any Interest Period the duration of which is selected by the Facility Agent pursuant to Clause 4.3 (*Default interest*), such date as may be determined by the Facility Agent (acting reasonably).

“**Repayment Date**” means:

- (a) the dates falling 18, 21, 24, 27, 30 and 33 months after the date of this Agreement; and
- (b) the Termination Date.

“**Screen Rate**” means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other entity or person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is to be made .

“Utilisation Request” means a notice substantially in the relevant form set out in part I of schedule 3 (*Requests*) of the Common Terms Agreement.

1.2 **Currency symbols and definitions**

“\$”, “US\$” and “US dollars” denote the lawful currency of the US.

1.3 **Principles of Construction**

In this Agreement, the principles of construction set forth in clause 1.2 (*Construction*) of the Common Terms Agreement shall apply to this Agreement.

1.4 **Supremacy**

The rights and obligations of the Parties are subject to:

- (a) the terms and conditions of the Common Terms Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Common Terms Agreement, the terms and conditions of the Common Terms Agreement shall prevail; and
- (b) the terms and conditions of the Intercreditor Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

1.5 **Designation**

This Agreement is designated as a Finance Document for the purposes of the Common Terms Agreement.

1.6 **Third Party Rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any third person who is not a Party is not required to rescind or vary this Agreement at any time.

2. **REPAYMENT**

2.1 **Repayment of Loans**

- (a) The Borrower shall repay the Loans made to it in instalments by repaying on each Repayment Date an amount which reduces the amount of the outstanding aggregate Loans by an amount equal to (i) all the Loans borrowed by the Borrower as at close of business in Singapore on the last day of the Availability Period, divided by (ii) the aggregate number of Repayment Dates (each such amount a “**Repayment Instalment**”).

- (b) If, in relation to a Repayment Date, the aggregate amount of the Loans made to the Borrower exceeds the Repayment Instalment to be repaid by the Borrower, the Borrower may, if it gives the Agent not less than five (5) Business Days' prior notice, select which of those Loans will be wholly or partially repaid so that the Repayment Instalment is repaid on the relevant Repayment Date in full. The Borrower may not make a selection if as a result more than one Loan will be partially repaid.
- (c) If the Borrower fails to deliver a notice to the Agent in accordance with paragraph (b) above, the Facility Agent shall select the Loans to be wholly or partially repaid.
- (d) The Borrower may not reborrow any part of the Facility which is repaid.

3. **PREPAYMENT AND CANCELLATION**

3.1 **Change of control**

If either TOTAL S.A or TZS ceases to beneficially own at least 20% each of outstanding ordinary shares of the Company, where the determination of the ordinary shares beneficially owned by TOTAL S.A or TZS and the total outstanding ordinary shares of the Company shall be on an as converted, exercised or exchanged basis excluding any ordinary shares of the Company that may be issuable upon conversion of any Convertible Bonds held by any person until such ordinary shares in the Company are actually issued, or any other individual shareholder (or group of shareholders acting in concert) has greater board appointment rights or shareholding in the Company than TOTAL S.A. or TZS:

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund a Utilisation; and
- (c) if a Lender so requires and notifies the Facility Agent within ten (10) Business Days of the Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than five (5) Business Days' notice to the Borrower, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents in relation to that Lender's participation(s) immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.

3.2 **Mandatory prepayment – Maxeon 3 Line**

- (a) Following the occurrence of a Review Event, the Borrower and the Lenders shall hold good faith discussions to reach a solution to resolve such Review Event for a period of no less than 15 Business Days (the “**Consultation Period**”) from the date such Review Event first arose. Following the expiry of the Consultation Period, if a solution has not been reached to the satisfaction of the

Lenders (in their sole discretion), the Borrower shall prepay the outstanding Loans within five (5) Business Days of the delivery of a notice by the Facility Agent under this Clause.

- (b) For the purposes of this Clause 3.2, a “**Review Event**” shall occur if, at any time, the weighted average monthly production capacity of the Maxeon 3 line for the previous 12 month period is less than 250 MW.

3.3 **Mandatory prepayment – Financial covenants**

- (a) If at any time:
 - (i) the Debt Service Coverage Ratio in respect of the Borrower is less than 1.25x;
 - (ii) the ratio of Total Net Debt to EBITDA in respect of the Borrower is greater than:
 - (A) 2.0x for each Test Date falling in 2021; and
 - (B) 1.75x for each Test Date thereafter,then the Borrower shall prepay the outstanding Loans within five (5) Business Days of the delivery of a notice by the Facility Agent under this Clause.
- (b) The defined terms set out in clause 18 (*Financial Covenants*) and schedule 11 (*Financial Covenant Definitions*) of the Common Terms Agreement shall have the same meaning in this Clause 3.3.
- (c) The financial covenants set out in paragraph (a) above shall be calculated in accordance with GAAP and tested by reference to each of the financial statements delivered by the Company pursuant to paragraphs (a)(ii) and (b)(ii) of clause 17.1 (*Financial Statements*) of the Common Terms Agreement and, in the case of the period ending 30 September 2021, the financial statements delivered pursuant to paragraph (c) of clause 17.1 (*Financial statements*) of the Common Terms Agreement and/or each Compliance Certificate delivered pursuant to clause 17.2 (*Compliance certificate*) of the Common Terms Agreement, commencing on the delivery of the financial statements for the period ending 30 September 2021.
- (d) The Borrower shall procure that the Company supplies to the Facility Agent a Compliance Certificate setting out (in reasonable detail) computations as to compliance with this Clause 3.3 as at the date at which the financial statements referred to in paragraph (c) above were drawn up.
- (e) In the event of a breach of the financial covenants set out in paragraph (a) above, clause 18.4 (*Equity Cure*) of the Common Terms Agreement shall apply *mutatis mutandis*, provided that:
 - (i) any Cure Amount must be paid to the Borrower to be treated as a Cure Amount for the purposes of this Clause 3.3;

- (ii) for the purposes of paragraph (a)(i) above such Cure Amount shall be treated as having been added to the Cashflow of the Borrower for the Cure Relevant Period; and
- (iii) for the purposes of paragraph (a)(ii) such Cure Amount shall be treated as having been deducted from the Total Net Debt of the Borrower as at the Relevant Test Date; and
- (iv) any Cure Amount provided in respect of the financial covenants set out in paragraph (a) above shall be applied by the Borrower in prepayment of the Loans under the Facility promptly, and in any event within five (5) Business Days of receipt.

4. INTEREST

4.1 Calculation of interest

- (a) The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) LIBOR.
- (b) From the date of this Agreement until the date on which the documents set out in paragraph (a) of clause 4.3 (*Conditions Subsequent*) of the Common Terms Agreement are delivered to the satisfaction of the Intercreditor Agent (acting on the instructions of the Instructing Parties), the Margin shall be increased by:
 - (i) 0.5% per annum for the period from the date of this Agreement to (and including) the date falling 90 days after Financial Close; and
 - (ii) 0.75% per annum thereafter.

4.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of its Interest Period (and, if the Interest Period is longer than six (6) Months, on the dates falling at six-monthly intervals after the first day of the Interest Period).

4.3 Default interest

- (a) If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below, two per cent. (2%) per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 4.3 shall be immediately payable by the Borrower on demand by the Facility Agent.

- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two per cent. (2%) per annum higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

4.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

5. INTEREST PERIODS

5.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Loan which has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, be three (3) Months.
- (d) Subject to this Clause 5, the Borrower may select an Interest Period of three (3) or six (6) Months or of any other period agreed between the Borrower, the Facility Agent and all the Lenders in relation to the relevant Loan. In addition the Borrower may select an Interest Period of a period of less than three (3) Months, if necessary to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if the Loan is a Loan which has already been made) on the last day of the preceding Interest Period of such Loan.

5.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

5.3 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.
- (b) Subject to clause 4.4 (*Maximum number of Loans*) and 5.2 (*Currency and amount*) of the Common Terms Agreement, if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

6. CHANGES TO THE CALCULATION OF INTEREST

6.1 Unavailability of Screen Rate

- (a) *Shortened Interest Period*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the Interest Period for that Loan shall (if it is longer than the Fallback Interest Period) be shortened to the Fallback Interest Period and the applicable LIBOR for that shortened Interest Period shall be determined pursuant to the definition of “LIBOR”.
- (b) *Shortened Interest Period and Historic Screen Rate*: If the Interest Period of a Loan is, after giving effect to paragraph (a) above, either the Fallback Interest Period or shorter than the Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR the applicable LIBOR shall be the Historic Screen Rate for that Loan.
- (c) *Shortened Interest Period and Interpolated Historic Screen Rate*: If paragraph (b) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
- (d) *Cost of funds*: If paragraph (c) above applies but it is not possible to calculate the Interpolated Historic Screen Rate there shall be no LIBOR for that Loan and Clause 6.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

6.2 Market disruption

- (a) If a Market Disruption Event occurs, then Clause 6.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) For the purposes of this Clause 6.2, “**Market Disruption Event**” means, before close of business in London on the Business Day immediately following the

Quotation Day for the relevant Interest Period, the Facility Agent has received notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five per cent. (35%) of that Loan) that the cost to it or them of funding its or their participation(s) in that Loan from whatever source it or they may reasonably select would be in excess of LIBOR.

6.3 Cost of funds

- (a) If this Clause 6.3 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Facility Agent by such Lender as soon as practicable, and in any event one Business Day prior to the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 6.3 applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 6.3 applies, the Facility Agent shall, as soon as is practicable, notify the Borrower.

6.4 Break Costs

- (e) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (f) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

7. FEES

7.1 Commitment fee

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee in US dollars computed at the rate of one per cent. (1%) per annum on that Lender's Available Commitment for the period starting on the earlier of the date of this Agreement and Financial Close, and ending on the last day of the Availability Period.

- (b) The accrued commitment fee is payable on the last day of each successive period of three (3) Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

7.2 Upfront fee

The Borrower shall pay to each Original Lender (for its own account) an upfront fee in the amount and at the times agreed in one or more Fee Letters.

8. REPLACEMENT OF SCREEN RATE

8.1 Amendments and waivers

- (a) Subject to the other terms of the Intercreditor Agreement, if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark; and
 - (ii)
 - (A) aligning any provision of this Agreement to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Obligors.

8.2 Definitions

In this Clause 8, the following terms shall have the following meanings:

“Majority Lenders” has the meaning given to that term in the Intercreditor Agreement in respect of this Agreement.

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Replacement Benchmark” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to a Screen Rate.

“Screen Rate Replacement Event” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Obligors materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than 1 month; or
- (d) in the opinion of the Majority Lenders and the Obligors, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

9. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

10. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

11. ENFORCEMENT

11.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding sub-clause (a) above, any Finance Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
THE ORIGINAL LENDERS

Name of Original Lender	Commitment
DBS Bank Ltd.	US\$ 30,000,000.00
Standard Chartered Bank, Philippines Branch	US\$ 25,000,000.00

Borrower

SIGNED for and on behalf of **SUNPOWER**)
PHILIPPINES MANUFACTURING LTD.:)
) /s/ Jeffrey W. Waters
) Duly Authorised Signatory
)
)
)
) Name: JEFFREY W. WATERS
)
)
)
) Title: AUTHORISED SIGNATORY
)

Original Lender

Signed by Ganesh Padmanabhan)
and _____)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Ganesh Padmanabhan_
Signature

Original Lender

Signed by Lynette V. Ortize)
a duly authorised representative)
for and on behalf of)
STANDARD CHARTERED BANK,)
PHILIPPINES BRANCH) /s/ Lynette V. Ortiz
Signature

Facility Agent

Signed by Chan Kim Lim and)	
Noor Azizah Ador)	
duly authorised representatives)	
for and on behalf of)	
DBS BANK LTD.)	<u>/s/ Chan Kim Lim</u> <u>/s/ Noor Azizah Ador</u>
	Signature	Signature

DATED 14 July 2020

MAXEON SOLAR TECHNOLOGIES, PTE. LTD.
AS THE BORROWER

DBS BANK LTD.
AS THE FACILITY AGENT

and

THE FINANCIAL INSTITUTIONS SET OUT AT SCHEDULE 1
AS ORIGINAL LENDERS

WORKING CAPITAL FACILITY AGREEMENT

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THIS AGREEMENT is dated 14 July 2020 and is made between:

- (1) **MAXEON SOLAR TECHNOLOGIES, PTE. LTD.**, a company incorporated in Singapore with registered number 201934268H and its registered address at 8 Marina Boulevard #05-02, Marina Bay Financial Centre, 018981, Singapore, as borrower (the “**Borrower**”);
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as original lenders (the “**Original Lenders**”); and
- (3) **DBS BANK LTD.** as agent of the Finance Parties (other than itself) (the “**Facility Agent**”).

IT IS AGREED as follows:

1. **INTERPRETATION**

Except as otherwise defined in this Agreement or to the extent that the context requires otherwise, terms defined and references construed in the Common Terms Agreement shall have the same meaning and construction when used in this Agreement. For the purposes of this Agreement:

1.1 **Definitions**

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “**Commitment**” in Schedule 1 (*The Original Working Capital Lenders*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Common Terms Agreement.

“**Common Terms Agreement**” means the common terms agreement dated on or about the date of this Agreement and entered into between the Borrowers, the Guarantors, the Intercreditor Agent, the Facility Agents, the Security Agents and the financial institutions listed in schedule 1 therein as original lenders

“**Facility**” the revolving working capital facility made available under this Agreement as described in clause 2.1 (*The Facilities*) of the Common Terms Agreement.

“**Fallback Interest Period**” means one Month.

“**Finance Party**” means the Facility Agent or a Lender.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to paragraph (a)(ii) of Clause 7.3 (*Cost of funds*).

“Historic Screen Rate” means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interest Payment Date” means the last day of each Interest Period.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 6 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 5.3 (*Default interest*).

“Interpolated Historic Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the most recent applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the most recent applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each for the currency of that Loan and each of which is as of a day which is no more than three (3) Business Days before the Quotation Day.

“Interpolated Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
 - (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of the Specified Time for the currency of that Loan.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with clause 21 (*Changes to the Lenders*) of the Common Terms Agreement, and this Agreement,

which in each case has not ceased to be a Party as such in accordance with the terms of the Common Terms Agreement and this Agreement.

“LIBOR” means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or

(b) as otherwise determined pursuant to Clause 5.3 (*Default interest*) below,
and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“Loan” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“London Business Day” means a day (other than a Saturday or Sunday) on which commercial banks are open for general business, including dealings in interbank deposits in London.

“Margin” means three point seven five per cent. (3.75%) per annum.

“Party” means a party to this Agreement.

“Quotation Day” means:

- (a) in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)); or
- (b) in relation to any Interest Period the duration of which is selected by the Facility Agent pursuant to Clause 5.3 (*Default interest*), such date as may be determined by the Facility Agent (acting reasonably).

“Screen Rate” means in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other entity or person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

“Utilisation” means a utilisation of the Facility.

“Utilisation Date” means the date of a Utilisation, being the date on which the relevant Loan is to be made .

“Utilisation Request” means a notice substantially in the relevant form set out in part I of schedule 3 (*Requests*) of the Common Terms Agreement.

1.2 **Currency symbols and definitions**

“\$”, “US\$” and “US dollars” denote the lawful currency of the US.

1.3 **Principles of Construction**

In this Agreement, the principles of construction set forth in clause 1.2 (*Construction*) of the Common Terms Agreement shall apply to this Agreement.

1.4 **Supremacy**

The rights and obligations of the Parties are subject to:

- (a) the terms and conditions of the Common Terms Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Common Terms Agreement, the terms and conditions of the Common Terms Agreement shall prevail; and
- (b) the terms and conditions of the Intercreditor Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

1.5 **Designation**

This Agreement is designated as a Finance Document for the purposes of the Common Terms Agreement.

1.6 **Third Party Rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any third person who is not a Party is not required to rescind or vary this Agreement at any time.

2. **REPAYMENT**

2.1 **Repayment of Loans**

- (a) Subject to paragraph (b) below, the Borrower shall repay each Loan on the last day of its Interest Period.
- (b) Without prejudice to the Borrower’s obligation under paragraph (a) above, if:
 - (i) one or more Loans are to be made available to the Borrower:
 - (A) on the same day that a maturing Loan is due to be repaid by the Borrower; and
 - (B) in whole or in part for the purpose of refinancing the maturing Loan; and

- (ii) the proportion borne by each Lender's participation in the maturing Loan to the amount of that maturing Loan is the same as the proportion borne by that Lender's participation in the new Loans to the aggregate amount of those new Loans,

the aggregate amount of the new Loans shall, unless the Borrower notifies the Facility Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Loan so that:

- (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
 - (1) the Borrower will only be required to make a payment under clause 25.1 (*Payments to the Facility Agents*) of the Common Terms Agreement in an amount equal to that excess; and
 - (2) each Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan and that Lender will not be required to make a payment under clause 25.1 (*Payments to the Facility Agents*) of the Common Terms Agreement in respect of its participation in the new Loans; and
- (B) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
 - (1) the Borrower will not be required to make a payment under clause 25.1 (*Payments to the Facility Agents*) of the Common Terms Agreement; and
 - (2) each Lender will be required to make a payment under clause 25.1 (*Payments to the Facility Agents*) of the Common Terms Agreement in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender's participation in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.

3. UTILISATION

- (a) In addition to the provisions of clauses 4.1 (*Initial conditions precedent*) and 4.2 (*Further conditions precedent*) of the Common Terms Agreement, the Lenders will only be obliged to participate in a Utilisation of the Facility (including any Utilisation to made in respect of Working Capital Rollover Loans) if:

- (i) the Borrower has made a representation in the relevant Utilisation Request that the aggregate amount of (i) Cash and Cash Equivalents held by the members of the Group (excluding SunPower Malaysia) and (ii) committed but undrawn facilities for Financial Indebtedness immediately available to be utilised by the members of the Group (excluding SunPower Malaysia) (excluding the Working Capital Facility), in each case on both the date of the Utilisation Request and on the proposed Utilisation Date is not less than USD 80,000,000 (or its equivalent in another currency or currencies); and
 - (ii) if requested by any Lender prior to the proposed Utilisation Date, the Borrower has provided reasonable detail demonstrating that the representation given under paragraph (i) is accurate.
- (b) For the purposes of this Clause 3, the terms “**Cash**” and “**Cash Equivalents**” shall have the meaning given to them in schedule 11 (*Financial Covenant Definitions*) of the Common Terms Agreement, **provided that** the definition of Cash shall exclude amounts which are held by a member of the Group in a DSRA.

4. **PREPAYMENT**

Unless a contrary indication appears in this Agreement or the Common Terms Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement and the Common Terms Agreement.

5. **INTEREST**

5.1 **Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

5.2 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of its Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six-monthly intervals after the first day of the Interest Period).

5.3 **Default interest**

- (a) If the Borrower fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the Unpaid Sum from the due date to the date of actual payment (both before and after judgment) at a rate which is, subject to paragraph (b) below, two per cent. (2%) per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted a Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 5.3 shall be immediately payable by the Borrower on demand by the Facility Agent.

- (b) If any Unpaid Sum consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the Unpaid Sum during that first Interest Period shall be two per cent. (2%) per annum higher than the rate which would have applied if the Unpaid Sum had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

5.4 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

6. INTEREST PERIODS

6.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this Clause 6, the Borrower may select an Interest Period of one, three or six Months or of any other period agreed between the Borrower, the Facility Agent and all the Lenders in relation to the relevant Loan.
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (d) Each Interest Period for a Loan shall start on the Utilisation Date.

6.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

6.3 Consolidation of Loans

If two or more Interest Periods end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

7. CHANGES TO THE CALCULATION OF INTEREST

7.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Shortened Interest Period*: If, after giving effect to paragraph (a) above, no Screen Rate is available for LIBOR for the Interest Period of a Loan, the Interest Period for that Loan shall (if it is longer than the Fallback Interest Period) be shortened to the Fallback Interest Period and the applicable LIBOR for that shortened Interest Period shall be determined pursuant to the definition of “LIBOR”.
- (c) *Shortened Interest Period and Historic Screen Rate*: If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the Fallback Interest Period or shorter than the Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR the applicable LIBOR shall be the Historic Screen Rate for that Loan.
- (d) *Shortened Interest Period and Interpolated Historic Screen Rate*: If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
- (e) *Cost of funds*: If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, there shall be no LIBOR for that Loan and Clause 7.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

7.2 Market disruption

- (a) If a Market Disruption Event occurs, then Clause 7.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) For the purposes of this Clause 7.2, “**Market Disruption Event**” means, before close of business in London on the Business Day immediately following the Quotation Day for the relevant Interest Period, the Facility Agent has received notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five per cent. (35%) of that Loan) that the cost to it or them of funding its or their participation(s) in that Loan from whatever source it or they may reasonably select would be in excess of LIBOR.

7.3 Cost of funds

- (a) If this Clause 7.3 applies, the rate of interest on each Lender’s share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and

(ii) the rate notified to the Facility Agent by such Lender as soon as practicable, and in any event one Business Day prior to the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.

- (b) If this Clause 7.3 applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 7.3 applies, the Facility Agent shall, as soon as is practicable, notify the Borrower.

7.4 Break Costs

- (e) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (f) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

8. FEES

8.1 Commitment fee

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee in US dollars computed at the rate of one per cent. (1.0%) per annum on that Lender's Available Commitment for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

8.2 Upfront fee

The Borrower shall pay to each Original Lender (for its own account) an upfront fee in the amount and at the times agreed in one or more Fee Letters.

9. AMENDMENTS AND WAIVERS

9.1 Restricted amendments

The Borrower agrees that it shall not request or consent to any amendments to the following provisions of the Common Terms Agreement without the prior written consent of the Facility Agent:

- (a) the definition of “Eligible Equipment” in clause 1.1 (*Definitions*);
- (b) clause 3.1(a) (*Purpose*);
- (c) clause 7.7 (*Mandatory Prepayment – Disposals*); and
- (d) clause 19.27 (*Purchase of Eligible Equipment*).

9.2 Replacement of Screen Rate

- (a) Subject to the other terms of the Intercreditor Agreement, if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark; and
 - (ii)
 - (A) aligning any provision of this Agreement to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Obligors.

9.3 Definitions

In this Clause 9, the following terms shall have the following meanings:

“**Majority Lenders**” has the meaning given to that term in the Intercreditor Agreement in respect of this Agreement.

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“**Replacement Benchmark**” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to a Screen Rate.

“**Screen Rate Replacement Event**” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Obligors materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than 1 month; or
- (d) in the opinion of the Majority Lenders and the Obligors, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

10. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

12. ENFORCEMENT

12.1 Jurisdiction of English courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding sub-clause (a) above, any Finance Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

SCHEDULE 1
THE ORIGINAL WORKING CAPITAL LENDERS

Name of Original Lender	Working Capital Facility Commitment
Goldman Sachs Lending Partners LLC	US\$ 50,000,000.00

Borrower

Signed by Jeffrey W. Waters)
a duly authorised signatory)
for and on behalf of)
MAXEON SOLAR)
TECHNOLOGIES, PTE. LTD.) /s/ Jeffrey W. Waters
Signature

Original Lender

GOLDMAN SACHS LENDING PARTNERS LLC,
a Delaware limited liability company,

By: /s/ Thomas M. Manning

Name: Thomas M. Manning
Title: Authorized Signatory

Facility Agent

Signed by Chan Kim Lim and)
Noor Azizah Ador)
duly authorised representatives)
for and on behalf of)
DBS BANK LTD.) /s/ Chan Kim Lim /s/ Noor Azizah Ador
Signature **Signature**