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

FORM 20-F

(Mark One)

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report

For the transition period from __ to __

Commission file number 001-34661

Newegg Commerce, Inc.
(Exact name of registrant as specified in its charter)

British Virgin Islands
(Jurisdiction of incorporation or organization)

Newegg Commerce, Inc.
17560 Rowland Street
City of Industry, CA 91748
(Address of principal executive offices)

Robert Chang
Chief Financial Officer
Newegg Commerce, Inc.
17560 Rowland Street
City of Industry, CA 91748
Telephone: (626) 271-9700
(Name, Telephone, Email and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Shares, par value $0.021848	NEGG	The Nasdaq Capital Market

Securities registered or to be registered pursuant to Section 12(g) of the Act. None.

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act. None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

As of December 31, 2022, there were 376,660,069 shares of the registrant's Common Shares outstanding.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☐ Yes ☒ No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. ☐ Yes ☒ No

Note – Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See definition of "large accelerated filer," "accelerated filer," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Non-accelerated filer	☒
Accelerated filer	☐	Emerging growth company	☐

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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. ☐

† The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP	☒	International Financial Reporting Standards as issued by the International Accounting Standards Board	☐	Other	☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. ☐ Item 17 ☐ Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

Background and Certain Defined Terms

As used in this annual report, unless otherwise specified, the terms "we," "our," "us," the "Company" and "Newegg" refer to the registrant, Newegg Commerce, Inc. (previously known as "Lianluo Smart Limited" or "LLIT").

References to the "Merger" refer to the merger of Newegg Inc. with Lianluo Smart Limited, which subsequently changed its name to Newegg Commerce, Inc.

Hangzhou Liaison Interactive Information Technology Co., Limited ("Hangzhou Lianluo"), is a publicly traded company in China and a majority owner of Newegg Commerce, Inc. through a wholly-owned subsidiary, Digital Grid (Hong Kong) Technology Co., Limited ("Digital Grid").

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DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This annual report contains forward-looking statements that reflect our current expectations and views of future events, all of which are subject to risks and uncertainties. Forward-looking statements give our current expectations or forecasts of future events. You can identify these statements by the fact that they do not relate strictly to historical or current facts. You can find many (but not all) of these statements by the use of words such as "approximates," "believes," "hopes," "expects," "anticipates," "estimates," "projects," "intends," "plans," "will," "would," "should," "could," "may" or other similar expressions in this annual report. These statements are likely to address our growth strategy, financial results and product and development programs. You must carefully consider any such statements and should understand that many factors could cause actual results to differ from our forward-looking statements. These factors may include inaccurate assumptions and a broad variety of other risks and uncertainties, including some that are known and some that are not. No forward-looking statement can be guaranteed and actual future results may vary materially. Factors that could cause actual results to differ from those discussed in the forward-looking statements include, but are not limited to:

- future financial and operating results, including revenues, income, expenditures, cash balances and other financial items;
- our ability to execute our growth and expansion, or manage our contraction, including our ability to meet our goals;
- current and future economic and political conditions;
- our ability to compete in an industry with low barriers to entry;
- our capital requirements and our ability to raise any additional financing which we may require;
- our ability to attract customers, and further enhance our brand recognition;
- our ability to hire and retain qualified management personnel and key employees in order to enable us to develop our business;
- trends and competition in the e-commerce industry;
- uncertainty about the ongoing impact of the COVID-19 pandemic on the Company's operations, the demand for the Company's products, supply chains, and economic activity in general;
- inflationary pressures and other macroeconomic factors that have affected and may continue to affect our business and financial condition; and
- other assumptions described in this annual report underlying or relating to any forward-looking statements.

We describe material risks, uncertainties and assumptions that could affect our business, including our financial condition and results of operations, under "Risk Factors." We base our forward-looking statements on our management's beliefs and assumptions based on information available to our management at the time the statements are made. We caution you that actual outcomes and results may, and are likely to, differ materially from what is expressed, implied or forecast by our forward-looking statements. Accordingly, you should be careful about relying on any forward-looking statements. Except as required under the federal securities laws, we do not have any intention or obligation to update publicly any forward-looking statements after the distribution of this annual report, whether as a result of new information, future events, changes in assumptions, or otherwise.

PART I

Item 1. Identity of Directors, Senior Management and Advisers

Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

A. [Reserved]

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

An investment in the Company's securities involves a high degree of risk. You should carefully consider the risks and uncertainties described below together with the other information set forth in this annual report. If any of the following risks or uncertainties actually occurs, our business, financial position and results of operations could be materially and adversely affected. In such case, the trading price of our securities could decline and you may lose all or part of your investment. Our business, financial condition, prospects, results of operations or cash flows could also be harmed by risks and uncertainties not currently known to us or that we currently do not believe are material. We cannot assure you that any of the events discussed in the risk factors below will not occur. The risks described below are organized by risk type and are not listed in order of their priority to us.

Summary of Factors That May Affect Our Future Results

The following summarizes the principal factors that make an investment in the Company speculative or risky. This summary should be read in conjunction with the remainder of this "Risk Factors" section and should not be relied upon as an exhaustive summary of the material risks facing our business. The occurrence of any of these risks could harm our business, financial condition, and results of operations or cause our actual results to differ materially from those contained in forward-looking statements we have made in this annual report. You should consider all of the risk factors described in our public filings when evaluating our business, including risks relating to:

- the impact of global macroeconomic conditions on consumer spending;
- the ongoing impact of COVID-19 on our business and financial results;
- our reputation and business if we or Newegg Marketplace sellers sell pirated, counterfeit, illegal or "gray market" items;
- the intense domestic and international competition we face;
- any decline in demand for IT/CE products;

- our inability to provide a satisfactory customer experience;
- our use of software and systems contain open source software;
- pricing strategies not meeting customers' price expectations or resulting in profitability;
- system interruptions, including failures caused or experienced by third-party service providers, and lack of redundancy and timely upgrade;
- our reliance on and relationships with third-party payment processors to process deposits and withdrawals made by users of our Marketplace;
- the loss of key employees or the failure to attract or retain qualified personnel;
- any significant inadvertent disclosure or breach of confidential or personal information we hold;
- our ability to promote and strengthen the Newegg brand;
- inflation, uncertainty and volatility in the financial markets and other macroeconomic factors;
- the material weaknesses we identified in our internal control over financial reporting;
- our international operations (principally in Canada);
- our expansion into new product categories, services, technologies and geographic regions;
- any interruption in our fulfillment operations;
- our reliance on a limited number of third-party courier service providers;
- pandemics and other public health crises, natural disasters, terrorist activities and political unrest;
- our dependence on relationships with vendors to source sufficient quantities of merchandise on favorable terms;
- our marketing activities to help attract visitors to our online platforms;
- delays, increased cost or quality control deficiencies in the importation of products manufactured abroad;
- our dependence on third parties to perform a number of our e-commerce functions;
- management of our inventory;
- the fact that we have incurred net losses in the past and may experience losses in the future;
- failure to adopt new technologies or adapt our websites, mobile apps and systems to changing customer requirements or emerging industry standards;
- the seasonality of our business;

- the life cycle fluctuations of the products we sell;
- the performance, reliability and security of the internet infrastructure in the countries where we operate;
- management of our growth or execution of our strategies;
- any adverse change in our vendor payment terms and conditions;
- our disclosure controls and procedures;
- our revolving credit agreement, which contains a number of covenants that may restrict our current and future operations;
- access to international markets and applicable laws relating to trade, export and import controls and economic sanctions;
- our ability to raise additional capital;
- claims, litigation, government investigations, and other proceedings may adversely affect our business and results of operations;
- our ability to adequately protect our intellectual property rights;
- any assertions, claims and allegations that we have infringed or violated intellectual property rights;
- product liability claims, which could be costly and time-consuming to defend;
- any additional costs incurred due to tax assessments resulting from ongoing and future audits by tax authorities;
- significant developments stemming from recent U.S. government actions and proposals concerning tariffs and other economic proposals;
- relatively stringent employment laws in some of the countries in which we operate;
- our ability to use our net operating loss carryforwards and certain other tax attributes;
- our being treated as a U.S. corporation for all U.S. federal tax purposes;
- the shares pledged as collateral to support delinquent indebtedness of our parent company;
- the extreme volatility of the market price of our common shares due to numerous circumstances beyond our control;
- Mr. Zhitao He and Mr. Fred Chang's approximate 59.3% and 34.6% control, respectively, and 93.9%, collectively, of the voting power of our issued and outstanding common shares;
- our status as a "controlled company" within the meaning of the Nasdaq Listing Rules and the corresponding exemptions from certain corporate governance requirements;
- certain provisions of Newegg's Amended Shareholders Agreement that may delay or prevent us from raising funding in the future and may have an adverse impact on us and the liquidity and market price of our common shares;
- any shareholder litigation due to the volatility in the price of our common shares, which may result in substantial costs and a diversion of our management's attention and resources;
- our failure to maintain compliance with Nasdaq Listing Rules, which may lead to us being delisted from Nasdaq, which would result in a limited public market for trading our shares and make obtaining future debt or equity financing more difficult;

- any involvement of our directors and officers in investigations or other forms of regulatory or governmental inquiry which may cause reputational harm to the Company, result in additional expenses, and distract our management from our day-to-day operations;
- securities or industry analysts not publishing research or reports about our business or adversely changing their recommendations regarding our common shares;
- techniques employed by short sellers to drive down the market price of our common shares;
- difficulty enforcing judgments against us, our directors and management;
- unavailability of certain types of class or derivative actions under British Virgin Islands law and other interests under U.S. law;
- protecting shareholder interests that would otherwise be normally available to shareholders of a U.S. corporation;
- our expectation not to pay dividends in the foreseeable future;
- certain home country (British Virgin Islands) practices in relation to corporate governance matters that differ significantly from Nasdaq's corporate governance listing standards, which may afford less protection to shareholders; and
- our foreign private issuer status, which exempts us from certain reporting requirements applicable to U.S. domestic public companies.

Risks Relating to Our Business

Global macroeconomic conditions and the effect of economic pressures and other business factors on discretionary consumer spending and consumer preferences may have a material adverse effect on our business, results of operations and financial condition.

Uncertainties in global macroeconomic conditions that are beyond our control have in the past impacted our business and may in the future materially adversely affect our business, results of operations, financial condition and stock price. These adverse economic conditions include inflation, slower growth or recession, new or increased tariffs and other changes to fiscal and monetary policy, higher interest rates, high unemployment, decreased consumer confidence in the economy, armed hostilities, foreign currency exchange rate fluctuations, conditions affecting the retail environment for products we sell, and other matters that influence consumer spending and preferences.

In addition, consumer confidence and spending can be materially adversely affected in response to financial market volatility, negative financial news, conditions in the real estate and mortgage markets, including home equity loans and consumer credit, changes in net worth based on market changes and uncertainty, energy shortages and cost increases, labor and healthcare costs, government actions and general uncertainty regarding the overall future economic environment. Some consumers view a substantial portion of the products we offer as discretionary items rather than necessities. As a result, our operating results are sensitive to changes in macroeconomic conditions that impact consumer spending, including discretionary spending. Declines in consumer spending have resulted, and in the future may result, in decreased demand for our products and services which may have an adverse effect on our results of operations.

A downturn in the economic environment can also lead to financial instability; increased credit and collectability risk on our receivables; the failure of important partners, including suppliers, logistics providers, and financial institutions; limitations on our ability to issue new debt; reduced liquidity and declines in the fair value of our financial instruments. These and other economic factors can materially adversely affect our business, results of operations, financial condition and stock price.

The ongoing impact of COVID-19, and any future outbreaks or public health emergencies, may adversely affect our business and financial results.

The COVID-19 pandemic and the various responses to it negatively impacted the global economy, disrupted consumer spending and global supply chains and created significant volatility and disruption of financial markets. Authorities across the United States and the globe implemented varying degrees of restriction on social and commercial activity. While certain of these restrictions have been lifted and phased re-openings occurred in some regions, some restrictions continued through fiscal 2022 in certain regions or to certain extents, and other regions have seen a resurgence of COVID-19 cases resulting in reinstitution or expansion of such measures.

We have at times seen increased demand for our products and services during the pandemic that has contributed to increased sales and market share. However, the course of the outbreak and its effects on consumer buying habits remains uncertain, and a prolonged global economic slowdown and increased unemployment could have a material adverse impact on economic conditions, which in turn could lead to a reduced demand for our products and services.

As a consequence of the COVID-19 outbreak, we have experienced occasional supply constraints, primarily in the form of delays in shipment of inventory. We have also experienced increases in the cost of certain products, as well as a decrease in promotions by some manufacturers. While we have so far considered such events to be relatively minor and temporary, continued supply chain disruptions could lead to delayed receipt of, or shortages in, inventory and higher costs.

Further, COVID-19 has impacted, and may continue to impact, the supply chain of our brand partners and Marketplace sellers, and our ability to timely fulfill orders and deliver such orders to our customers, particularly as a result of mandatory shutdowns in different countries and cities to mitigate the spread of the virus.

Although we cannot estimate the length or severity of the long-term effects of the COVID-19 outbreak at this time, any additional waves of increased infections or emergence of new strains of the virus may have an adverse effect on the results of our future operations. The full impact of COVID-19 on our operations remains uncertain and potentially widespread, including potential impacts on:

- our ability to successfully forecast sales and execute our long-term growth strategy during these uncertain times;
- the build-up of excess inventory as a result of lower consumer demand;
- supply chain disruptions experienced by brand partners and Marketplace sellers, resulting from closed factories, reduced workforces, scarcity of raw materials, and scrutiny or embargoing of goods produced in infected areas, along with increased freight costs for us;
- our ability to access capital sources and maintain compliance with our credit facilities, as well as the ability of our key customers, suppliers, and vendors to do the same in regard to their own obligations;
- our ability to collect outstanding receivables from our customers;
- our ability to attend and participate in industry and trade shows; and
- diversion of management and employee attention and resources from key business activities and risk management outside of COVID-19 response efforts, including cybersecurity and maintenance of internal controls, with resulting potential loss of employee productivity.

The impact of the COVID-19 pandemic continues to evolve and therefore, there can be no assurance that these potential negative impacts will not materialize, and these and other impacts of COVID-19 may adversely affect our future business, financial condition, cash flow, liquidity and results of operations.

Newegg's reputation and business may be harmed if Newegg or the Newegg Marketplace sellers sell pirated, counterfeit, illegal or "gray market" items.

We receive from time to time, and may receive in the future, communications alleging that Newegg or the Newegg Marketplace sellers sold pirated, counterfeit, illegal or "gray market" items. These and future claims could increase our cost of doing business as a result of legal expenses, adverse judgments or settlements, and reputational harm, and require us to change our business practices in a way that would be less efficient and more costly. In addition, key manufacturers and vendors, for instance, may be less likely to offer us favorable terms or authorization to carry their products if we sell products of theirs, purchased on the "gray market." We currently do not have any insurance to cover the types of claims that could be asserted in such litigation or in legal or administrative actions initiated by customers of such products, or by government agencies. If a claim were brought against us successfully, it could expose us to significant liability, which could have a material adverse effect on our business and operations.

Our business faces intense domestic and international competition.

The e-commerce market is intensely competitive with limited barriers to entry. Our current and potential competitors include retailers, manufacturers and distributors that offer a wide range of similar product categories and companies that provide Direct-to-Consumer ("D2C") platform services, fulfillment and logistics services and other e-commerce related services. It is expected that the competition in this market will intensify in the future as companies develop new business models and enhanced technologies, new competitors enter the market, competitors forge new business combinations or alliances, and established companies in other market segments expand to become competitive with our business.

Many of our current and potential online and brick-and-mortar competitors have larger bases of customers or third-party sellers, better brand recognition and greater financial, marketing, technical, management and other resources than we do. In addition, some of our competitors have used and may continue to use aggressive pricing or promotional strategies, may have stronger supplier relationships with more favorable terms and inventory allocation and may devote substantially greater resources to their online platforms and system development than we do. Increased competition may result in reduced operating margins, reduced profitability, loss of market share and diminished brand recognition for Newegg.

We compete with online retailers such as Amazon and traditional retailers like Best Buy and Walmart, who sell through brick-and-mortar stores and their online websites. In addition, we also face competition in the international markets in which we participate or may enter in the future. Certain other competitors in countries where we operate are subsidiaries of e-commerce competitors in the United States with established local operations and brands and with greater experience and resources than we have. In other countries that we may enter, there may be incumbent online and multi-channel online or brick-and-mortar competitors presently selling Information Technology/Consumer Electronic ("IT/CE") products. These incumbents may have advantages that could impede our expansion and growth in these markets.

We could also experience significant competitive pressure if any of our manufacturers or distributors were to initiate or expand their own online or brick-and-mortar retail operations. Because our manufacturers and distributors have access to merchandise at a lower cost than we do, they could sell products at lower prices and maintain a higher gross margin on their product sales than we can, and they may have the ability to directly connect with buyers at relatively low cost. This could result in our current and potential buyers deciding to purchase directly from these manufacturers and distributors instead of from Newegg. Increased competition from any manufacturer or distributor capable of maintaining high sales volumes and acquiring products at lower prices than we can, could significantly reduce our market share and adversely impact our operating results.

There is no assurance that we will be able to compete successfully against current and future competitors. Competitive pressures may materially and adversely affect our business, financial condition and results of operations.

A decline in demand for IT/CE products could adversely affect our operating results.

We and our Marketplace sellers primarily sell IT/CE products that are often discretionary purchases rather than necessities for consumers. Consequently, our results of operations tend to be sensitive to changes in macroeconomic conditions and their impact on consumer spending. Factors including customer confidence, employment levels, conditions in the residential real estate and mortgage markets, access to credit, interest rates, tax rates, customer debt levels and fuel and energy costs could reduce customer spending or change customer purchasing habits in ways that materially and adversely affect demand for the products that we and our Marketplace sellers offer.

There could be declines in the sales of the products offered by us and our Marketplace sellers due to several factors, including:

- decreased demand for IT/CE products, particularly computer components and parts that have historically generated a significant portion of our net sales;
- poor economic conditions and any related decline in customers' demand for the products we and our Marketplace sellers offer;
- increased price competition from our competitors; or
- technological obsolescence of the products that we and our Marketplace sellers offer.

Additionally, it is expected that some of our future growth should be driven by product releases or upgrades that may occur in the near future. If such product releases do not occur or do not drive sales of IT/CE products to the extent expected, our future sales may be less than predicted, negatively impacting our net sales and net income.

If we are unable to provide a satisfactory customer experience, our reputation would be harmed and we could lose customers.

The success of our business depends largely on our ability to provide a superior customer experience to maintain and grow our customer base and keep our customers highly engaged on our online platforms, which in turn depends on a variety of factors. These include our ability to continue to maintain a wide range of product offerings with attractive pricing, provide timely and reliable order fulfillment and provide high-quality customer support and service. If our customers are not satisfied with our platforms, products or services, or our online platforms are severely interrupted or otherwise fail to meet our customers' requests, our reputation could be adversely affected.

As an e-commerce company, we have limited ability to allow buyers to touch, test and feel products, personally interact with sales and customer service representatives, and receive or return products without waiting or paying for the products to be shipped, like brick-and-mortar retailers or online retailers that have brick-and-mortar operations do. Therefore, it is important that we continue to improve our online platforms, including efforts to encourage the creation of more high-quality and useful user-generated content, such as reviews and commentary, on the products we and our Marketplace sellers offer. If we do not continue to make investments in the development of our online platforms and customer service operations and, as a result, or due to other reasons, fail to provide a high-quality customer experience, we may lose customers, which could adversely impact our operating results.

We currently operate customer service centers in California and Texas, focusing on serving North American buyers. To enhance our service capabilities and maintain increased access, Newegg operates an Asia-based multilingual customer service center that is available seven days a week, via email and instant messaging. Any material disruption or slowdown in our customer support services resulting from telephone or internet failures, power or service outages, natural disasters, labor disputes or other events could make it difficult or impossible for us to provide adequate customer support. In addition, the future volume of customer complaints and inquiries may exceed our present system capacities. If this occurs, we could experience delays in responding to customer inquiries and addressing customer complaints and concerns. Our current level of customer support may also fail to meet the expectations of customers. Failure to provide satisfactory levels of customer service may harm our reputation, causing potential loss of existing customers and difficulty in acquiring new customers.

Some of our software and systems contain open source software, which may pose particular risks to our proprietary software and solutions.

We have incorporated open source software code into some of our internal software and systems and expect to continue to use this open source software in the future. The licenses applicable to open source software typically require that the source code subject to the license be made available to the public and that any modifications or derivative works to open source software continue to be licensed under open source licenses. From time to time, we may face intellectual property infringement claims from third parties, demands for the release or license of the open source software or derivative works that we developed using such software (which could include our proprietary source code) or claims that otherwise seek to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to purchase a costly license, publicly release the affected portions of our source code, be limited in the licensing of our technologies or cease offering the implicated solutions unless and until we can re-engineer them to avoid infringement or change the use of the implicated open source software. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties, indemnities or other contractual protections with respect to the software (for example, non-infringement or functionality). Our use of open source software may also present additional security risks because the source code for open source software is publicly available, which may make it easier for hackers and other third parties to determine how to breach our websites, mobile apps and systems that rely on open source software. Any of these risks could be difficult to eliminate or manage and, if not addressed, could have a material adverse effect on our business, financial condition and results of operations.

We and our Marketplace sellers' pricing strategy may not meet customers' price expectations or result in profitability.

Demand for our products is generally highly sensitive to price. Our pricing strategies have had, and may continue to have, a significant impact on our net sales and net income. We often offer discounted prices, free or discounted shipping or bundled products as a means of attracting customers and encouraging repeat purchases. Such offers and discounts may reduce our margins. Moreover, our competitors' pricing and marketing strategies are beyond our control and can significantly impact the results of our pricing strategies. If we fail to meet our customers' price expectations in any given period, or if our competitors decide to engage in aggressive pricing strategies, our business and results of operations would suffer.

In addition, under applicable federal and state unfair competition laws, including the California Consumer Legal Remedies Act, and U.S. Federal Trade Commission regulations, we are required to accurately identify product offerings, not make misleading claims on our platforms, and use qualifying disclosures where and when appropriate. We are particularly subject to the risks associated with our discounting pricing practices as a result of the aggressive judicial interpretations of deceptive pricing laws, particularly in California, which has led to numerous class action settlements by online and brick-and-mortar retailers over the past few years. For example, Newegg was named as the defendant in a putative class action accusing it of violating the False Advertising Law, the Unfair Competition Law and the Consumer Legal Remedies Act by using allegedly deceptive list prices with allegedly overstated discounts for our products. While the trial court had sustained without leave to amend our demurrer to such lawsuit, in July 2018, a California appellate panel reversed the trial court's judgment and reinstated the action against us. This matter is still pending as of the date of this annual report. There can be no assurance that we will be able to prevail in the foregoing action or that we will be able to settle the dispute on terms favorable to us. Any adverse outcome of the foregoing class action or other lawsuits challenging deceptive pricing against us could have a material adverse effect on our reputation, business and financial condition.

We generally are not able to control the pricing strategies of our Marketplace sellers, which could affect our net income and our ability to effectively compete on price with other e-commerce retailers and brick-and-mortar stores. Our inability to execute an effective pricing strategy, or a determination by our Marketplace sellers that they can more competitively price their products through other distribution channels could adversely affect our business, financial condition, results of operations and prospects.

Operational Risks

We face risks related to system interruption, including failures caused or experienced by third-party service providers, and lack of redundancy and timely upgrades.

Our success depends on our ability to successfully receive and fulfill orders and to promptly deliver such orders to our customers. We could lose existing customers or fail to attract new customers, potentially resulting in a decline in net sales, if our online platforms are inaccessible or if our transaction processing systems, order fulfillment processes or network infrastructure are not operational or performing to our customers' satisfaction.

Any internet network interruptions, latency or problems with our online platforms' availability could prevent customers from accessing, browsing and placing orders on our online platforms, and impact our ability to fulfill orders or bill customers, which may cause customer dissatisfaction and damage our reputation and brand. We have experienced brief computer system interruptions in the past and believe that others will occur from time to time in the future. Our systems and operations potentially are vulnerable to damage or interruption from a number of sources, including the following:

- natural disaster or other catastrophic event such as earthquake, fire, power loss or interruption, telecommunications failure, hurricane, volcanic eruption, flood or terrorist attack. For example, our headquarters and the majority of our infrastructure, including some of our servers, are located in Southern California, a seismically active region. In addition, California has in the past experienced power outages as a result of limited electric power supply;
- diseases or pandemics (including COVID-19) that have affected and may continue to affect the supply chain of our brand partners and Marketplace sellers, and our logistics in the future due to inconsistent and unanticipated order patterns, other diseases or pandemics or unforeseen natural disasters;
- computer malware, physical or electronic break-ins and similar disruptions;
- security breaches and hacking attacks;
- failure by third-party vendors, including data center and bandwidth providers, to provide steady and high-speed access to our online platforms and systems. Any disruption in our network access or co-location services, which are the services that house some of our servers and provide internet access to them, provided by these third-party providers or any failure of these third-party vendors to handle existing or higher volumes of use could significantly harm our business. Any financial or other difficulties these vendors face could also adversely affect our business; and
- incidents of fraud.

We have not yet created sufficient redundancy for our information technology systems and data, and we do not presently maintain backup copies of all of its data. Newegg has a limited disaster recovery plan in effect and may not have sufficient insurance for losses that may occur from natural disasters, catastrophic events or the resulting business interruption. Any substantial damage to, or disruption of, our technology infrastructure could cause interruptions or delays, loss of data, or reduced system availability, which could have a material adverse effect on our business, financial condition and results of operations.

We may be unable to accurately project the rate or timing of traffic flow, including any traffic increases, or successfully and cost-effectively upgrade our systems and infrastructure in a timely manner to accommodate higher traffic levels on our online platforms. If the volume of traffic on our online platforms or the number of purchases made by our customers increases substantially, we may experience unanticipated system disruptions, slower response times, reduced levels of customer service and impaired quality and delays in reporting accurate financial information. For example, we experience surges in online traffic and orders associated with promotional activities and holiday seasons, especially during Black Friday and the Christmas holiday season, which can put additional demands on our technology platform at specific times.

Additionally, we must continue to upgrade and improve our technology and infrastructure to support our business growth, and failure to do so could impede our growth. However, we cannot assure you that we will be successful in executing these system upgrades and improvement strategies. Any such upgrades to our systems and infrastructure could require substantial investments. In particular, our systems may experience interruptions during upgrades, and the new technologies or infrastructures may not be fully integrated with the existing systems on a timely basis, or at all. If our existing or future technology and infrastructure do not function properly, it could cause system disruptions and slow response times, affecting data transmission, which in turn could materially and adversely affect our business, financial condition and results of operations.

We rely on third-party payment processors to process deposits and withdrawals made by users of our Marketplace, and if we cannot manage our relationships with such third parties and other payment-related risks, our business, financial condition and results of operations could be adversely affected.

We rely on a limited number of third-party payment solutions to process deposits and withdrawals made by users of our Marketplace. If any third-party payment solution terminates its relationship with Newegg or refuses to renew its agreement with Newegg on commercially reasonable terms, we would need to find an alternate payment solution, and may not be able to secure similar terms or replace such payment solution in an acceptable time frame. Further, the software and services provided by our third-party payment solutions may not meet our expectations, contain errors or vulnerabilities, be compromised or experience outages. Any of these risks could cause us to lose our ability to accept online payments or other payment transactions or make timely payments to users of our Marketplace, any of which could make our Marketplace less trustworthy and convenient and adversely affect our ability to attract and retain our users.

Nearly all of our users' payments are made by credit card, debit card or through other third-party payment services, which subjects Newegg to certain regulations and to the risk of fraud. We may in the future offer new payment options to users that may be subject to additional regulations and risks. We are also subject to a number of other laws and regulations relating to the payments we accept from our users, including with respect to money laundering, money transfers, privacy and information security. If we fail to comply with applicable rules and regulations, we may be subject to civil or criminal penalties, fines and/or higher transaction fees and may lose our ability to accept online payments or other payment card transactions, which could make our Marketplace less convenient and attractive to our users. If any of these events were to occur, our business, financial condition and results of operations could be adversely affected.

Additionally, card organizations, including Visa, require Newegg to comply with payment card network operating rules, which are set and interpreted by the payment card networks. The payment card networks could adopt new operating rules or interpret or reinterpret existing rules in ways that might prohibit us from providing certain offerings to some users, be costly to implement or difficult to follow. We have agreed to reimburse our payment processors for fines, penalties or assessments that are assessed by card organizations if we or the users on our Marketplace violate these rules, and as a result we may be subject to fines, penalties or assessments assessed by card organizations against us from time to time. Any of the foregoing risks could adversely affect our business, financial condition and results of operations.

The loss of key employees or the failure to attract or retain qualified personnel can have a material adverse effect on our ability to run our business.

The loss of any of our current executives, key employees or key advisors, or the failure to attract, integrate, motivate and retain additional key employees, can have a material adverse effect on our business. Competition for well-qualified and skilled employees has been increasingly intense, and our future success also depends on our continuing ability to attract, develop, motivate and retain highly qualified and skilled employees, including, in particular, software engineers, data scientists and technology and fulfillment professionals. Although we have employment agreements with our executive officers, all of our executive officers are employed "at-will" and could terminate their employment at any time. If we lose one or more of our executive officers or other key employees, our ability to implement our business strategy successfully can be seriously harmed. Furthermore, replacing executive officers or other key employees with other highly skilled and qualified candidates has been and may continue to be difficult, taking an extended period of time. Recruiting skilled personnel is highly competitive. The increased availability of flexible or remote work arrangements, accelerated by the COVID-19 pandemic, has both intensified and expanded competition for qualified personnel. There can be no assurance that we will continue to attract and retain the personnel needed for our business. The failure to attract or retain qualified personnel could have a material adverse effect on our business.

A significant inadvertent disclosure or breach of confidential or personal information we hold could be detrimental to our business, reputation and results of operations.

Our business requires the storage, transmission and utilization of data, including personal information, much of which must be maintained on a confidential basis. These activities have made, and may in the future make, us a target of cyber-attacks by third parties seeking unauthorized access to the data we maintain, including our customer data, or to disrupt our ability to provide service. As a result of the types and volume of personal data on our systems, we believe that we are a particularly attractive target for such breaches and attacks. For example, in 2018, Newegg suffered an intrusion of a portion of its network, as a result of which access was gained to a limited amount of credit card information.

In recent years, the frequency, severity and sophistication of cyber-attacks, computer malware, viruses, social engineering, and other intentional misconduct by computer hackers has significantly increased, and government agencies and security experts have warned about the growing risks of hackers, cyber criminals and other potential attackers targeting information technology systems. Such third parties could attempt to gain entry to our systems for the purpose of stealing data or disrupting the systems. In addition, our security measures may also be breached due to employee error, malfeasance, system errors or vulnerabilities, including vulnerabilities of our vendors, suppliers, their products, or otherwise. Third parties may also attempt to fraudulently induce employees or customers into disclosing sensitive information such as usernames, passwords or other information to gain access to our customers' data or our data, including intellectual property and other confidential business information.

While we have implemented security measures designed to protect against security breaches, these measures could fail or may be insufficient, particularly as techniques used to sabotage or obtain unauthorized access to systems change frequently and generally are not recognized until launched against a target, resulting in the unauthorized disclosure, modification, misuse, destruction, or loss of our or our customers' data or other sensitive information. Any failure to prevent or mitigate security breaches and improper access to or disclosure of the data we maintain, including personal information, could result in litigation, indemnity obligations, regulatory enforcement actions, investigations, fines, penalties, mitigation and remediation costs, disputes, reputational harm, diversion of management's attention, and other liabilities and damage to our business.

We believe we have taken appropriate measures to protect our systems from intrusion, but we cannot be certain that advances in criminal capabilities, discovery of new vulnerabilities in our systems and attempts to exploit those vulnerabilities, physical system or facility break-ins and data thefts or other developments will not compromise or breach the technology protecting our systems and the information we possess.

We may incur significant costs in protecting against or remediating cyber-attacks. Any security breach could result in operational disruptions that impair our ability to meet our customers' requirements, which could result in decreased revenue. Also, whether there is an actual or a perceived breach of our security, our reputation could suffer irreparable harm, causing our current and prospective customers to reject our products and services in the future, deterring data suppliers from supplying us data or customers from uploading their data on our platform, or changing consumer behaviors and use of our technology. Further, we could be forced to expend significant resources in response to a security breach, including those expended in notifying individuals and providing mitigating services, repairing system damage, increasing cybersecurity protection costs by deploying additional personnel and protection technologies, and litigating and resolving legal claims or governmental inquiries and investigations, all of which could divert the attention of our management and key personnel away from our business operations. Federal, state and foreign governments continue to consider and implement laws and regulations addressing data privacy, cybersecurity, and data protection laws, which include provisions relating to breaches. In any event, a significant security breach could materially harm our business, operating results and financial condition.

We may not succeed in promoting and strengthening the Newegg brand, which may materially and adversely affect our business and results of operations.

Brand recognition is a primary competitive factor in the e-commerce market and will be a key factor in maintaining and expanding our customer base, market position and bargaining power with vendors. Any loss of trust in our brand could harm our reputation and result in consumers, sellers, brands, vendors and other participants reducing their activity level in our business, which could materially reduce our profitability.

If we do not, or are unable to continue to, promote and strengthen the Newegg brand, or if the brand fails to continue to be viewed favorably, we may not be successful in attracting new customers and Marketplace sellers, which could have a material adverse effect on our financial condition and results of operations. Additionally, we compete not only for customers and Marketplace sellers, but also for favorable product allocations and cooperative advertising support from our vendors. If we fail to maintain favorable recognition of our brand, we may not be successful in maintaining and strengthening our relationships with vendors in existing and new product categories or in maintaining existing offerings and sourcing new products at competitive prices and with adequate levels of inventory.

Adverse publicity about Newegg may arise from time to time. Negative comments about our online platforms, the products and services offered by us and our Marketplace sellers or our management may appear in internet postings and other media sources from time to time, and there is no assurance that other types of negative publicity of a more serious nature will not arise in the future. For example, if our customer service representatives fail to satisfy the individual needs of the customers, the customers may become disgruntled and disseminate negative comments about our customer service. In addition, our Marketplace sellers and brand partners may also be subject to negative publicity for various reasons, such as customers' complaints about the quality of their products and related services or other public relations incidents, which may adversely affect the sales of their products through Newegg and indirectly affect our reputation. Moreover, negative publicity about other online retailers or the e-commerce industry in general may arise from time to time and cause customers to lose confidence in the products and services Newegg offers. Any such negative publicity, regardless of veracity, may have a material adverse effect on our business, reputation and financial condition.

Our business, operating results, and cash flows may be adversely impacted by a rising rate of inflation.

Due to labor and supply chain constraints, including those stemming from the ongoing effects of the COVID-19 pandemic, there has been an inflationary environment resulting in significant increases to the cost of components, labor and freight costs and other expenses. These inflationary pressures have affected, and may continue to affect, wages, the cost and our ability to obtain products, the price of our goods and services, our ability to meet customer demand, discretionary consumer spending that may lead to lesser demand for our products, our gross margins and operating profit. If we are unable to successfully manage the effects of inflation, our business, operating results, cash flows and financial condition may be adversely affected. In addition, inflation may amplify or exacerbate many of the other risks discussed in this "Risk Factors" section.

We identified material weaknesses in our internal control over financial reporting and may identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, which could result in material misstatements of our consolidated financial statements or cause us to fail to meet our periodic reporting obligations.

We have identified material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. We have concluded that material weaknesses arose because we did not have effective internal controls in place with respect to the Control Activities and Information & Communication components of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) internal control framework.

For a description of the identified material weaknesses, see Item 15, "Controls and Procedures." In connection with management's identification of these material weaknesses, management has concluded that our disclosure controls and procedures were not effective as of December 31, 2022 and 2021.

As further described in Item 15 "Controls and Procedures," we have undertaken steps to improve our internal control over financial reporting. We expect that we will need to improve existing procedures and controls, and implement new ones, to remediate the material weaknesses. We may not be successful in making the improvements necessary to remediate the material weaknesses identified by management or be able to do so in a timely manner. Any inability to remediate the material weaknesses effectively or in a timely manner, or the identification of any new material weaknesses in the future, could limit our ability to prevent or detect a misstatement of our accounts or disclosures and could result in a material misstatement of our annual or interim financial statements. In such case, we may be unable to maintain compliance with securities law requirements regarding timely filing of periodic reports in addition to applicable stock exchange listing requirements, investors may lose confidence in our financial reporting and the price of our common stock may decline as a result.

We are, or may become, subject to risks associated with our international operations, principally in Canada, which may harm our business.

Newegg began operations on our Canadian retail website, www.newegg.ca, in October 2008. We also have a physical presence in China and Taiwan. While we may invest in building our business in other markets, we may not be able to successfully manage the challenges associated with our current and future international operations due to risks, such as:

- international economic and political conditions or geopolitical events and security issues (including terrorist attacks, war, or other armed hostilities);

- changes in, or impositions of, legislative or regulatory requirements on e-commerce businesses and companies, such as U.S. sanctions laws and regulations, and limitations on our ability to directly own or control key assets, such as overseas warehouses;
- the legal and regulatory environment in foreign jurisdictions, including with respect to consumer privacy and data protection laws, tax, law enforcement, network security, trade compliance and intellectual property matters, as well as consumer litigation;
- tax laws, regulations and treaties, including U.S. taxes on foreign operations and repatriation of funds;
- difficulties in identifying, attracting, hiring, training and retaining qualified personnel, and overseeing international operations, including the efficient management of our international operations;
- delays or additional costs resulting from import/export controls, duties, tariffs or other barriers to trade; and
- currency exchange controls or changes in exchange rates, which could make our pricing less competitive or reduce our profit margins.

Any one of the foregoing factors could cause our business, financial condition and results of operations to suffer.

Any future expansion into new product categories, services, technologies and geographic regions may subject us to additional business, legal, financial and competitive risks.

Any future expansion into new product categories, services, technologies and regions, such as our expansion into Canada and our third-party service offerings under Newegg Partner Services ("NPS"), is subject to risk. In directing our focus into new areas, we face numerous risks and challenges, including alienating our core customer base, facing new competitors, having the increased need to develop new strategic relationships and straining our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. There is no assurance that our strategy will result in increased net sales or net income. Furthermore, growth into new business areas may require changes to our existing business model and cost structure, modifications to our infrastructure, and exposure to new regulatory and legal risks related to operating in new jurisdictions, any of which may require expertise in areas in which we have little or no experience. These risks may pose a material adverse risk to our business, financial condition and results of operations.

Any interruption in our fulfillment operations may have an adverse impact on our business.

Our ability to process and fulfill orders accurately and provide high-quality customer service depends on the smooth operation of our fulfillment infrastructure, including our warehouses and order processing centers. If we do not optimize and operate our fulfillment infrastructure successfully and efficiently, it could result in excess or insufficient fulfillment capacity, an increase in costs or impairment charges and a reduction in our gross profit margin, or harm our business in other ways. If we do not have sufficient fulfillment capacity or experience a problem fulfilling orders in a timely manner or if certain products are out of stock, our customers may experience delays in receiving their orders, which could harm our reputation and our relationship with our customers.

Our fulfillment infrastructure may be vulnerable to damage caused by fire, floods, power outages, telecommunications failures, break-ins, earthquakes, human error and other events. For example, our warehouse located in Indianapolis experienced a significant fire in January 2019, causing damage to our inventory. In addition, in May 2022, our warehouse located in Toronto, Canada experienced a break-in and theft of approximately $3.4 million of inventory. Our fulfillment infrastructure and processes may also contain undetected errors or design flaws that may cause our fulfillment operations to fail and materially impact our business and results of operations. If, for example, any of our warehouses were rendered incapable of operations, we may be unable to fulfill any orders in areas that rely on that warehouse. While we maintain property and business interruption insurance to protect against losses of this nature, we cannot guarantee that such insurance will be available in the future at terms and rates acceptable to us, nor can we guarantee that any related insurance claims will be paid out in a timely manner, or at all. The occurrence of any of the foregoing risks could have a material adverse effect on our business, prospects, financial condition and results of operations.

We rely on a limited number of third-party courier service providers to deliver our products, and their failure to provide high-quality courier services in a timely manner, if at all, to our customers may negatively impact the procurement experience of our customers, damage our market reputation and materially and adversely affect our business and results of operations.

We rely on a limited number of third-party courier service providers to deliver products to our customers. For the periods of the fiscal years ended December 31, 2022 and 2021, approximately 78.2% and 76.7%, respectively, of our total packages were shipped by our top three third-party courier service providers. Interruptions to or failures in these couriers' shipping services could prevent the timely or successful delivery of our products. These interruptions may be due to unforeseen events that are beyond our control or the control of these third-party couriers, such as inclement weather, natural disasters or labor unrest. If our products are not delivered on time or are delivered in a damaged state, customers may refuse to accept our products and have less confidence in our services. As a result, we could lose customers, and our financial condition and market reputation could suffer.

Pandemics or other public health crises, natural disasters, terrorist activities, and political unrest could disrupt our delivery and operations, which could materially and adversely affect our business, financial condition, and results of operations.

Global pandemics, epidemics or other public health crises in China or elsewhere in the world, or natural disasters such as hurricanes, earthquakes, tsunamis, fire, or drought could disrupt our business operations, reduce or restrict our operations and services, incur significant costs to protect our employees and facilities, or result in regional or global economic distress, which may materially and adversely affect our business, financial condition, and results of operations. Actual or threatened war, terrorist activities, political unrest, civil strife, and other geopolitical uncertainty could have a similar adverse effect on our business, financial condition, and results of operations. It is difficult to assess the likelihood of such threat and any potential impact at this time. Any one or more of these events may impede our operation and delivery efforts and adversely affect our sales results, or even for a prolonged period of time, which could materially and adversely affect our business, financial condition, and results of operations.

We depend on our vendors to source sufficient quantities of merchandise on favorable terms. If we fail to maintain strong vendor relationships or if our vendors are otherwise unable to supply products that meet our standards in a timely manner, our net sales and net income could suffer.

Our contracts or arrangements with vendors generally do not guarantee the availability of merchandise or provide for the continuation of particular pricing or other practices. Our vendors may not continue to sell their inventory to us on current terms or at all, and, if the terms are changed, we may not be able to establish new supply relationships on similar or better terms. In most cases, our relationships with our vendors do not restrict them from selling their products through our competitors. Newegg competes with other retailers for favorable product allocations and vendor incentives from product manufacturers and distributors, including but not limited to marketing dollars and volume-based sales incentive programs. Some of our competitors could enter into exclusive or favorable distribution arrangements for certain products with our vendors, which would deny us complete or partial access to those products and marketing and promotional resources. In addition, some vendors whose products are offered on our online platforms also sell their products directly to customers. If we are unable to develop and maintain relationships with vendors that permit us to obtain sufficient quantities of desirable merchandise on favorable terms, our business, financial condition and results of operations could be adversely impacted.

Our relationship with any particular vendor is dependent on our sales of products manufactured or distributed by that vendor. For certain products, we do not currently, and in the future may not be able to, meet the sales volumes or other requirements necessary to receive favorable treatment from the manufacturer of that product. As a result, we may not receive favorable pricing, vendor incentives or other considerations from those vendors. During times of short supply for highly desirable products, we may not receive adequate, or any, allocation of a popular product, leading to lost sales and customer dissatisfaction.

Certain products help create and maintain customer loyalty to the Newegg brand. Failing to maintain an adequate supply of these products could damage our ability to retain customers. We currently do not carry the full product portfolio of, and in some cases do not carry any products of, certain well-known brands. As a result, consumers who are searching for those brands may not be able to purchase products from us or purchase them at the most favorable prices, leading to potentially reduced net sales and net income.

Certain vendors provide a significant portion of our merchandise. In the United States and Canada, for the twelve months ended December 31, 2022, our ten largest suppliers accounted for approximately 73% of the merchandise we purchased. Three of our ten largest suppliers, Giga-Byte Technology, ASI Corporation, and MSI Computer Corporation, accounted for approximately 39% of our purchases for the same period. Failure to maintain a positive relationship with these key suppliers could impact our ability to sell to customers the products they want.

Our vendors' financial performance, liquidity and access to capital may be materially adversely affected by many factors, including, but not limited to: general economic factors, such as a continued slowdown in the U.S. or global economy or an uncertain economic outlook; political or financial instability; merchandise quality issues; product safety concerns; trade restrictions; work stoppages; tariffs; international trade war; foreign currency exchange rates; transportation capacity and costs; inflation; or outbreak of pandemics. These and other issues may affect their ability to maintain their inventories, production levels and/or product quality and could cause them to raise prices, lower production levels or cease their operations, all of which may in turn materially adversely affect our net sales and net income.

We conduct marketing activities to help attract visitors to our online platforms, and if we are unable to attract these visitors or convert them into customers in a cost-effective manner, our business and results of operations could be harmed.

Our success depends on our ability to attract visitors to our online platforms and convert them into customers in a cost-effective manner. We rely on search engines, social media, shopping comparison sites and other affiliate networks to provide content, advertising banners and other links that direct visitors to our online platforms. As of December 31, 2022, approximately 34% of our website and mobile app visitors were referred to us through paid and unpaid search engine listings, shopping comparison sites and other affiliate networks that provide links to our online platforms. In particular, we rely on search engines, such as Google, Microsoft Bing and Yahoo!, and social media platforms, such as TikTok, Facebook and Instagram, as important marketing channels. If search engines or social media platforms change their search engine algorithms periodically or penalize us for non-compliance with their guidelines while using their algorithms, terms of service, or display and featuring of search results, or if competition increases for advertisements, we may be unable to cost-effectively drive visitors to our websites and mobile apps. We also sometimes pay these third parties to include or highlight our websites in their search results. If such third parties modify or terminate their relationship with us or increase the price they charge to us, if our competitors offer them greater fees for traffic, or if any free third-party platforms on which we rely begin charging fees for listing or placement, our expenses could rise and traffic to our websites could decrease, resulting in harm to our operations.

Our success also depends on our ability to convert visitors to our websites and mobile apps into paying customers, a process which is partially reliant upon our ability to identify and purchase relevant keyword search terms, provide relevant content on our online platforms and effectively target our other marketing programs, such as internet portal referrals, email campaigns and affiliate programs. If we are unable to attract visitors to our websites and mobile apps and convert them into customers cost-effectively, our business and financial results may be harmed.

Because many of the products that we sell are manufactured abroad, we may face delays, increased cost or quality control deficiencies in the importation of these products, which could reduce our net sales and profitability.

Many of the products that we purchase for direct sale on our online platforms are manufactured in countries outside the United States. These imported products subject us to the risk of changes in import duties or quotas, new restrictions on imports, work stoppages, delays in shipment, freight cost increases, product cost increases due to foreign currency fluctuations or revaluations and economic uncertainties (including the imposition of antidumping or countervailing duty orders, safeguards, remedies or compensation and retaliation due to illegal foreign trade practices) and instability in the political and economic environments of the countries in which the manufacturers of these products operate. If any of these or other factors were to cause a disruption of trade from these countries, we may be unable to obtain sufficient quantities of these imported products to satisfy our requirements or our cost of obtaining such products may increase. Historically, instability in the political and economic environments of the countries in which our suppliers operate has not had a material adverse effect on our operations. However, the effect that future changes in economic or political conditions in the foreign countries where our supplying manufacturers are located may have on our operations cannot be predicted. Potential disruptions or delays in supply due to economic or political conditions in foreign countries could adversely affect our results of operations unless and until alternative supply arrangements are made.

We are partially dependent on third parties to perform a number of our e-commerce functions. If such third parties are unwilling or unable to continue providing these services, our business could be harmed.

As of December 31, 2022, approximately 8.0% of our gross merchandise value ("GMV") was generated by the sale of products fulfilled through third parties. These third parties provide various services on our behalf, including inventory maintenance and order processing. We have no effective means to ensure that these third parties will continue to perform these services to our satisfaction, in a manner satisfactory to our customers or on commercially reasonable terms. Our customers may become dissatisfied and cancel their orders or decline to make future purchases if these third parties fail to deliver products on a timely basis. If our customers become dissatisfied with the services provided by these third parties, our reputation and brand could suffer.

If we fail to manage our inventory effectively, our financial condition, results of operations and liquidity may be materially and adversely affected.

Our scale and business model require us to manage a large volume of inventory effectively. If we expand our product offerings and include more SKUs in our inventory, it could make it more challenging for us to manage our inventory effectively and put more pressure on our warehousing system.

We purchase most of the merchandise that we sell directly to customers on our online platforms from manufacturers or distributors. We assume inventory damage, theft, obsolescence, and price erosion risks for our inventory. These risks are especially significant as most of the merchandise sold on our online platforms is characterized by rapid technological change, obsolescence and price erosion. For the year ended December 31, 2022, we recorded inventory write-offs or write-downs totaling $6.0 million, or 0.4% of our cost of goods sold. We may sell obsolete or dated merchandise at a discount or loss. If there were unforeseen product developments or if vendors were to change their terms and conditions, our inventory risks could increase. We also periodically take advantage of cost savings associated with certain opportunistic bulk inventory purchases offered by our vendors. These bulk purchases increase our exposure to inventory obsolescence. Our success depends on our ability to sell our inventory rapidly, purchase inventory at attractive prices relative to our resale value and manage customer returns and the shrinkage resulting from theft, loss, and misrecording of inventory. If we are unsuccessful in any of these areas, we may be forced to write down or write off substantial amounts of inventory, or sell it at a discount or loss, which could materially and adversely impact our business, financial condition and results of operations.

We depend on our demand forecasts for various kinds of products to make purchase decisions and to manage our inventory. We are exposed to inventory risks as a result of seasonality, new product launches, rapid changes in product cycles and pricing, defective merchandise, changes in consumer demand, tastes and spending patterns, and other factors. While we endeavor to accurately predict these trends and avoid overstocking or understocking products we sell, the demand for products can change significantly between the time inventory is ordered and the date of sale, and we may be unable to sell products in sufficient quantities as we expect. Furthermore, we may in the future open additional warehouses and duplicate part of the inventory for our direct sales business that is stored at our current warehouses to increase our overall fulfillment efficiency as we grow our business, which will also increase the inventory risks our direct sales business faces. Failure to effectively manage our inventory risk could have a material adverse effect on our business, financial condition and results of operations.

We have incurred net losses in the past and may experience losses in the future.

We incurred net losses of $57.4 million and $17.0 million in 2022 and 2019, respectively, and reported net income of $36.3 million and $30.4 million in 2021 and 2020, respectively. We cannot assure you that we will be able to generate net profits or positive cash flow from operating activities in the future. Our ability to achieve and maintain profitability will depend in large part on our ability to, among other things, source and sell higher margin products, grow and diversify our supplier base, and optimize our cost structure. We may not be able to achieve any of the above. If we grow and expand our business, our operating expenses may increase further. As a result of the foregoing, we may incur net losses in the future.

If we fail to adopt new technologies or adapt our websites, mobile apps and systems to changing customer requirements or emerging industry standards, our business may be materially and adversely affected.

To remain competitive, we must continue to enhance and improve the responsiveness, functionality and features of our online platforms, including our websites and mobile apps. The internet and the e-commerce industry are characterized by rapid technological evolution, such as emerging artificial intelligence ("AI") and machine learning technologies, frequent introductions of new products and services embodying new technologies and the emergence of new industry standards and practices, and changes in customer requirements and preferences, any of which could render our existing technologies and systems obsolete. We may be required to devote substantial resources to developing proprietary technologies or license technologies, enhancing our existing websites and mobile apps, developing new services and technology such as AI and machine learning that address the increasingly sophisticated and varied needs of our current and prospective customers and adapting to technological advances and emerging industry and regulatory standards and practices in a cost-effective and timely manner. The development of proprietary technology entails significant technical and business risks. There can be no assurance that our efforts to develop proprietary technologies will succeed or that any technology licenses will be available on commercially reasonable terms. Substantial investments will be required to remain technologically competitive, and our failure to do so may harm our business and results of operations.

The seasonality of our business places increased strain on our operations.

Newegg historically experiences higher sales in the fourth quarter due to the holiday season. If we do not stock or restock popular products in sufficient amounts such that we fail to meet customer demand, it could significantly affect our revenue and future growth. If we overstock products, we may be required to take significant inventory markdowns or write-offs and incur commitment costs, which could reduce profitability. We may experience an increase in our net shipping cost due to complimentary upgrades, split-shipments and additional long-zone shipments necessary for timely delivery for the holiday season. If too many customers access our online platforms within a short period of time due to increased holiday demand, we may experience system interruptions that make our online platforms unavailable or prevent us from efficiently fulfilling orders, which may reduce the volume of goods sold through our online platforms and the attractiveness of our products and services. In addition, we may be unable to adequately staff our fulfillment and customer service capability during these peak periods.

As we tend to experience higher sales in the fourth quarter, we generally experience an increase in our cash position at year-end, as compared to the first, second and third quarters when sales are lower. Historically, our cash, cash equivalents, and marketable securities balances typically reach their highest level (other than as a result of cash flows provided by or used in investing and financing activities) at December 31 of each year. In anticipation of higher sales during the holiday season, we typically begin building up inventory levels in the later part of the third quarter. As a result of this inventory build-up and faster inventory turnover during the fourth quarter, our accounts payable are typically at their highest levels at year-end. As sales begin to slow in the first and second quarters, inventory levels decrease, inventory turnover lengthens, and accounts payable and cash balances decrease as we pay our vendors. While the early part of the COVID-19 pandemic resulted in increased cash and accounts payable balances and faster inventory turnaround times due to an increased demand in our products, we have seen that trend reverse in 2022 with reduced consumer demand and a more challenging macroeconomic environment. As of the fiscal year ended December 31, 2022 and 2021, accounts payable amounted to approximately $207.1 million and $220.8 million, respectively.

Many of the products we sell are highly susceptible to technological advancement, product life cycle fluctuations and changes in consumer preferences.

We operate in a highly and increasingly dynamic industry sector fueled by constant technology innovation and disruption. This manifests itself in a variety of ways: the emergence of new products and categories, the often rapid maturation of categories, cannibalization of categories, changing price points and product replacement and upgrade cycles.

This rapid pace of change can be hard to predict and manage, and there is no guarantee we can effectively do so all the time. If we fail to interpret, predict and react to these changes in a timely and effective manner, the consequences can include: failure to offer the products and services that our customers want; excess inventory, which may require heavy discounting or liquidation; inability to secure adequate access to brands or products for which consumer demand exceeds supply; delays in adapting our merchandising, marketing or supply chain capabilities to accommodate changes in product trends; and damage to our brand and reputation. In addition, consumer preferences may be influenced even further as the social and economic environment navigates through the post-pandemic environment. These and other similar factors could have a material adverse impact on our revenue and profitability.

The successful operation of our business depends upon the performance, reliability and security of the internet infrastructure in the countries where we operate.

Our business depends on the performance, reliability and security of the telecommunications and internet infrastructure in the countries where we operate. We have several servers located in China that provide development, testing and quality control services. Almost all access to the internet in China is maintained through state-owned telecommunication operators under the administrative control and regulatory supervision of the Ministry of Industry and Information Technology of the People's Republic of China. In addition, the national networks in China are connected to the internet through state-owned international gateways, which are the only channels through which a domestic user can connect to the internet outside China. We may face similar or other limitations in other countries in which we operate. We may not have access to alternative networks in the event of disruptions, failures or other problems with the internet infrastructure in China or elsewhere. In addition, the internet infrastructure in the countries in which we operate may not support the demands associated with continued growth in internet usage.

The failure of telecommunications network operators to provide Newegg with the requisite bandwidth could also interfere with the speed and availability of our websites and mobile apps. If the prices that we pay for telecommunications and internet services rise significantly, our net income could be adversely affected. In addition, if internet access fees or other charges to internet users increase, our user traffic may decrease, which in turn may significantly decrease our revenues.

If we are unable to manage our growth or execute our strategies effectively, our business and prospects may be materially and adversely affected.

Our success depends upon our ability to manage the growth of our operations effectively. We anticipate expanding further as we pursue our growth strategies. Our expansion increases the complexity of our business and places a significant strain on our management, operations, technical systems, financial resources and internal control over financial reporting functions. Our current and planned personnel, systems, procedures and controls may not be adequate to support and effectively manage our future operations, especially as we employ personnel in several geographic locations. In addition, our growth will require us to improve our operational and financial systems, procedures and controls, successfully manage international operations and hire additional personnel. These efforts may not be successful, and we may be unable to improve our systems, procedures and controls in a timely manner.

Delays or problems associated with any of these initiatives could harm our business and operating results. These initiatives will also cause our operating expenses to increase. If we fail to accurately estimate and assess our growth or fail to increase net sales to match our increased operating expenses, our financial condition and results of operations could suffer.

An adverse change in our vendor payment terms and conditions may have a material adverse effect on our business, financial condition and results of operations.

We purchase our inventory from vendors on trade accounts typically requiring payment between 30 and 60 days after the date the inventory is shipped to us. As of December 31, 2022, our accounts payable balance was $207.1 million with 50 days of payables outstanding. Our accounts payable balances as of December 31, 2022 represented 38.2% of our liabilities and shareholders' equity. An adverse change in our vendors' payment terms and conditions would significantly increase our working capital requirements and have a material adverse effect on our business, financial condition and results of operations.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

Since the Merger, we have implemented a variety of measures designed to comply with the rules applicable to public companies in the United States. To the extent these new procedures and policies have not changed historical behaviors that might be inconsistent with the rules and practices regulating a U.S. public company, we could be at risk of violation or poor reporting as a public company. If our directors or executive officers inadvertently fail to identify, review or disclose a new relationship or arrangement causing the Company to fail to properly disclose any related party transaction or in the event that we fail to comply with SEC reporting and internal controls and procedures, we may be subject to securities laws violations that may result in additional compliance costs or costs associated with SEC judgments or fines, both of which will increase our costs and negatively affect our potential profitability and our ability to conduct our business. The public reporting requirements and controls are new for our management since completion of the Merger in May 2021 and may require us to obtain outside assistance from legal, accounting or other professionals that will increase our costs of doing business.

We and certain of our subsidiaries are parties to a revolving credit agreement, which contains a number of covenants that may restrict our current and future operations and could adversely affect our ability to execute business needs.

We and certain of our subsidiaries have entered into certain credit agreements with financial institutions which contains a number of covenants that limit our ability and our subsidiaries' ability to, among other things, incur indebtedness, create liens, make investments, merge with other companies, dispose of our assets, prepay other indebtedness and make other distributions. The obligations under the credit agreements are also guaranteed by our assets or those of our subsidiaries.

The terms of these credit agreements may restrict our current and future operations and could adversely affect our ability to finance our future operations or capital needs or to execute business strategies in the means or manner desired. In addition, complying with these covenants may make it more difficult to successfully execute our business strategy, invest in our growth strategy and compete against companies who are not subject to such restrictions. The credit agreement also contains financial covenants that require us to maintain certain minimum financial ratios and maintain an operating banking relationship with the financial institutions. Although we are currently in compliance with the financial covenants, we cannot guarantee that we will continue to be able to generate sufficient cash flow or sales to meet the financial covenants or pay the principal or interest under the credit agreements.

If we are unable to comply with our payment requirements, the financial institutions may accelerate our obligations under the credit agreement and foreclose upon the collateral, or we may be forced to sell assets, restructure our indebtedness or seek additional equity capital, which would dilute shareholders' interests. If we fail to comply with any covenant it could result in an event of default under the agreement and the lenders could make the entire debt immediately due and payable. If this occurs, we might not be able to repay the debt or borrow sufficient funds to refinance it. Even if new financing is available, it may not be on terms that are acceptable to us. See "Note 8 - Line of Credit" to our consolidated financial statements for more information.

Our international sales and operations require access to international markets and are subject to applicable laws relating to trade, export and import controls and economic sanctions, the violation of which could adversely affect our operations.

Newegg must comply with all applicable U.S. export and import laws and regulations. Such laws and regulations include, but are not limited to, the Export Administration Act and the Export Administration Regulations. Newegg must also comply with U.S. sanctions laws and regulations, which are primarily administered by the U.S. Department of Treasury's Office of Foreign Assets Control, as well as other U.S. government agencies. U.S. sanctions generally prohibit transactions by U.S. persons, including us, involving sanctioned countries, entities and persons, without U.S. government authorization (which will rarely be granted). Non-U.S. subsidiaries of U.S. companies are required to comply with U.S. sanctions against Cuba and Iran.

Violations of U.S. laws and regulations relating to trade, export and import controls and economic sanctions could result in significant civil and/or criminal penalties on us or on our foreign subsidiaries, including fines, prohibitions on exporting and importing, prohibitions on receiving government contracts or other government assistance and other trade-related restrictions. U.S. enforcement of such laws and regulations continues to increase.

We must also comply with applicable foreign laws relating to trade, export and import controls and economic sanctions. We may not be aware of all of such laws applicable in the markets in which we do business, which subjects us to the risk of potential violations.

We may need additional capital and failure to raise additional capital on terms favorable to us, or at all, could limit our ability to grow our business and develop or enhance our service offerings to respond to market demand or competitive challenges.

We believe that our current cash, cash flow from operations and borrowings are sufficient to meet our anticipated cash needs for at least the next 12 months. We may, however, require additional cash resources due to changed business conditions or other future developments, including any investments or acquisitions we may decide to pursue. If these resources are insufficient to satisfy our cash requirements, we may seek to sell additional equity or debt securities, or draw from or refinance our credit facilities. The sale of additional equity securities could result in dilution to our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could require us to agree to operating and financing covenants that would restrict our operations. Our ability to obtain additional capital on acceptable terms is subject to a variety of uncertainties, including:

- investors' perception of, and demand for, our securities;
- conditions of the U.S. and other capital markets in which we may seek to raise funds; and
- our future results of operations and financial condition.

In addition, adverse developments that affect financial institutions, or concerns about such developments, have in the past and may in the future lead to market-wide liquidity problems and disruptions in the financial services industry. For example, in March 2023, the closure of Silicon Valley Bank and Signature Bank destabilized many financial institutions and created uncertainty across the industry. Although we did not have any funds in Silicon Valley Bank or Signature Bank, future defaults or other similar destabilizing events could impact the credit markets and adversely impact our ability to access our capital and to obtain debt financing on favorable terms.

Financing may not be available in amounts or on terms acceptable to us, if at all. Any failure by us to raise additional funds on terms favorable to us, or at all, could limit our ability to grow our business and develop or enhance our product and service offerings to respond to market demand or competitive challenges.

Legal and Regulatory Risks

Claims, Litigation, Government Investigations, and Other Proceedings May Adversely Affect Our Business and Results of Operations

We are, or may be, subject to actual and threatened claims, litigation, investigations, and other proceedings, involving a wide range of issues, including patent and other intellectual property matters, taxes, labor and employment, privacy, data use, data protection, data security, network security, consumer protection, product liability, commercial disputes, and other matters. Any of these types of proceedings can have an adverse effect on us because of legal costs, disruption of our operations, diversion of management resources, negative publicity, and other factors. The outcomes of these matters are inherently unpredictable and subject to significant uncertainties. Determining legal reserves or possible losses from such matters involves judgment and may not reflect the full range of uncertainties and unpredictable outcomes. Until the final resolution of such matters, we may be exposed to losses in excess of the amount recorded, and such amounts could be material. Should any of our estimates and assumptions change or prove to have been incorrect, it could have a material effect on our business or results of operations.

We may not be able to adequately protect our intellectual property rights.

We rely on trademark and copyright law, trade secret protection and confidentiality or licensing agreements with employees, buyers, third-party sellers, brand partners and others to protect our proprietary rights. These steps may be inadequate, agreements may be violated or there may be inadequate remedies for a violation of such agreements. Our competitors may independently develop equivalent proprietary information and rights or may otherwise gain access to our trade secrets or proprietary information, which could affect our ability to compete in the market. There is no assurance that the steps that we have taken will adequately protect our proprietary rights, especially in countries where the laws or enforcement of the laws may not protect our rights to the same extent or in the same way as in the United States.

In addition, third parties may infringe or misappropriate our proprietary rights, and we could be required to enforce our intellectual property rights, which could require expenditure of significant financial and managerial resources. We have registered and common law trademark rights in the United States and certain foreign jurisdictions, as well as pending trademark applications for a number of marks and associated domain names. Such pending applications are not certain to be approved, and even if we obtain approval for such pending applications, the resulting registrations may not adequately cover our trademarks or protect us against infringement or dilution by others. Effective trademark, service mark, copyright, patent and trade secret protection may not be available in every country or jurisdiction in which our products may be made available online, which may cause our business and operating results to suffer. In addition, we may be unable to acquire or protect relevant domain names in the United States and in other countries. If we are not able to acquire or protect our trademarks, domain names or other intellectual property, we may experience difficulties in achieving and maintaining brand recognition and customer loyalty.

Assertions, claims and allegations, even if not true, that we have infringed or violated intellectual property rights could harm our business and reputation.

Third parties have, and likely will in the future, assert allegations and claims of intellectual property infringement against us on the items or their descriptions listed on our websites and mobile apps. Any such claims, disputes or litigation, even if resolved in our favor or not true, could be time-consuming and costly to defend, and could divert our management's efforts from growing our business. We have intellectual property complaint and take-down procedures in place to address communications alleging that items listed on online platforms, including the Newegg Marketplace, infringe third-party copyrights, trademarks or other intellectual property rights. We follow these procedures to review complaints and relevant facts to determine the appropriate action, which may include removal of the item from our online platforms and, in certain cases, discontinuing our relationship with a Marketplace seller or brand partner who violates our policies. However, these rules and procedures may not effectively reduce or eliminate our liability. In particular, Newegg may be subject to civil or criminal liability for activities carried out, including products listed, by sellers or brands on our online platforms.

If any third parties prevail in their intellectual property rights claims against Newegg, we may be required to pay significant licensing fees, damages and attorney's fees, and may even be liable for punitive damages if Newegg is found to have willfully infringed third parties' proprietary rights. We may have to stop using certain technology or solutions and need to develop or acquire alternative, non-infringing technology or solutions, which could require significant time and resources. We could even be required to obtain a license to use certain technologies, although such licenses may not be available on reasonable terms or at all, which may result in substantial payments and royalties and significantly increase our operating expenses. If we cannot develop non-infringing technology or license the appropriate technology at commercially reasonable rates, an intellectual property claim successfully asserted against us could cause significant business interruptions in our operations, which could restrict our ability to compete effectively and have a material adverse effect on our financial condition and results of operations.

Newegg may be subject to product liability claims, which could be costly and time-consuming to defend.

The majority of the products sold on our online platforms are manufactured by third parties, and some of them may be defectively designed or manufactured. If any product we sell were to cause physical injury or injury to property, an injured party could bring claims against us as the retailer of the product. Furthermore, we also offer computer systems, IT components, peripherals, household appliances and other goods under our private labels, Rosewill and ABS, on our platforms or through other e-commerce platforms, such as eBay, which could potentially create more exposure for Newegg with respect to product liability than if we had simply acted as a retailer of third-party products. Our insurance coverage may not be adequate against such product liability claims. If a successful claim were brought against Newegg in excess of our insurance coverage, it could adversely affect our financial condition and results of operations. Even unsuccessful claims could result in the expenditure of significant funds and management time in defending them and could have a negative impact on our reputation and business.

We may incur additional costs due to tax assessments resulting from ongoing and future audits by tax authorities.

In the ordinary course of business, Newegg is subject to tax examinations by various governmental tax authorities. The global and diverse nature of our business means that there could be additional examinations by governmental tax authorities and the resolution of ongoing and other probable audits which could impose a future risk to the results of our business. For example, in February 2018, we received from the Commonwealth of Massachusetts Department of Revenue a notice of intent to assess sales and use taxes relating to a prior tax period, which subsequently resulted in an assessment of approximately $0.3 million, plus penalties and interest. In May 2020, we received from the Commonwealth of Massachusetts Department of Revenue another notice of assessment for sales and use taxes for additional prior tax periods in the amount of a total assessment of $2.7 million, including penalties and interest. We appealed these assessments, and ultimately prevailed. However, any similar future matters that are not resolved in our favor could have a material impact on our consolidated financial position, cash flows, and results of operations.

Significant developments stemming from recent U.S. government actions and proposals concerning tariffs and other economic proposals could have a material adverse effect on us.

As of December 31, 2022 and 2021, approximately 71% and 70% of our products that were sold through our platforms, both direct sales and marketplace, were manufactured in China, respectively. U.S. government actions since 2018 have imposed greater restrictions and economic disincentives on international trade impacting imports and exports. The U.S. government has adopted changes, and may adopt further changes, to trade policy and in some cases, to renegotiate, or potentially terminate, certain existing bilateral or multi-lateral trade agreements. It has initiated the imposition of additional tariffs on certain foreign goods, including steel and aluminum, semiconductor manufacturing equipment and spare parts thereof, and has amended export regulations regarding sales to companies on the U.S. Entity List. These changes prevent sales of foreign produced direct products of the U.S. that are manufactured using controlled U.S.-origin equipment, technology, and software located outside the United States to certain companies on the U.S. Entity List.

Examples of recent actions are tariffs on steel and aluminum product imports announced by the U.S. Department of Commerce in March 2018, the scope of which increased on February 8, 2020, and a 25% tariff on certain products that originate in China announced by the United States Trade Representative ("USTR") in June 2018 pursuant to an investigation under Title III of the Trade Act of 1974, 19 U.S.C. §§2411-2420 ("Section 301"). The USTR announced in June and July 2018 two additional supplemental lists of products that are subject to tariffs if the goods imported into the United States originate in China, which increased the cost of these imported products. These supplemental lists issued by the USTR added an additional 25% tariff on certain semiconductor equipment and parts originating in China that are sold by Newegg or used in our business in the United States. In August 2018, the second list was made effective with a 25% tariff and in September 2018 the third list ("List 3") was made effective with a 10% tariff, increasing to 25% in May 2019. A fourth list was proposed by USTR in May 2019 for all remaining items originating in China. A portion of the fourth list ("List 4a"), was made effective September 1, 2019, with an additional tariff of 15%, reduced to 7.5% on February 14, 2020. The remainder of the fourth list ("List 4b") was scheduled to have an additional tariff of 15% go into effect on December 15, 2019; however, on December 13, 2019, the tariffs for List 4b were suspended after the U.S. announced it would enter into a trade agreement with China (the "Phase 1 Agreement"). A Phase 2 Agreement has not been announced as of the date of this annual report. On April 1, 2022, the U.S. Court of International Trade upheld the List 3 and List 4a tariffs and rejected arguments brought by plaintiff importers that the tariffs exceeded the authority of the USTR to impose. Certain procedural issues with the tariffs were remanded to USTR to reconsider. It is expected that this litigation, which only covers tariffs imposed on goods originating from China, will continue into 2023. In May 2022, the USTR began the statutory four-year review of the Section 301 actions taken against China. The agency determined that two separate actions had been taken as part of the investigation (the first and second list), and that they had been subsequently modified by imposing additional duties on supplemental lists of products (List 3 and List 4a), as well as by temporarily removing or suspending duties on some of them through exclusions. The USTR announced that the first step of this review process would be to notify representatives of domestic industries that benefit from the trade actions (as modified) of their possible termination, and to offer them the opportunity to request their continuation. The USTR announced in September 2022 that it had received several such requests and that as a result, it would keep the actions in place—subject to possible further modifications—and proceed with the second phase of the review process.

Any increase in the cost of importing goods and parts could decrease our margins, reduce the competitiveness of our products, or inhibit our ability to sell products or purchase necessary parts, which could have a material adverse effect on our business results, results of operations, or financial condition.

On April 28, 2020 the U.S. Department of Commerce issued new rules that (1) expand the definition of military end use and (2) eliminate the applicability of certain license exceptions for exports to countries on Country Group D of Supplement No. 1 to part 740 of the Export Administration Regulations. These changes expand export license requirements for U.S. companies to sell certain items to companies in China that have operations that could support military end uses, even if the items sold by the U.S. companies are for civilian end use and they reduce the applicability of license exceptions for exports to those countries listed on Country Group D, including China. Additionally, amendments have been made to General Prohibition Three (Foreign-Produced Direct Product Rule) and the Entity List, the most recent of which were effective August 17, 2020. These amendments expand the restrictions on the sale of goods manufactured outside the United States that are produced using certain controlled U.S. technology or software to companies on the U.S. Entity List, and regulate the use of U.S.-origin semiconductor manufacturing equipment that produces semiconductor devices for companies on the U.S. Entity List. The rule changes for export controls may reduce or impair our ability to sell products internationally, which could in turn decrease the demand for our products and have a material adverse effect on our revenues and profitability. At this time, the rule changes are not anticipated to impact the Company's sales of non-U.S. products; however, any unpredicted rule changes could adversely affect our business results, operations, or financial condition.

Changes in U.S. trade policy could result in one or more U.S. trading partners adopting responsive trade policy making it more difficult or costly for us to export our products to those countries. As indicated above, these measures could also result in increased costs for goods imported into the U.S. This in turn could require us to increase prices to our customers, which may reduce demand or, if we are unable to increase prices, result in lowering our margin on goods and services sold. To the extent that trade tariffs and other restrictions imposed by the U.S. increase the price of semiconductor equipment and related parts imported into the U.S., the cost of our materials may be adversely affected and the demand from customers for products and services may be diminished, which could adversely affect our revenues and profitability. See "— Newegg's Business Model" for more information about direct sales and marketplace.

We cannot predict future trade policy, the terms of any renegotiated trade agreements or additional imposed tariffs and their impact on our business. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and the U.S. economy, which in turn could adversely impact our business, financial condition and results of operations.

Changes in U.S. social, political, regulatory and economic conditions or in laws and policies governing foreign trade, manufacturing, development and investment in the territories and countries where we currently develop and sell products, and any negative sentiments towards the United States as a result of such changes, could adversely affect our business. In addition, negative sentiments towards the United States among non-U.S. customers and among non-U.S. employees or prospective employees could adversely affect sales or hiring and retention, respectively.

Employment laws in some of the countries in which we operate are relatively stringent.

As of December 31, 2022, we had 1,355 full-time employees, of whom approximately 52% were located in the United States, 39% in China, 7% in Taiwan, and 2% in Canada and other countries and regions. In some of the countries in which we operate, employment laws may grant significant job protection to employees, including rights on termination of employment and setting maximum number of hours and days per week that a particular employee is permitted to work. In addition, in certain countries in which we operate, Newegg is or may be required to consult and seek the advice of employee representatives and/or unions. These laws, coupled with the requirement to consult with any relevant employee representatives and unions, could impact our ability to react to market changes and the needs of our business.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited and could adversely impact our business, financial condition and operating results.

Under Sections 382 and 383 of the Code, if a corporation undergoes an "ownership change," the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income and taxes may be limited. In general, an "ownership change" occurs if there is a cumulative change in our ownership by one or more "5% shareholders" (as defined under U.S. income tax laws) that exceeds 50 percentage points over a rolling three-year period. Similar rules apply under state tax laws. We believe it is possible that we may experience an ownership change in the future as a result of shifts in our stock ownership, some of which are outside our control, in which case we may be limited in our ability to use our net operating loss carryforwards and other tax assets to reduce taxes owed on the net taxable income that we earn. If finalized, Treasury Regulations currently proposed under Section 382 of the Code may further limit our ability to utilize our pre-change net operating losses and tax credit carryforwards if we undergo such an ownership change.

We are treated as a U.S. corporation for all U.S. federal tax purposes.

We believe that we are an inverted corporation for U.S. federal tax purposes. This means that, notwithstanding that we are a company incorporated in the BVI, we will be treated for all U.S. federal tax purposes as if we are a U.S. corporation and you will be treated for all U.S. federal tax purposes as holding the stock of a U.S. corporation. See "Item 10. Additional Information – E. Taxation" for additional detail.

Risks Related to our Common Shares

A majority of Newegg's capital shares are pledged as collateral to support delinquent indebtedness of our parent company and could be sold to satisfy that indebtedness or other delinquent indebtedness of our parent company.

The shares of our common stock owned by Digital Grid have been pledged to Bank of China Limited Zhejiang Branch, or BOC, as collateral to support working capital loans and letters of credit provided by BOC to Hangzhou Lianluo. The loans have been guaranteed jointly and severally by Beijing Digital Grid Technology Co., Ltd., a subsidiary of Hangzhou Lianluo, and by Mr. Zhitao He. The total principal amount owed under these loans as of March 31, 2023 was RMB150 million in RMB-denominated loans plus USD$66.5 million in U.S. dollar-denominated loans. In May 2020, BOC filed several lawsuits against Hangzhou Lianluo, Digital Grid, Beijing Digital Grid Technology Co., Ltd. and Mr. Zhitao He in the Hangzhou Intermediate People's Court in China alleging that Hangzhou Lianluo has failed to repay the loans when due and is in breach of the loan agreements. The court has ruled that the loans are in default in a final, non-appealable judgment. On December 19, 2022, Digital Grid, BOC, Newegg, and Hangzhou Lianluo entered into a supplemental agreement (the "Supplemental Agreement") to agree upon procedures to temporarily remove BOC's lien on Digital Grid's Newegg Common Shares to enable their sale and use of proceeds to repay BOC.

In addition, on April 11, 2023, the Industrial and Commercial Bank of China ("ICBC") filed a lawsuit against Hangzhou Lianluo in the Hangzhou Intermediate People's Court in China alleging that Hangzhou Lianluo failed to repay when due three separate loans, provided by ICBC to Hangzhou Lianluo, and was in breach of the related loan agreements. The estimated total amount owed under the loans, including interest, fees, expenses and penalties, as of March 31, 2023 was approximately RMB448 million. Hangzhou Lianluo did not pledge any Common Shares owned by it or Digital Grid as collateral to support the ICBC loans.

As of the date hereof, to the best of our knowledge, no Common Shares have been sold by Hangzhou Lianluo in connection with the repayment of the BOC or ICBC loans.

Sales of the Common Shares owned or pledged by Digital Grid or Hangzhou Lianluo, including for the payment of financial or settlement obligations to BOC or ICBC, could cause the market price of the Common Shares to drop significantly.

BOC could sell, or force Digital Grid to sell, some or all of its shares while the BOC loans remain delinquent. Digital Grid could also choose to voluntarily sell some or all of its shares at any time to satisfy the BOC or ICBC loans. Any such sale or attempted sale could:

- Occur at a discount to our public trading price and over a short time period;
- Result in a change of control of us to the buyer of such shares; or
- Result in litigation over the ownership and title to those shares.

Each of these risks could cause our share price to fall significantly and is described further below.

- BOC could attempt to foreclose upon and sell Digital Grid's shares in Newegg at any time. Any such sale could be done quickly and without regard for maximizing the sale price, other than to enable BOC to recover the amount of indebtedness owed to it by Hangzhou Lianluo. In such a case, the sale price would likely be significantly less than the public trading price of our shares, which would likely cause our share price to fall significantly.
- If Digital Grid sold some or all of its shares, its ownership percentage in Newegg could drop below 50%, causing it to lose control of our board of directors, leading to a potential change in control of the Company. Any such change in control could be viewed negatively by our shareholders, leading to a drop in the trading price of our shares.
- In addition, any transfer of those shares to a non-affiliate of Digital Grid would be subject to our amended and restated shareholders agreement. The shareholders agreement gives a right of first refusal in favor of the Company, and a right of second refusal in favor of the pre-merger Newegg Inc. shareholders (which primarily includes Mr. Fred Chang), to purchase some or all of the shares being transferred, subject to certain exemptions. See "Item 10. Additional Information – B. Memorandum and Articles of Association – *Rights of Certain Principal Shareholders – Right of First Refusal of the Company and Principal Shareholders*" for additional detail. The shareholders agreement may not be recognized or enforceable in China's courts, because the agreement is governed by the laws of the British Virgin Islands, and China courts generally do not recognize court decisions from that jurisdiction. As a result, BOC or Digital Grid could try to sell some or all of Digital Grid's shares without complying with those agreements. Any such sale could result in significant litigation and uncertainty over the ownership of those shares, which could cause our share price to fall.

The market price of our common shares has been extremely volatile and may continue to be volatile due to numerous circumstances beyond our control.

The market price of our common shares has fluctuated, and may continue to fluctuate, widely, due to many factors, some of which may be beyond our control. These factors include, without limitation:

- "short squeezes";
- comments by securities analysts or other third parties, including blogs, articles, message boards and social and other media;
- actual or anticipated fluctuations in our financial and operating results;
- risks and uncertainties associated with the ongoing impact of the COVID-19 pandemic;
- shifts in the timing or content of certain promotions or service offerings;
- announcements of new products and services by us or our competitors;
- the effect of changes in tax rates in the jurisdictions in which we operate;
- announcements of new investments, acquisitions, strategic partnerships or joint ventures by us or our competitors;
- the mix of earnings in the countries in which we operate;
- changes in foreign currency exchange rates;
- announcements about our earnings that are not in line with shareholders' expectations;
- changes in financial estimates by securities analysts;
- negative public perception of us, our competitors, or industry;
- release of lock-up or other transfer restrictions on our outstanding equity securities or sales of additional equity securities;
- potential litigation or regulatory investigations; and
- overall general market fluctuations.

Stock markets in general and our share price in particular have recently experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies and our company. For example, on March 28, 2022, our common shares experienced an intra-day trading high of $8.48 per share and a low of $5.01 per share. In addition, from March 1, 2022 to April 29, 2022, the closing price of our common shares on Nasdaq ranged from as low as $4.14 to as high as $8.48 and daily trading volume ranged from approximately 143,800 to 39,024,100 shares. During this time, we have not experienced any material changes in our financial condition or results of operations that would explain such price volatility or trading volume. These broad market fluctuations may adversely affect the trading price of our common shares. In particular, a large proportion of our common shares has been and may continue to be traded by short sellers which has put and may continue to put pressure on the supply and demand for our common shares, further influencing volatility in its market price. Additionally, these and other external factors have caused and may continue to cause the market price and demand for our common shares to fluctuate, which may limit or prevent investors from readily selling their common shares and may otherwise negatively affect the liquidity of our common shares.

Mr. Zhitao He and Mr. Fred Chang control approximately 59.3% and 34.6%, respectively, and 93.9%, collectively, of the voting power of our issued and outstanding common shares. They will exert significant influence on our business and operations and may have a conflict of interest with our other shareholders.

Mr. Zhitao He and Mr. Fred Chang control approximately 59.3% and 34.6%, respectively, of the voting power of our issued and outstanding common shares, and 93.9%, collectively, as of December 31, 2022. Additionally, Mr. Zhitao He and Mr. Fred Chang, both of whom serve as our directors, will be able to exercise substantial influence over our business and operations. They may also have a conflict of interest with our other shareholders. Where such a conflict exists, our other shareholders will be dependent upon Mr. He, Mr. Chang, and other directors exercising, in a manner fair to all of our shareholders, their fiduciary duties. Also, Mr. He and Mr. Chang will have the ability to control the outcome of most corporate actions requiring shareholder approval, including the sale of all or substantially all of our assets and amendments to our Memorandum and Articles of Association. Moreover, such concentration of voting power could have the effect of delaying, deterring, or preventing a change of control or other business combination, which may, in turn, have an adverse effect on the market price of our shares or prevent our shareholders from realizing a premium over the then-prevailing market price for their shares.

We are a "controlled company" within the meaning of the Nasdaq Listing Rules and, as a result, qualify for exemptions from certain corporate governance requirements. You will not have the same protections afforded to shareholders of companies that are subject to such requirements.

Mr. Zhitao He, through Hangzhou Lianluo, Hyperfinite Galaxy Holding Limited, and Digital Grid, controls a majority of the voting power of our outstanding common shares. As a result, we are a "controlled company" within the meaning of Nasdaq's corporate governance standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company." For so long as we remain a controlled company under this definition, we are permitted to elect to rely on certain exemptions from corporate governance rules, including:

- an exemption from the rule that a majority of our board must be independent directors;
- an exemption from the rule that the compensation of our chief executive officer must be determined or recommended solely by independent directors; and
- an exemption from the rule that our director nominees must be selected or recommended solely by independent directors.

As a result, you will not have the same protection afforded to shareholders of companies that are subject to these corporate governance requirements.

The Amended and Restated Memorandum and Articles of Association limit your ability to appoint directors and influence corporate matters and could discourage others from pursuing any change of control transactions that minority holders of common shares may view as beneficial.

Digital Grid and Mr. Fred Chang, who beneficially own approximately 59.3% and 34.6%, respectively, of our total voting power, have the right to appoint four directors and three directors, respectively, with Mr. Fred Chang acting as a "Minority Representative" selected by a majority of the Legacy Shareholders (as defined in the Company's Amended and Restated Memorandum and Articles of Association), who collectively own approximately 36.6% of our total voting power as of December 31, 2022. The number of directors that Digital Grid and the Minority Representative are entitled to appoint will decrease proportionately with the decrease of the respective voting power of Digital Grid and the Legacy Shareholders. Any director positions which neither Digital Grid nor the Minority Representative is entitled to appoint shall be appointed by the remaining directors, or by any other means allowed under the Amended and Restated Memorandum and Articles of Association.

The Amended and Restated Memorandum and Articles of Association limit your ability to appoint or elect persons for service on our board and may discourage proxy contests for the election of directors and purchases of substantial blocks of shares by making it more difficult for a potential acquirer to gain control of our board.

Certain provisions of Newegg's Amended Shareholders Agreement may delay or prevent us from raising funding in the future and may have an adverse impact on us and the liquidity and market price of our common shares.

We are party to an amended and restated shareholders agreement (the "Amended Shareholders Agreement") with Digital Grid, Mr. Fred Chang and certain other shareholders (the "Principal Shareholders").

Under the Amended Shareholders Agreement, the Principal Shareholders have pre-emptive rights to acquire additional shares when the Company issues or sells additional securities in the future, except for "excluded issuances" as defined in the Amended Shareholders Agreement or common shares offered pursuant to a registration statement filed with the SEC.

In addition, the Company and the Principal Shareholders also have rights of first refusal over certain transfers of the common shares by the Principal Shareholders, pursuant to the Amended Shareholders Agreement, as amended, and subject to compliance with applicable laws and Nasdaq's Listing Rules. If any Principal Shareholder receives a bona fide offer from any person other than its affiliate to acquire any of the Principal Shareholder's common shares (the "ROFR Shares"), then the Company has a right of first refusal, but not the obligation, to elect to purchase all (and not less than all) of the ROFR Shares, at the same price, and on the same terms and conditions offered by the purchaser (the "ROFR Terms"). In the event the Company does not decide to purchase all such ROFR Shares, then each of the Principal Shareholders other than the selling Principal Shareholder shall have a right of first refusal to elect to purchase all (and not less than all) of its Pro Rata Share of the ROFR Shares on the ROFR Terms; provided, however, that notwithstanding anything to the contrary, twenty percent (20%) of Company common shares collectively held by each Principal Shareholder and its affiliates, calculated as of May 19, 2021, that are subject to any ROFR Rights shall be exempt from any ROFR Rights. For the purpose of the Amended Shareholders Agreement, "Pro Rata Share" means the percentage which corresponds to the ratio which each selling Principal Shareholder's "Percentage Interest" (which is calculated by dividing (i) the number of the common shares owned by such Principal Shareholder, by (ii) total number of the then outstanding shares of the common shares held by all Principal Shareholders) bears to the total Percentage Interests of all Principal Shareholders exercising their right of first refusal. In the event that the ROFR Shares are in exchange for non-cash consideration, then such right of first refusal shall be exercisable based on the fair market value determined in good faith by the board of such non-cash consideration.

We may be subject to shareholder litigation due to the volatility in the price of our common shares, which may result in substantial costs and a diversion of our management's attention and resources.

In the past, shareholders of a public company often brought securities class action suits following periods of instability in the market price of a company's securities. If we were involved in a class action suit, it could divert a significant amount of our management's attention and other resources from our business and operations, which could harm our results of operations and require us to incur significant expenses to defend the suit. Any such class action suit, whether or not successful, could harm our reputation and restrict our ability to raise capital in the future. In addition, if a claim is successfully made against us, we may be required to pay significant damages, which could have a material adverse effect on our financial condition and results of operations.

If we fail to maintain compliance with Nasdaq Listing Rules, we may be delisted from Nasdaq, which would result in a limited public market for trading our shares and make obtaining future debt or equity financing more difficult for us.

Our common shares are traded and listed on Nasdaq under the symbol "NEGG." However, there is no assurance that we will be able to continue to maintain compliance with Nasdaq continued listing requirements. The Nasdaq Listing Rules require, among other things, that listed securities maintain a minimum bid price of $1.00 per share (the "Minimum Bid Price Requirement"), and failure to meet the Minimum Bid Price Requirement within specified compliance periods following receipt of a deficiency notice may result in delisting. As of December 31, 2022, our common stock closed at a price of $1.31 per share. If we fail to comply with this, or any other, Nasdaq Listing Rule, our common shares may lose their status on Nasdaq and they would likely be traded on the over-the-counter market, including the Pink Sheets market. As a result, selling our common shares could be more difficult because smaller quantities of shares would likely be bought and sold, transactions could be delayed, and security analysts' coverage of us may not arise. In addition, in the event our common shares are delisted, broker dealers would bear certain regulatory burdens which may discourage broker dealers from effecting transactions in our common shares and further limit the liquidity of our shares. These factors could result in lower prices and larger spreads in the bid and ask prices for our common shares. Such delisting from Nasdaq and continued or further declines in our common share price could also greatly impair our ability to raise additional necessary capital through equity or debt financing and could significantly increase the ownership dilution to shareholders caused by our issuing equity in financing or other transactions.

We and our directors and officers may be involved in investigations or other forms of regulatory or governmental inquiry which may cause reputational harm to the Company, result in additional expenses, and distract our management from our day-to-day operations.

From time to time, we and our directors and officers may be involved in investigations or other forms of regulatory or governmental inquiry covering a range of possible issues including but not limited to securities laws compliance. See "Item 6.C. Board Practices – Involvement in Certain Legal Proceedings" for a discussion of current legal proceedings.
These inquiries or investigations could lead to administrative, civil or criminal proceedings involving us and could result in fines, penalties, restitution, other types of sanctions, or the need for us to undertake remedial actions, or to alter our business, financial or accounting practices. Our practice is to cooperate fully with regulatory and governmental inquiries and investigations.

Legal proceedings, inquiries and regulatory investigations are often unpredictable, and it is possible that the ultimate resolution of any such matters, if unfavorable, may be material to our results of operations in any future period, depending, in part, upon the size of the loss or liability imposed and the operating results for the period, and could have a material adverse effect on our business. In addition, regardless of the ultimate outcome of any such legal proceeding, inquiry or investigation, any such matter could cause us to incur additional expenses, which could be significant, and possibly material, to our results of operations in any future period.

Any of these factors may result in large and sudden changes in the volume and price at which the common shares will trade.

Shareholders of a public company often bring securities class action suits against the company following periods of instability in the market price of that company's securities. If we were involved in a class action suit, it could divert a significant amount of our management's attention and other resources from our business and operations, which could harm our results of operations and require us to incur significant expenses to defend the suit. Any such class action suit, whether or not successful, could harm our reputation and restrict our ability to raise capital in the future. In addition, if a claim is successfully made against us, we may be required to pay significant damages, which could have a material adverse effect on our financial condition and results of operations.

If securities or industry analysts do not publish research or reports about our business, or if they adversely change their recommendations regarding the common shares, the market price for the common shares and trading volume could decline.

The trading market for the common shares could be influenced by research or reports that industry or securities analysts may publish about our business in the future. Currently we have one security analyst covering our company. If any additional analysts cover us in the future and downgrade the common shares, the market price for the common shares would likely decline. If no additional analysts initiate coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the market price or trading volume for the common shares to decline.

Techniques employed by short sellers may drive down the market price of our common shares.

Short selling is the practice of selling securities that the seller does not own but rather has borrowed from a third party with the intention of buying identical securities back at a later date to return to the lender. The short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is in the short seller's interest for the price of the security to decline, many short sellers publish, or arrange for the publication of, negative opinions and allegations regarding the relevant issuer and its business prospects in order to create negative market momentum and generate profits for themselves after selling a security short. These short attacks appear to have, in the past, led to selling of our shares in the market. If we were to become the subject of any unfavorable allegations, whether such allegations are proven to be true or untrue, we could have to expend a significant amount of resources to investigate such allegations and/or defend ourselves. We may not be able to defend against any such short seller attacks and may be constrained in the manner in which we can proceed against the relevant short seller by principles of freedom of speech, applicable state law or issues of commercial confidentiality.

Investors may have difficulty enforcing judgments against us, our directors and management.

We are incorporated under the laws of the BVI and many of our directors reside outside the United States. Moreover, many of these persons do not have significant assets in the United States. As a result, it may be difficult or impossible to effect service of process within the United States upon these persons, or to recover against us or them on judgments of U.S. courts, including judgments predicated upon the civil liability provisions of the U.S. federal securities laws.

The courts of the BVI would not automatically enforce judgments of U.S. courts obtained in actions against us or our directors and officers, or some of the experts named herein, predicated upon the civil liability provisions of the U.S. federal securities laws, or entertain actions brought in the BVI against us or such persons predicated solely upon U.S. federal securities laws. Further, there is no treaty in effect between the United States and the BVI providing for the enforcement of judgments of U.S. courts in civil and commercial matters, and there are grounds upon which BVI courts may decline to enforce the judgments of U.S. courts. Some remedies available under the laws of U.S. jurisdictions, including remedies available under the U.S. federal securities laws, may not be allowed in the BVI courts if contrary to public policy in the BVI. Because judgments of U.S. courts are not automatically enforceable in the BVI, it may be difficult for you to recover against us or our directors and officers based upon such judgments.

In addition, under PRC law, a foreign judgment, which does not otherwise violate basic legal principles, state sovereignty, safety or social public interest, may be recognized and enforced by a PRC court, based either on treaties between China and the country where the judgment is made or on principles of reciprocity between jurisdictions. As currently there exists no treaty or other form of reciprocity between China and the United States or the BVI governing the recognition and enforcement of judgments, including those predicated upon the liability provisions of the U.S. federal securities laws, there is uncertainty whether and on what basis a PRC court would enforce judgments rendered by courts in the United States or the BVI. In addition, Taiwan does not have treaties providing for the reciprocal recognition and enforcement of judgments of courts with the United States and the BVI. Therefore, recognition and enforcement in Taiwan of judgement of United States and BVI courts in relation to any matter not subject to a binding arbitration provision would need to be enforced in accordance with common law principles.

Certain types of class or derivative actions generally available under U.S. law may not be available as a result of the fact that we are incorporated in the BVI. As a result, the rights of shareholders may be limited.

Shareholders of BVI companies may not have standing to initiate a shareholder derivative action in a court of the United States. The BVI courts are also unlikely to recognize or enforce against us judgments of courts in the United States based on certain liability provisions of U.S. securities law or to impose liabilities against us, in original actions brought in the BVI, based on certain liability provisions of U.S. securities laws that are penal in nature.

You may have more difficulty protecting your interests than you would as a shareholder of a U.S. corporation.

Our corporate affairs will be governed by the provisions of our memorandum and articles of association, as amended and restated from time to time, and by the provisions of applicable BVI law. The rights of shareholders and the fiduciary responsibilities of our directors and officers under BVI law are not as clearly established as they would be under statutes or judicial precedents in some jurisdictions in the United States, and some states (such as Delaware) have more fully developed and judicially interpreted bodies of corporate law.

These rights and responsibilities are to a large extent governed by the Companies Act and the common law of the BVI. The common law of the BVI is derived in part from judicial precedent in the BVI as well as from English common law, which has persuasive, but not binding, authority on a court in the BVI. In addition, BVI law does not make a distinction between public and private companies and some of the protections and safeguards (such as statutory pre-emption rights, save to the extent expressly provided for in the memorandum and articles of association) that investors may expect to find in relation to a public company are not provided for under BVI law.

There may be less publicly available information about us than is regularly published by or about U.S. issuers. Also, the BVI regulations governing the securities of BVI companies may not be as extensive as those in effect in the United States, and the BVI law and regulations regarding corporate governance matters may not be as protective of our shareholders as state corporation laws in the United States. Therefore, you may have more difficulty protecting your interests in connection with actions taken by our directors and officers or our Principal Shareholders than you would as a shareholder of a corporation incorporated in the United States.

The laws of BVI provide limited protections for our shareholders, so our shareholders will not have the same options as to recourse in comparison to the United States if the shareholders are dissatisfied with the conduct of our affairs.

Under the laws of the BVI there is limited statutory protection of our shareholders other than the provisions of the Companies Act dealing with shareholder remedies. The principal protections under BVI statutory law are derivative actions, actions brought by one or more shareholders for relief from unfair prejudice, oppression and unfair discrimination and/or to enforce the Companies Act or the memorandum and articles of association. Shareholders are entitled to have the affairs of the company conducted in accordance with the Companies Act and the memorandum and articles of association, and are entitled to payment of the fair value of their respective shares upon dissenting from certain enumerated corporate transactions.

There are common law rights for the protection of shareholders that may be invoked, largely dependent on English company law, since the common law of the BVI is limited. Under the general rule pursuant to English company law known as the rule in Foss v. Harbottle, a court will generally refuse to interfere with the management of a company at the insistence of a minority of its shareholders who express dissatisfaction with the conduct of the company's affairs by the majority or the board of directors. However, every shareholder is entitled to seek to have the affairs of the company conducted properly according to law and the constitutional documents of the company. As such, if those who control the company have persistently disregarded the requirements of company law or the provisions of the company's memorandum and articles of association, then the courts may grant relief. Generally, the areas in which the courts will intervene are the following: (i) a company is acting or proposing to act illegally or beyond the scope of its authority; (ii) the act complained of, although not beyond the scope of the authority, could only be effected if duly authorized by more than the number of votes which have actually been obtained; (iii) the individual rights of the plaintiff shareholder have been infringed or are about to be infringed; or (iv) those who control the company are perpetrating a "fraud on the minority."

These rights may be more limited than the rights afforded to our shareholders under the laws of states in the United States.

Under the Companies Act, members of the general public, on payment of a nominal fee, can obtain copies of the public records of a company available at the office of the Registrar which will include the company's certificate of incorporation, its memorandum and articles of association (with any amendments) and records of license fees paid to date and will also disclose any articles of dissolution, articles of merger and a register of charges if the company has elected to file such a register.

A member of a company is entitled, on giving written notice to the company, to inspect:

a. the memorandum and articles;
b. the register of members;
c. the register of directors; and
d. the minutes of meetings and resolutions of members and of those classes of members of which he is a member; and to make copies of or take extracts from the documents and records referred to in (a) to (d) above.

Subject to the memorandum and articles of association, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document, or part of a document, specified in (b), (c) or (d) above, refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records. Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the BVI Court for an order that he or she should be permitted to inspect the document or to inspect the document without limitation.

This may make it more difficult for you to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

As a result of all of the above, our public shareholders may have more difficulty in protecting their interests in the face of actions taken by our management, members of the Board or controlling shareholders than they would as public shareholders of a company incorporated in the United States. For a discussion of significant differences between the provisions of the Companies Act and the laws applicable to companies incorporated in the United States and their shareholders, see "Description of Shares — Differences between the Law of Different Jurisdictions."

Because we do not expect to pay dividends in the foreseeable future, you must rely on a price appreciation of the common shares for a return on your investment.

We currently intend to retain most, if not all, of our funds and any future earnings to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. Therefore, you should not rely on an investment in the common shares as a source for any future dividend income.

Our Board has complete discretion as to whether to distribute dividends, subject to certain requirements of BVI law. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our directors. Under BVI law, a BVI company may pay a dividend out of either profit or share premium account, provided that in no circumstances may a dividend be paid if this would result in the company being unable to pay its debts as they fall due in the ordinary course of business. Even if our Board decides to declare and pay dividends, the timing, amount and form of future dividends, if any, will depend on our future results of operations and cash flow, our capital requirements and surplus, the amount of distributions, if any, received by us from our subsidiaries, our financial condition, contractual restrictions, and other factors deemed relevant by our Board. Accordingly, the return on your investment in the common shares will likely depend entirely upon any future price appreciation of the common shares. There is no guarantee that the common shares will appreciate in value or even maintain the price at which you purchased the common shares. You may not realize a return on your investment in the common shares and you may even lose your entire investment in the common shares. Additionally, because we are a holding company, our ability to pay dividends on our common shares may be limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions to us, including restrictions that are imposed under the terms of the agreements governing our subsidiaries' loan and credit facilities. There is no assurance that future dividends will be paid, and if dividends are paid, there is no assurance with respect to the amount of such dividend.

As a company incorporated in the British Virgin Islands, we are permitted to adopt certain home country practices in relation to corporate governance matters that differ significantly from Nasdaq's corporate governance listing standards. These practices may afford less protection to shareholders than they would enjoy if we complied fully with Nasdaq's corporate governance listing standards.

As a BVI company listed on Nasdaq, we are subject to Nasdaq's corporate governance listing standards. However, Nasdaq rules permit a foreign private issuer like us to follow the corporate governance practices of its home country. Certain provision in the Companies Act relating to corporate governance in the BVI, which is our home country, may differ significantly from Nasdaq's corporate governance listing standards. We intend to follow the relevant provisions in the Companies Act in lieu of the following corporate governance requirements of Nasdaq that listed companies must have for as long as we qualify as a foreign private issuer: (i) a majority of independent directors; (ii) a nominating/corporate governance committee composed entirely of independent directors; and (iii) a compensation committee composed entirely of independent directors. To the extent we choose to follow home country practice in the future, our shareholders may be afforded less protection than they otherwise would enjoy under Nasdaq's corporate governance listing standards applicable to U.S. domestic issuers.

In addition, in September 2018, California's Senate Bill 826 was signed into law. Senate Bill 826 generally requires public companies with principal executive offices in California to have a minimum number of females on its board of directors. As of December 31, 2019, each public company with principal executive offices in California was required to have at least one female on its board of directors. As of December 31, 2021, each public company was required to have at least two females on its board of directors if the company has at least five directors, and at least three females on its board of directors if the company has at least six directors. However, on May 13, 2022, the Superior Court of the State of California for the County of Los Angeles held in Crest v. Padilla, Case No. 19STCV27561, that such minimum female board member requirement violates the Equal Protection Clause of the California Constitution. The case is currently being appealed by the State of California, and we intend to monitor legislative developments accordingly.

Our board of directors currently includes one female director. There is uncertainty as to whether this law applies to foreign private issuers with their principal executive offices in California, like us. If the law is deemed to apply to foreign private issuers, we may be deemed out of compliance. An initial violation of Senate Bill 826 can result in a fine from the California Secretary of State in the amount of $100,000, with each subsequent violation resulting in a fine of $300,000. We cannot assure you that we can recruit, attract and/or retain qualified members of the board and meet gender requirements under California law, which may expose us to financial penalties and adversely affect our reputation.

We are a foreign private issuer within the meaning of the rules under the Exchange Act, and as such we are exempt from certain provisions applicable to U.S. domestic public companies.

Because we qualify as a foreign private issuer under the Exchange Act of 1934, as amended (the "Exchange Act"), we are exempt from certain provisions of the securities rules and regulations in the United States that are applicable to U.S. domestic issuers, including:

- the rules under the Exchange Act requiring the filing with the SEC of quarterly reports on Form 10-Q or current reports on Form 8-K;
- the sections of the Exchange Act regulating the solicitation of proxies, consents or authorizations in respect of a security registered under the Exchange Act;
- the sections of the Exchange Act requiring insiders to file public reports of their share ownership and trading activities and liability for insiders who profit from trades made in a short period of time; and
- the rules under Regulation FD governing selective disclosure rules of material nonpublic information.

We are and will continue to be required to file an annual report on Form 20-F within four months of the end of each fiscal year. In addition, we intend to publish our results on a semi-annual basis as press releases, distributed pursuant to the rules and regulations of Nasdaq. Press releases relating to financial results and material events will also be furnished to the SEC on Form 6-K. However, the information we are required to file with or furnish to the SEC will be less extensive and less timely compared to that required to be filed with the SEC by U.S. domestic issuers. As a result, you may not be afforded the same protections or information that would be made available to you were you investing in a U.S. domestic issuer.

Item 4. Information on the Company

A. History and Development of the Company

Newegg Commerce, Inc. (previously known as "Lianluo Smart Limited") was incorporated as an international business company under the International Business Companies Act, 1984, in the British Virgin Islands on July 22, 2003. The Company's registered office is located at 17560 Rowland Street, City of Industry, CA 91748 and its telephone number is (626) 271-9700, and its website address is www.Newegg.com. The address of the Company's registered agent is Vistra License Holdings (BVI) Limited, Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands. The SEC maintains an internet site that contains reports, proxy information, and other information regarding issuers that file electronically with the SEC at www.sec.gov.

We are a leading technology-focused e-commerce company in North America and ranked No. 1 as the global top electronics online Marketplace according to Web Retailer's report as of July 2022, as measured by an average of 20.1 million visits per month in 2022. Since 2005, we have recognized GMV of approximately $41 billion and have processed over 187 million orders. In 2022, 2.7 million buyers purchased over 604,000 items from us, making us one of the largest e-commerce businesses in the United States. In 2022, we offered more than 20 million SKUs for sale on our platform, representing over 51,000 brands in the IT, consumer electronics and other related categories. We offer brands and sellers a wide range of options to sell through our platform, as well as services that we offer to help make their online businesses more efficient and effective. Our Direct offering allows brands to sell directly to us and we manage the inventory and transaction directly with our consumers. Our Marketplace offering allows brands to leverage our platform, buyer audience and e-commerce solutions in order to generate sales on the Newegg platform.

B. Business Overview

The Newegg Ecosystem

Founded in 2001, we have developed a technology-focused e-commerce ecosystem that enables all of our participants to discover, engage and transact with each other. We take pride in connecting customers to a wide and increasing selection of technology products and a large range of brands, sellers, suppliers, manufacturers, distributors and third-party service providers.

We have developed a powerful online marketplace that delivers value to consumers, brands and sellers in the technology products sector. Our new product and service introductions are aimed at continually improving our value proposition to these key constituents of our ecosystem and marketplace. For consumers, on the demand side, we provide access to a vast, yet curated selection of technology products sourced globally. On the supply side, we create value for brand partners, Marketplace sellers and suppliers by connecting them to one of the largest audiences of technology product consumers online. Additionally, our platforms offer a comprehensive suite of e-commerce solutions, including product listing, fulfillment, marketing, customer service and other value-added tools and services.

Key Ecosystem Participants and How We Create Value for Them

There are three key participants of our ecosystem: customers, Marketplace sellers, and brand partners.

Customers

We have built a large, highly engaged and loyal customer base. As of December 31, 2022, we had over 2.7 million active customers, defined as a unique customer ID with at least one item purchased on our platforms in the past 12 months.

Our core customers include both our business-to-consumer ("B2C") customers and our business-to-business ("B2B") customers. See "Our Business Models" for more information about our B2C and B2B businesses.

We believe that we offer the following compelling value propositions to our customers:

- Wide range of technology-focused products. With approximately 20.2 million SKUs and 1,605 categories as of December 31, 2022, we are viewed by our customers as a one-stop shop for a vast selection of technology products, ranging from brand-name IT/CE products and in-house brands of computer hardware to peripherals under our private labels. Our extensive product offerings enable us to meet the diverse needs of a group of sophisticated customers, which is difficult for brick-and-mortar retailers to match due to shelf space constraints.
- Data-driven shopping experience.
  - Content-rich, user-friendly interface. Our platforms are user-friendly and easy to navigate, with features enabling customers to easily discover new products and trends, such as intelligent product recommendations and curated, personalized content supported by data and analytics. We also empower customers to make informed purchasing decisions by offering customized shopping tools, detailed product information, customer opinions, peer reviews, product tutorials and the opportunity to network with other members of the Newegg community. We operate in-house video production that generates original content to engage and inform customers, and we continue to enhance these capabilities in order to produce more and better content. Our platforms also provide an extensive portfolio of user-generated content, including over 4.6 million reviews as of December 31, 2022.
  - Timely, secure and reliable fulfillment. Leveraging our reliable logistics network and infrastructure, we are able to maintain a high level of shipping accuracy and reliability and timely delivery. See also "— Logistics and Fulfillment." As of December 31, 2022, we achieved, for orders directly fulfilled by us, an over 99.9% average delivery accuracy rate, a 95.8% one-business day fulfillment rate in the United States and Canada if ordered prior to our 3:00 p.m. local time order cut-off, and a 99.0% two-business day fulfillment rate in the United States and Canada.

- Vibrant community of tech-savvy customers. While expanding our range of product offerings, we continue to maintain a large and vibrant community of tech-savvy customers, providing inspiration for visitors to discover new technology trends and products and valuable decision-making intelligence typically not found at traditional retailers. We have continued to offer additional functionalities to foster this community by operating Newegg Media Services, which produces Unbox This, The Gamer Lounge, Newegg Live, and many other original video and editorial content platforms, where like-minded technology enthusiasts can get information about Newegg and technology products.
- Competitive Offerings.
  - Competitive Pricing. We are able to offer competitive pricing across a broad range of categories because of our scale, strong supplier and Marketplace seller relationships, and our ability to maintain a cost-efficient infrastructure. Our experienced product management team leverages data to cost-effectively match demand with supply, minimize inventory and reduce infrastructure costs associated with brick-and-mortar retailers. We are also able to find optimized pricing points by leveraging our data and analytics capabilities and by monitoring our major competitors' pricing trends.
  - Flexible payment options. We accept a variety of payment options and have sought to add new payment methods to cater to the needs of our customers. We also offer open-term accounts for business and public sector customers. For example, in response to increasing customer demand, we introduced Bitcoin payment solution in 2014 and Apple Pay in 2016. In Q4 2020, we also started offering a Pay-in-4 program, where customers are given the freedom and flexibility to spread their payment in four interest-free installments. See also "— Payment."

Marketplace Sellers

On our Newegg Marketplace, third-party sellers offer their products to our customers through our platforms and pay us commissions on their sales. See "— Our Business Models — Marketplace" for more details. Our Newegg Marketplace has over 9,500 sellers, approximately 20.0 million SKUs and over 1,500 categories as of December 31, 2022.

We are a business enabler for our Newegg Marketplace sellers in many ways. We believe that our Marketplace sellers choose to partner with us not just because we offer a large online sales channel, but also because we deliver the following additional value:

- Scaled access to technology-focused consumers. Our Marketplace connects sellers, whether brand owners or retailers, to a large and growing customer base, the majority of whom are tech-savvy, in more than 20 countries and regions as of December 31, 2022, without expanding their physical footprint. In 2022, approximately 1.4 million active customers purchased $552.2 million in gross merchandise value from our Marketplace business. In addition to consumers, our Newegg Marketplace also provides smaller vendors and retailers with access to profitable B2B opportunities that would otherwise be difficult to reach due to the challenges associated with providing specialized support for business' purchasing needs.
- Access to premium e-commerce solutions. Sellers generally face high barriers entering the e-commerce market, including logistics and scalable economics. Our Marketplace addresses these challenges by providing sellers with a comprehensive suite of e-commerce solutions, including an API-enabled portal, on-site promotions, a curated marketing program, and fulfillment and delivery services. Particularly, we provide Marketplace sellers with valuable data insights, which help them to market their products more effectively, generate additional traffic and increase conversion.
- Human touch. Our Marketplace is a key component of our ecosystem. Since we launched our Marketplace model in 2010, we have carefully nurtured our relationships with Marketplace sellers and have invested in their success, which we believe drives our continued growth in the long run. For example, we assign dedicated account managers to qualified sellers to help them tackle the variety of challenges associated with operating a virtual storefront.

Brand Partners

We are a trusted partner and a go-to channel for many leading technology product brands and are increasingly establishing partnerships with brands in a growing number of adjacent product categories. As of December 31, 2022, we sourced merchandise from over 2,970 brand partners for our direct sales business, and featured the official online stores of a number of brand partners, including some of the most well-known brands such as AMD, Asus, Gigabyte, Intel, Lenovo, Meta Quest, Microsoft, MSI, Nvidia, and Samsung.

We provide the following benefits for our brand partners:

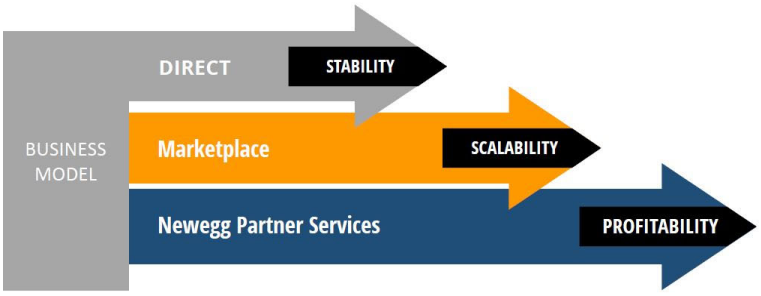
- Access to a targeted customer base. Enabling brands to cost-effectively reach target audiences, our existing, loyal customer base is highly valued by companies targeting ready-to-buy, tech-savvy customers as well as foreign brands seeking to sell products and build brand awareness in the markets we serve.
- Comprehensive and cost-efficient distribution channel. Leveraging Newegg's customer-friendly online platforms, established logistics network and infrastructure and extensive e-commerce experience and expertise, we offer to our brand partners comprehensive and cost-efficient distribution channels and comprehensive supply chain capabilities, including marketing, warehousing, fulfillment and customer service.
- Brand building and promotion solutions. We offer our brand partners solutions and support to run special promotions and targeted marketing and brand-building campaigns through our platforms utilizing data and interactive media in ways that cannot be achieved through traditional media. See "— Our Business Models — Marketing Services."
- Data insights. We collect insights from our customers' interactions on the platform using our data and analytics capabilities. We use these insights, coupled with customer feedback and our knowledge of the e-commerce market, to facilitate our brand partners' product and marketing decision-making.

Our Business Models

Our primary business model is to help customers find and purchase their desired products through our platforms. From a customer base and target audience perspective, we categorize our business model into B2C and B2B operations. We strive to offer a compelling online shopping experience, reliable and timely order fulfilment and superior customer service across our B2C and B2B operations through our Direct sales, Marketplace and NPS platforms.

The following chart sets forth our business models:

BUSINESS MODEL	DIRECT	MARKETPLACE	NEWEGG PARTNER SERVICES (NPS)
	Newegg controls inventories sourced from suppliers and directly sells goods to its customers and businesses on Newegg platforms	Newegg allows third-party Sellers to sell products through the Newegg Marketplace, and recognizes commission and service fees from third-party Sellers in its net sales	Newegg generates revenue by charging service fees for providing various e-commerce services to Vendor partners, marketplace Sellers and other customers and businesses



B2C

We have maintained a B2C business since launching our e-commerce platform in 2001. With a focus on selling IT/CE products, our B2C business has expanded to include an increasingly wide range of products, including emerging tech product categories such as 3D printers, home automation, wearable and health tech, E-sports, drones, and others.

Our B2C customers consist primarily of sophisticated IT professionals, gamers, do-it-yourself technology enthusiasts and early technology adopters who generally occupy a well-educated, affluent, and IT trendsetting demographic with relatively high purchase frequency and strong willingness to embrace technology trends and try new products. We believe our success is built upon our ability to cater to the preferences, tastes and habits of this demographic. As of December 31, 2022, we served customers in the United States, Canada and over 20 additional countries and region through our Newegg.com, Newegg.ca and Newegg Global platforms. For details of these platforms, see "— Our Platforms — B2C Platforms." Our B2C operations generated GMV of $1.7 billion and $2.4 billion for the years ended December 31, 2022 and 2021, respectively.

B2B

With a focus on providing office and IT equipment, NeweggBusiness.com offers our B2B customers access to our extensive product assortment and account managers with expertise in sourcing technology for business and processing industry specific requirements. Our B2B operations generated GMV of $379.5 million and $537.6 million for the years ended December 31, 2022 and 2021, respectively.

Our B2B customers span across a range of verticals, including healthcare providers, K-12 and higher educational institutions, government agencies, and businesses of all sizes, and our B2B operations have been focused on providing specialized support for their industry- and business-specific needs.

Currently, while we position NeweggBusiness.com as our dedicated B2B website, a significant number of our B2B customers also shop via our account managers, or on our flagship retail platform, Newegg.com. See "— Our Platforms — B2B Platforms" for more information about these platforms.

How We Deliver Our Service

We sell products to our B2C and B2B businesses through direct sales and Marketplace.

We believe that the integration of our direct sales and Marketplace operations has created a virtuous, self-reinforcing cycle. Our Marketplace is built on the success of our direct sales business, and we believe that many sellers are attracted to our Marketplace by our direct sales credentials. On the other hand, as we continue to source new products and recruit quality sellers, the choices available to customers also should increase, generating momentum for our growth. We believe that this self-reinforcement, coupled with our reliable logistics network, has made it a top online destination for IT/CE products.

Direct Sales

We acquire products directly from our partners that consist of manufacturers, distributors and wholesalers, and sell them directly to our B2C and B2B customers. For our direct sales, we generally source the products, take inventory risk, process customer payments, prepare packages for shipment and delivery, and provide customer service and support. We stock and ship from our own warehouses, and also drop-ship directly to customers from our partners' warehouses.

Direct sales is a significant driver of our business, generating approximately 70.3% of our GMV for the year ended December 31, 2022. The success of our direct sales business depends largely upon our ability to secure a broad selection of products from suppliers at competitive costs. Since the commencement of our operations, we have sought and cultivated deep, longstanding relationships with some of the biggest IT brands in the world and many of the largest, most important IT distributors. We continuously seek to build similar relationships with suppliers in new and emerging categories and geographies. Due to our strong supplier relationships and our purchasing volume, we are able to obtain favorable pricing, early allocation of new products, preferential allocation of products in shortage, and funding for product promotion and cooperative marketing. We also enjoy exclusive arrangements with certain suppliers where we are able to offer highly demanded products exclusively on our platforms. For more information about merchandise sourced for direct sales, see "— Merchandise Sourcing."

Marketplace

Our Marketplace operations enable customers to discover and purchase products from qualified third-party sellers from over 40 countries and regions globally as of December 31, 2022. As of December 31, 2022, our Marketplace consisted of over 3,500 active sellers based in the United States, over 4,800 active sellers based in China, and over 1,100 active sellers coming from other countries. Our Marketplace sellers pay us commissions on their sales, with published commission rates varying from 8% to 14% according to product category. We also charge membership fees for the additional value-added services and tools that we provide to sellers based on their enrollment.

Our Marketplace operations consist of the Newegg Marketplace that launched in 2010, the Newegg B2B Marketplace, and the Newegg Canada Marketplace that launched in 2014. As of December 31, 2022, our Marketplace connected B2C and B2B customers to over 9,500 third-party sellers offering approximately 20.0 million SKUs. Our Marketplace offers a wide and increasing portfolio of categories, including emerging smart home automation, VR, lifestyle electronics, health and beauty technology products and houses online stores of some of the most well-known brands in the technology industry, such as Dyson and Lenovo.

While we encourage Marketplace sellers to offer the most attractive prices, they have the flexibility to price the products sold through our Marketplace. Due to our partnership, unique customer base, scale and large visitor traffic, some of the Marketplace sellers also set aside exclusive offers, promotion, and product supplies for us and offer some of the best offers tailored specifically to our customers. We have a rigorous process in place to assess our Marketplace sellers. We select Marketplace sellers based on a number of factors, including service level, logistics capability, operation efficiency, category focus, sales volume, brand assortment, customer rating and market reputation. We also require third-party sellers to meet our strict standards and protocols in terms of product authenticity, customer service, and delivery and fulfillment so that customers are confident that they receive the same level of buying experience and customer service that they expect when buying directly from us. See also "— Customer Service and Support — Marketplace monitoring."

Merchandise Sourcing

As of December 31, 2022, we offered approximately 20.2 million SKUs across our platforms, consisting of over 124,400 direct sales SKUs sourced from at least 390 suppliers globally and approximately 20.0 million SKUs on our Marketplace from over 9,500 third-party sellers globally. As of December 31, 2022, approximately 63.7% of our direct sales inventory was purchased directly from manufacturers, 33.6% from distributors and 2.7% from other sources. As of December 31, 2022, the 10 largest suppliers, whom we have worked with for over a decade, accounted for 73% of the merchandise we purchased for direct sales.

The table below shows our major product categories offered through our platforms and their selected featured brands:

Category	Products	Selected Featured Brands
Computer System	Desktops, laptops, gaming laptops, peripherals and accessories	Asus, MSI, HP, Lenovo, Acer, Microsoft, Samsung, LG, Gigabyte, Westinghouse
Components	CPU/processors, Graphic Cards, Motherboards, storage devices and computer accessories	Intel, AMD, Asus, MSI, Corsair, Gigabyte, ASRock, EVGA, Western Digital, Seagate, Samsung, G.Skill
Electronics	Home Video, Home Audio, Headphones, Pro Audio/Video, Cellphones, Wearables, Digital Cameras	Samsung, LG, Denon, Yamaha, Polk Audio, Klipsch, Jabra, JBL, Sennheiser, Bose, Beyerdynamic
Office Solutions	Display & printing, office technology furniture, office supplies and mailing & inventory supplies	HP, Brother, Epson, Xerox, Lexmark, Zebra, Honeywell, ELO Touch, Sony, Sharp, Asus, Acer, Samsung, Eureka Ergonomic, COUGAR
Software & Services	Software, Digital Downloads, Warranty & Services, 3rd Party Gift Cards, and Entertainment Products	Microsoft, Adobe, Norton, LifeLock, Intuit, Allstate
Others	Xbox, PlayStation, Home Networking, Server & Components, Smart Home Products, Car Electronics, Motorcycles and ATV, Wheels and Tires, Home Improvement Tools, Home Appliances, Kitchen Utensils, Outdoor & Garden Furniture, Fitness, Sports and Health Supplies	Sony PlayStation, Microsoft Xbox, Google, Asus, TP-Link, Netgear, Alpine, Pioneer, Kenwood, Continental Tires, Goodyear Tires, Bosch, Dyson, Frigidaire, iRobot, Black & Decker, LG, Huffy, Razor, Garmin, Philips, GT Racing

We strive for a steady supply of products and optimized pricing and allocation, and as a result, we maintain multiple sourcing arrangements for most of our products. Leveraging our scale, brand and global footprint, we seek to enter into exclusive agreements with selected suppliers and third-party distributors for some or all of their products with favorable terms.

We deploy a flexible sourcing model, utilizing different distribution channels when economically and logistically beneficial while maintaining our reseller authorizations and relationships with our brand partners. As we increase in scale in new or emerging product categories, we endeavor to increase our purchases directly from manufacturers and, where appropriate, to become an authorized reseller, which we believe provides improved product pricing and better access to preferred product allocation.

Our technology savvy customer base, our online marketing and merchandising expertise and our ability to quickly and efficiently launch new products make us the go-to channel for many manufacturers and distributors. We are particularly strong in the components categories where we are one of the largest channels online or offline and we continue to gain significant traction with suppliers in other categories, such as desktop PCs, laptops, and input/output devices.

We maintain extensive and longstanding relationships with many of the biggest technology product brands and distributors globally. We employ a team of merchandising professionals specifically trained to cultivate and manage relationships with large international IT brands, such as AMD, Asus, Intel, Lenovo, Microsoft, MSI, Nvidia, and Samsung. Our merchandising professionals review our product categories and brands on a regular basis to assess demand and trends so that we offer our customers access to the most current and desirable products.

Private Labels

In 2004, Newegg launched and offered our first private label brand, Rosewill, on Newegg.com. We leverage our data and insights from customers and activity on the platform to determine products and features to focus our investment. The private label assortment is primarily focused around categories where we believe that we can compete at higher than average margins while delivering cost effective, high quality options to our customers. We offer our private label products both across our platforms and on other e-commerce platforms, such as Walmart, Amazon, and eBay.

Our private labels currently include Rosewill, which is focused on offering computer components and accessories, gaming peripherals and home electronics, and ABS, offering high-end gaming PCs for consumers.

Other Services and Solutions

In addition to online retail sales, we also generate revenues from a range of ancillary value-added partner services. We believe by providing these services, we create additional value for our business partners and customers and ultimately benefit our ecosystem and all its participants.

Supply Chain Third-party (3PL) Services

- Shipped by Newegg® Service. We began to offer Shipped by Newegg, a comprehensive suite of warehousing and fulfillment services, to our Marketplace sellers in 2013. Enrolled Newegg Marketplace sellers deliver their products to one of our fulfillment centers, and we handle the fulfillment of orders placed in the sellers' online stores and charge service fees based on the size of the products and the shipping methods requested.
- Newegg Logistics. We launched Newegg Logistics in 2014, a division dedicated to providing end-to-end e-commerce logistics and supply chain solutions covering warehousing, inventory management, order processing, packing, and shipping, designed to reduce inventory costs and streamline supply chain efficiencies, to our business partners, manufacturers, whole-sellers, Marketplace sellers and B2B clients. We provide our clients recommendations based on their supply chain strategy and roadmap. To address our clients' concerns in managing customer returns, we customize a cost-effective reverse logistics solution catered to their businesses. Our solutions range from small parcel delivery to Less Than Truckload, heavy freight, and all the way up to intermodal transport and cross-border shipping, with easy access to road, rail, water, and air transport. We typically enter into a master service agreement with our Newegg Logistics customers and charge service fees at a fixed rate.
- Newegg Staffing: We launched Newegg Staffing in 2020 with a focus on providing both direct placement and seasonal placement of employees to help our partners, offering clerical, manufacturing, and logistics employee placement. Clients such as vendor partners utilize these services as a one-stop shop solution for all their business needs.

Marketing Services

In 2020 we began rolling out the first of our marketing services for Newegg Marketplace sellers. We offer flexible marketing packages consisting of advertising sales, event organization and other marketing campaigns to our brand partners. We help brands reach a potential audience by leveraging our online portals, marketing affiliates and promotional emails. We help our brand partners and Marketplace sellers design marketing activities with highly effective cost of sales. In addition, our Newegg Media team also provides social media and video content service offerings to market our brand partners to over five million social fans across various internet platforms, including Facebook, TikTok, Twitter, YouTube and Instagram through live stream shopping, video content, and engaging social posts by offering promotions, sweepstakes, and reviews in order to maximize our brand partners' exposure.

Our Platforms

Our websites and mobile applications, which we refer to as the "Newegg platforms," are the foundation of our ecosystem. While each Newegg platform is strategically focused on different market segments, customers and/or product categories, the platforms share a common Newegg brand and are supported by our integrated logistics and fulfillment capability, operational expertise and technology infrastructure, and we offer the same level of customer service and dedication across all these platforms.

B2C Platforms

- Newegg.com. Launched in 2001 in the United States, Newegg.com is our first online platform and currently our flagship e-commerce platform. Newegg.com offers a typical range of IT/CE categories with the continuous addition of emerging categories across the internet of things (IoT), home automation, robotics, drones, sporting goods, and more. While Newegg.com operates predominantly as a B2C e-commerce platform, Newegg.com supports both direct sales, where we sell merchandise directly to customers, and the Marketplace model where third-party sellers offer their inventory to our customers. As of December 31, 2022, Newegg.com fulfilled orders originating from various countries, mostly in North America.
- Newegg.ca. We launched Newegg.ca in 2008 to sell IT/CE products in Canada with a business model similar to that of Newegg.com. Newegg.ca is a leading e-commerce platform focusing on IT/CE products in Canada, with approximately 1.9 million registered accounts, and GMV of $159.3 million for the year ended December 31, 2022 and $244.3 million for the year ended December 31, 2021. Currently, nearly half of orders on Newegg.ca are fulfilled from our warehouses. We also deliver to our Canadian customers via Shipped by Newegg or other third-party shipping companies. Orders for merchandise offered by Canada-based Marketplace sellers are fulfilled locally by such sellers in Canada as well.
- Newegg Global. We launched Newegg Global in 2017 as an expansion of our footprint in the global e-commerce market. Newegg Global currently fulfills orders originating from 21 countries or regions. Newegg Global had over 1.1 million registered customers outside North America as of December 31, 2022 and had a GMV of $31.3 million and $65.4 million for the year ended December 31, 2022 and 2021, respectively.
- Mobile apps. Since the launch of our first mobile app in 2008, we have accumulated millions of downloads of our mobile apps. We currently have a mobile app for Apple devices and for Android devices, and we launch updated versions of our apps periodically. We have also developed live-streaming shopping features that enable our customers to engage in real time product discovery through media channels such as Newegg Live and TikTok. For more details, see "— Technology — Our IT Capability — Mobile site and apps."

B2B Platforms

In 2009, we launched NeweggBusiness.com, a site that currently supports substantially all of our B2B operations. Over the years, we have built NeweggBusiness.com into a dedicated B2B e-commerce platform offering a full range of IT, office and industrial products and solutions with a wide customer base ranging from government agencies, healthcare institutions, and education institutions to other businesses of all sizes. NeweggBusiness.com supports both direct sales and a B2B Marketplace that connects our B2B customers with over 1,820 third-party sellers globally.

Other Platforms

In addition to the major Newegg platforms discussed above, we also operate Newegglogistics.com, a platform dedicated to providing reliable logistics and supply chain solutions through 3PL operations. For details of Newegg's 3PL services, see "— Our Business Models — Supply Chain Third-party (3PL) Services."

Logistics and Fulfillment

We have a reliable logistics network and infrastructure designed to prioritize timely and accurate shipment of large quantities of orders. This has allowed us to deliver over 21,994 parcels per day on average, with an average accuracy rate of over 99.9%, a 95.8% one-business day fulfillment rate in the United States and Canada if ordered prior to our 3:00 p.m. local time order cut-off and a 99.0% two-business day fulfillment rate in the United States and Canada, as of December 31, 2022.

We stock and ship the vast majority of our direct sales products. Fulfillment of orders from our Marketplace is executed by the sellers except for orders shipped through our Shipped by Newegg services, where the items will be shipped from one of our warehouses.

Our logistics and fulfillment infrastructure and capabilities include:

- Warehouses. We believe the best approach in serving our customers is to maintain reasonable inventory levels and to ship directly from our own inventory. As of December 31, 2022, we operated nine strategically located fulfillment centers, including eight warehouses located in North America and one in China, covering more than 2 million square feet in total. We maintain regional warehouses in Southern California, New Jersey, Indiana, Georgia, and Ontario, Canada to fulfill customer orders in the United States and Canada. The geographical placement of our warehouses in North America enables us to reach approximately 96% of the North American population in two business days.
- Cooperation with reliable logistics service providers. We capitalize on a robust transportation framework that connects international air and sea transport, domestic over-the-road carriers, and last-mile delivery to residential consumers such as United States Postal Service, Purolator, OnTrac and UPS. We have also engaged and are working with multiple logistics partners to offer a wide array of flexible delivery options.
- Virtual fulfillment. We ship certain products to customers directly from vendors and distributors who meet our quality fulfillment standards without going through our warehouses, a practice which we refer to as virtual fulfillment. Virtual fulfillment is fully utilized to broaden our product assortment and avoid loss of sales when SKUs are out of stock. In the United States, virtual fulfillment accounted for approximately 7.6% of direct sales for the year ended December 31, 2022.

Our logistics and fulfillment focus on reliable, efficient, and flexible delivery.

- Reliability. We have a reliable technology platform and order process for our fulfillment operation. Each order is verified at least twice before being shipped. Customers can track the shipping status of their purchases through links to our email and/or our websites and mobile applications. Our inventory management and tracking also have redundant capabilities to enable each facility, if necessary, to fulfill most of our direct orders. This redundancy could allow us to continually fulfill most orders, albeit less efficiently, as long as a single warehouse is operational.
- Efficiency. We have a well-designed, fully customized, warehousing management software system that is adopted by all warehouses, featuring smart categorization of inventory assortment in various warehouse locations to maximize logistics efficiency. When we order product from a supplier, we track the receipt of the merchandise and can “material optimize,” or direct, the inventory to a specific warehouse to match customer demand in a geographical area; when a purchase order is received, we match the order to our inventory and distribute a specific order fulfillment assignment to one or more warehouses for processing. We use advanced, “pick-to-light” conveyer systems to allow our warehouse staff to fulfill orders quickly.
- Flexibility. Our customers may choose various shipping methods, including basic ground delivery and expedited overnight shipping, and we have continuously optimized our available delivery options to upgrade the shopping experience of our customers. For example, in 2019, in collaboration with UPS, we introduced an option allowing customers to pick up the products they purchase at a nearby UPS location instead of having them delivered at their own addresses. This is a safe and convenient shipping option and reduces the waiting time customers would otherwise experience between the time an order is placed and when their products are received.

Customer Service and Support

We have built our brand on the principle of superior customer service. We provide high-quality customer service and support throughout our customers' entire engagement with us, from purchase to returns.

- Customer service. Our in-house customer service staff are trained to resolve customers' inquiries as quickly as possible. We currently operate customer service centers in California and Texas, focusing on serving North American buyers. To enhance our service capabilities and maintain increased access, Newegg operates an Asia-based customer service center that is available seven days a week, via email and instant messaging. Our customer service representatives are available by phone, live-chat, chatbot or email. We have also been making investments in artificial intelligence and machine learning technologies, such as ChatGPT, to enhance our chatbot functionality and better serve our customers.
- Marketplace monitoring. When customers purchase items from our Marketplace sellers, we make them confident that they receive the same level of customer service they expect from our direct sales. With that in mind, we closely monitor the performance of our Marketplace sellers to monitor compliance with Newegg Marketplace rules, have a reliable logistics network, provide customers with quality customer support, ship orders on time, and respond to customer queries in a timely fashion. We have adopted a zero-tolerance policy on counterfeit products and have rules in place to take down allegedly counterfeit or pirated products and disqualify sellers selling counterfeit or pirated products. For more information, see "Risk Factors — Risks Related to Newegg's Business — Our reputation and business may be harmed if we or our Marketplace sellers sell pirated, counterfeit, illegal or "gray market" items."
- Newegg Marketplace Guarantee service. We also offer a special customer service program, Newegg Marketplace Guarantee, for Marketplace orders. With Newegg Marketplace Guarantee, if a Marketplace seller fails to reimburse the customer for products that are damaged, defective, not received by customer, or materially different from what was displayed on our platform by that seller, the customer can submit a claim directly to us and may be eligible for reimbursement of the purchase price of any product they purchase from a Newegg Marketplace seller.
- Return policy. Our standard "Hassle Free" return policy generally allows certain items that are directly sold and shipped by us to be returned within 30 days of the delivery date for a full refund or replacement. Restocking fees are waived for all items directly sold by Newegg, but may be charged on items sold by third-party sellers on our marketplace.

From a customer service perspective, in addition to customers, we broadly define our customers to also include our Marketplace sellers, from whom we earn commissions, and purchasers of our 3PL services and other ancillary e-commerce solutions and services. See "— The Newegg Ecosystem — Key Ecosystem Participants and How We Create Value for Them — Marketplace Sellers" and "— Our Business Models — Supply Chain Third-party (3PL) Services" for more information about our engagement with these customers.

Payment

We provide our customers with the flexibility to choose from a number of traditional online payment options, along with certain alternative payment solutions that are popular with our predominantly technology-enthusiast customers.

- B2C payment options. We offer various mainstream online payment options to customers on our B2C platform, including credit cards, debit cards and prepaid gift cards. We offer customers the opportunity to pay for items purchased on our platforms with the Newegg Store Credit Card, a private-label credit card that Newegg launched in partnership with Synchrony Financial, a U.S. consumer financial services company. Newegg Store Credit Card has a revolving credit line and offers numerous attractive financing options, which we believe improves customer loyalty and purchase frequency and results in increased sales. We also allow customers to use Bitcoin, Bitcoin cash, and other cryptocurrencies to pay for purchases made on our platforms through our third-party payment service provider, BitPay, who converts and settles all transactions to U.S. dollars in real time. In Q4 2020, we started offering "Pay in 4" payment option that allows customers to pay in four interest-free installments within a six-week timeframe. This payment option is offered through Zip. In Q4 2021, we began offering Affirm to our customers to allow them to pay at their own pace for up to a period of 12 months.
- B2B payment options. B2B customers can make payment during checkout or request credit and pay on terms via the above-mentioned online payment options or via ACH, wire transfer, or bank check. We also offer open-term accounts for business and public sector customers. In most cases, the payment term that we grant to our B2B customers is 30 days.

Sales and Marketing

Our marketing strategy includes generating customer traffic, increasing our brand recognition, acquiring customers cost-efficiently, building customer loyalty and maximizing repeat purchases. Our integrated marketing framework represents a core competency that we regard as essential to the success of our platforms. We are focused on continuing to enhance our brand awareness through a variety of online and offline marketing and brand promotion activities, while leveraging technology to drive scalability and sustainability and eventually achieve optimal return on investment and highly effective cost of traffic as well as sales.

Referral

We benefit significantly from word-of-mouth referrals and positive product reviews, and we believe our reputation as a one-stop–technology shop has led to strong word-of-mouth promotion, especially among the technology-savvy. We have efficient customer acquisition strategies, because the majority of our web traffic is free. Free traffic includes mobile apps, email & SMS, social media, and brand mentions, reviews and shares. Paid traffic includes affiliate marketing, sponsorships, influences, connected TV, and paid searches. In 2022, 81% of traffic was free, as compared to the paid traffic of 19%.

Online Marketing

We conduct the majority of our marketing efforts online through targeted marketing via affiliates, search engines, promotional emails, social media traffic, targeting and personalization, and online promotion campaigns.

- Paid search engine marketing. Search engine marketing is an important driver of our traffic and customer acquisition. For the year ended December 31, 2022, our spending on paid search engine marketing represented approximately 65% of our total marketing spending and 11% of total traffic to Newegg's websites, including desktop, mobile, and app traffic. We bid for specific keywords and products on search engine sites, such as Google, Yahoo! and Microsoft Bing, for optimum visibility in the displayed results. Our broad and evolving product selection enables us to utilize a large quantity of keywords that we frequently test and measure for their effectiveness. We also use sophisticated software to strategically manage our keyword and SKU-level bids to maximize marketing performance at an efficient rate.
- Affiliate marketing. We also engage in affiliate marketing programs where we offer affiliated websites commissions for sales resulting from directing customer traffic to our websites through embedded hyperlinks. Such affiliates are typically deal sites that advertise retailer deals to their audiences. Affiliate marketing is our second largest paid marketing channel and represents approximately 27% of our total marketing expense for the year ended December 31, 2022.
- Targeting and personalization marketing. Targeting and personalization have proved to be highly effective in terms of conversion and customer acquisition. Our Customer Relationship Management Marketing Team runs various and highly diversified marketing programs through personalization and segmentation on multiple channels including website, email, social, paid search engine, and more. Based on customers' onsite behavioral data and purchase history data, we are able to identify prospective customers (that is, visitors sharing similar shopping patterns with current Newegg customers) as well as existing customers and display our brand and product advertising ads to them when they are on social media or Google search or other affiliate sites.
- Other online marketing channels. Other online marketing channels include click-through based advertising on publishers' sites, targeted messages, email distribution, banner advertisements on high-traffic portals, social networking via major social media sites and our own branded portal, and onsite promotions and cross-selling opportunities on our websites.

Offline Marketing

We also devote marketing resources to various offline formats, including hosting or exhibiting at live events.

We are beginning to selectively participate in live events in the wake of the COVID-19 pandemic, with a focus on the health and safety of our employees and event attendees.

Technology

Our technology systems are a critical component of our success and designed to enhance efficiency and scalability. Our research and development team, coupled with our proprietary technology infrastructure and the large volume of data generated and collected on our platforms, has created opportunities for continuous improvements in our technology capabilities, empowering reliability, scalability, and flexibility. Our technology strategy is to develop our own proprietary software and license technologies from third parties as appropriate in order to simplify and improve the shopping experience, as well as facilitate our fulfillment, financial and customer service operations.

IT Infrastructure

We have built our technology platform by relying primarily on software and systems that we have developed in-house and, to a lesser extent, on third-party software. Our technology infrastructure is designed for scalability and reliability to support business growth. We utilize high-availability clusters comprising groups of servers to provide sufficient redundancy and maintain continued service in the event of single point server failure due to hostile attacks, systematic errors or other reasons. Our high-availability data system is designed so that back-up servers instantly connect to our network once master servers experience technical difficulties.

We currently have one company-owned data center in City of Industry, California and two co-location data centers at facilities in Los Angeles, California, and New Jersey to provide redundancy for our e-commerce data. We maintain approximately 1,062 servers stored in our data centers and approximately 262 network devices. Our IT infrastructure enables us to support over 160 million page views per day and provides the capability to process up to 1 million orders per day. Our platform obtained PCI Level 1 certification in 2010.

Our IT Capability

- Websites. Our website incorporates proprietary technology internally developed on a primarily Microsoft.NET platform. It provides product descriptions, search and ordering functionalities, and product reviews.
- Mobile site and apps. Customer activity on mobile devices is growing, and we are investing significantly in mobile technology to increase sales to customers using mobile devices. Our mobile app aims to create a convenient shopping experience for our customers by, for example, enabling users to save their profiles and payment information for future purchases, and to provide helpful tools to Marketplace sellers by, for example, offering a mobile dashboard allowing them to better manage their inventory and orders on the go.
- Data and analytics. Data collected from our operations, including inventory data, behavioral and transactional data and pricing data, are housed in our data centers. We have deployed commercial business intelligence software to analyze this data and improve the shopping experience. We apply various AI capabilities and deep learning technologies across our platforms to enhance the shopping experience. Our sophisticated user behavior analysis system leverages our large customer database to create customized product recommendations, allowing us to efficiently acquire new customers and increase sales. Also, we have leveraged our AI capabilities to allow category extraction for different products based on the unstructured content and images, the results of which have been used to provide miscategorization correction and site search relevancy improvement.

- Inventory management. Our supply chain management system includes price optimization, inventory balancing, and inventory forecasting and other subsystems. It enables effective sales forecasting and inventory management that increases the efficiency of our supply chain and helps us control costs. Our inventory availability is coordinated through our technology platform. We have added functionality to update our platforms on a real-time basis when items become out of stock in our fulfillment centers. This feature limits the number of orders placed for out-of-stock items, allowing us to better manage aging inventory and minimize customer dissatisfaction by eliminating backorder merchandise.
- Transaction management. We have developed and deployed a scalable back office platform that allows us to monitor transactions and changes to financial data as well as provide our management with daily updates. We utilize both proprietary and third-party applications for accepting and validating purchase orders, placing and tracking orders with suppliers, managing inventory and assigning it to purchase orders, and ensuring proper shipment of products to customers.
- Fulfillment management. We have software for our fulfillment operations that tracks customer orders from placement through packing and shipping. We have installed sophisticated, "pick-to-light" conveyor systems and associated software and are making investments in new warehouse robotics technology. We have also developed software modules that efficiently manage the sorting and picking process of our products. Our systems are integrated with those from our primary U.S. shipping partners to facilitate tracking of the orders after shipment.
- Anti-fraud monitoring. Online fraud is a constant threat to the security and reliability of e-commerce retailers. We work with third-party vendors to monitor our network security devices and secure our online payment systems. We have developed proprietary tools in-house to monitor our online traffic for suspicious activities. Our websites have earned certifications from organizations and agencies like Tevora, based on our meeting of their information protection and fraud prevention standards.

Research & Development Team

Our global research and development team is focused on innovation through software development, algorithm design and development, and IT infrastructure design and maintenance. Our research and development personnel continually upgrade our platforms and test new features to improve our customer experience. Our research and development team also develops custom-built proprietary systems and engages third-party solutions to support our specific customer, vendor and Marketplace seller requirements, including handling heavy traffic on our platforms, and providing quick and efficient fulfillment services to meet customer expectations.

Security and Privacy Policy

We are committed to protecting information security across all Newegg platforms. We use a variety of techniques to protect the integrity of our networks and the confidential data we collect and store. Confidential information concerning our customers, sellers and suppliers is encrypted and protected using SSL encryption software. In addition, we use multiple layers of network segregation and hierarchical levels of firewall technology to protect against attacks or unauthorized access to our networks, servers, and databases. We also continue to build new procedural safeguards as part of our comprehensive privacy program. We operate in a secured and locked facility that requires all of our employees to check in and wear valid ID badges.

We have adopted a detailed privacy policy that describes in plain language our data use practices and how privacy is protected at Newegg, including the extent to which other Newegg users may have access to this information. We require users to acknowledge and expressly agree to this policy when registering with our platforms. For more information, see "Risk Factors — Risks Related to Newegg's Business — A significant inadvertent disclosure or breach of confidential or personal information we hold could be detrimental to our business, reputation and results of operations."

Intellectual Property

We rely on a combination of trademark, trade secret and other intellectual property laws as well as confidentiality agreements with our employees and suppliers for the purpose of protecting the proprietary rights associated with the products branded under our private labels. We control access to use and distribution of our intellectual property through license agreements, confidentiality procedures, non-disclosure agreements with third parties and our employment and contractor agreements.

Our intellectual property portfolio includes numerous domain names for websites that we use in our business. We have registered the domain names Newegg.com, Newegg.ca and NeweggBusiness.com and their variations. Our "Newegg" trademark and logo have also been registered with the relevant authorities in the United States, Canada and China (as well as in other regions, such as the European Union and Brazil). Furthermore, we have also registered the trademarks and logos of our private labels, such as Rosewill and ABS.

In addition to the protection of our intellectual property, we are focusing on ensuring that our product offerings (especially our private-label products) do not infringe on the intellectual property of others. Generally, our agreements with suppliers contain provisions to safeguard us against potential intellectual property infringement by our suppliers and impose penalties in the event of any infringement. We reserve the right to refuse to work with or terminate our relationship with suppliers where we become aware that they are violating the intellectual property rights of a third party.

Competition

The worldwide market in which we compete is evolving rapidly and intensely competitive, and we face a broad array of competitors from many different industry sectors around the world. Our current and potential competitors include: (i) online, offline and multichannel retailers, publishers, vendors, distributors, manufacturers, and producers of the products we offer and sell to customers; (ii) companies that provide ancillary D2C platform services and solutions, including website development, advertising, customer service and payment processing; (iii) companies that provide fulfillment and logistics services for themselves or for third parties, whether online or offline; and (iv) companies that design, manufacture, market, or sell consumer electronics, telecommunication, and electronic devices.

We believe the principal competitive factors in our market are:

- breadth and quality of product offerings;
- pricing;
- fulfillment capabilities;
- brand recognition and reputation;
- customer service;
- ability to respond more quickly to changing consumer preferences;
- ability to reach a geographically broader set of customers; and
- ability to be more flexible in marketing to a specific set of potential customers.

Some of our current and potential competitors have greater resources, longer histories, more customers, greater brand recognition, and greater control over inputs critical to our various businesses. They may secure better terms from suppliers, adopt more aggressive pricing, pursue restrictive distribution agreements that restrict our access to supply, direct consumers to their own offerings instead of ours, lock-in potential customers with restrictive terms, and devote more resources to technology, infrastructure, fulfillment, and marketing. Each of our businesses is also subject to rapid change and the development of new business models and the entry of new and well-funded competitors. Other companies also may enter into business combinations or alliances that strengthen their competitive positions.

Our principal market is in the United States, where we compete with retail stores and resellers, including superstores such as Best Buy, Costco and Walmart, hardware and software vendors that sell directly to end users, online retailers such as Amazon, and other marketers and resellers of IT/CE products.

See also Item 3 under the heading “Risk Factors,” the subheading “Our business faces intense domestic and international competition.”

Seasonality

Our business performance is subject to seasonal fluctuations. We have undergone and expect to continue to undergo an increase in activity during the year-end holiday period. These seasonal effects cause differences in revenues and expenses among the various quarters of any financial year, which means that the individual quarters should not be directly compared with one another or be used to predict annual financial results. This intra-year seasonal fluctuation in demand is in accord with historic experience in the retail and e-commerce industries, with increased volumes during the fourth calendar quarter of the year.

Government Regulations

We are subject to U.S. federal and state consumer protection laws, including laws protecting the privacy of customer personal information and regulations prohibiting unfair and deceptive trade practices. Other existing and future laws cover issues such as user privacy, spyware and the tracking of consumer activities, marketing emails and communications, other advertising and promotional practices, money transfers, pricing, content and quality of products and services, taxation, electronic contracts and other communications and information security.

Particularly, under applicable federal and state laws and regulations addressing privacy and data security, we must provide notice to consumers of our policies with respect to the collection and use of personal information, and our sharing of personal information with third parties and notice of changes to our data handling practices. In some instances, we may be obligated to give customers the right to prevent sharing of their personal information with third parties. Under applicable federal and state laws, we also are required to comply with a number of requirements when sending commercial email to consumers, including identifying advertising and promotional emails as such, ensuring that subject lines are not deceptive, giving consumers an opportunity to opt out of further communications and clearly disclosing our name and physical address in each commercial email. Regulation of privacy and data security matters is an evolving area, with new laws and regulations enacted frequently. For example, California enacted legislation that, among other things, requires new disclosures to California consumers, and affords such consumers new abilities to opt out of certain sales of personal information, which was effective on January 1, 2020. In addition, under applicable federal and state unfair competition laws, including the California Consumer Legal Remedies Act, and U.S. Federal Trade Commission, regulations, we must accurately identify product offerings, not make misleading claims on our platforms, and use qualifying disclosures where and when appropriate.

There is also great uncertainty over whether or how existing laws governing issues such as property ownership, sales and other taxes, auctions, libel, and personal privacy apply to the Internet and commercial online services. For example, tax authorities in a number of states are currently reviewing the appropriate tax treatment of companies engaged in online commerce, and new state tax regulations may subject us to additional state sales and income taxes. Additionally, new state legislation may also subject us to other types of taxes. New legislation or regulation, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business or the application of existing laws and regulations to the Internet and commercial online services could result in significant additional taxes or regulatory restrictions on our business or may necessitate changes to our business practices. These obligations or changes could have an adverse effect on our financial position and results of operations.

Our international operations are subject to foreign laws and regulations addressing topics such as customs duties and taxes, advertising and marketing practices, privacy, data protection and information security and consumer rights, as well as additional laws and regulations, including restrictions on imports from, exports to, and services provided to persons located in certain countries and territories, any of which might apply by virtue of our operations in foreign countries and territories or our contacts with consumers in such foreign countries and territories. For example, in Canada, we are subject to labor and employment laws, laws governing advertising, privacy and data security laws, safety regulations and other laws, including consumer protection regulations that apply to online retailers and/or the promotion and sale of merchandise and the operation of stores and warehouse facilities. We monitor changes in these laws, regulations, treaties, and agreements, and believe that we are in material compliance with applicable laws.

C. Organizational Structure

See Exhibit 8.1 for a list of our significant subsidiaries.

D. Property, Plants and Equipment

Our Facilities

As of December 31, 2022, we leased the following principal facilities:

Description of Use	Approximate Square Footage (in thousands)	Geographic Location	Lease Expirations
Corporate office facilities	150,884	North America	01/31/2025 through 11/30/2029
Corporate office facilities	23,732	China	03/26/2023 through 12/31/2023
Corporate office facilities	1,218	Taiwan	Through 04/30/2024
Fulfillment and warehouse operations	1,863,912	North America	05/31/2024 through 02/17/2032
Fulfillment and warehouse operations	43,737	China	Through 01/17/2024

As of December 31, 2022, Newegg owned the following principal facilities:

Description of Use	Approximate Square Footage (in thousands)	Geographic Location
Corporate office facilities	391,362	China
Corporate office facilities	2,707	Taiwan
Fulfillment and warehouse operations	109,473	China

Our corporate headquarters is located in the City of Industry, California. We also lease additional corporate office facilities and fulfillment and warehouse operations throughout North America, principally in California, Indiana, Georgia, and New Jersey in the United States, and Toronto in Canada. Outside of North America, we also own or lease corporate office facilities and fulfillment and warehouse operations, principally in China and Taiwan. Our Asia headquarters is in Shanghai. We periodically evaluate our facility requirements as necessary and believe our existing and planned facilities will be sufficient for our needs for at least the next twelve months.

Item 4A. Unresolved Staff Comments

None.

Item 5. Operating and Financial Review and Prospects

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes included elsewhere in this annual report. This discussion contains forward-looking statements that are subject to known and unknown risks and uncertainties. The long-term effects of the COVID-19 pandemic amplify many of these risks. Actual results and the timing of events may differ significantly from those expressed or implied in such forward-looking statements due to a number of factors, including those set forth in the sections entitled "Risk Factors" and "Disclosure Regarding Forward-Looking Statements" and elsewhere in this annual report. We have prepared our financial statements in accordance with accounting principles generally accepted in the United States ("GAAP").

Overview

Newegg is a leading technology-focused e-commerce company in North America, and ranked No. 1 as of July 2022 as the global top electronics online marketplace according to Web Retailer's report, as measured by 20.1 million average visits per month in 2022. Through *Newegg.com*, our flagship retail site, and other online platforms, we connect our global customer base to a wide and increasing assortment of tech products and a massive pool of brands, sellers, suppliers, manufacturers, distributors, and third-party service providers.

Headquartered in California, Newegg's reach is global. Leveraging our extensive fulfillment and warehousing network and the global footprint of our suppliers and sellers, we are able to offer merchandise sourced from over 40 countries and regions to customers located in over 20 countries and regions and deliver customer services in multiple languages.

Newegg's Business Model

GMV is the primary driver of our net sales, as we derive a significant majority of net sales from the GMV transacted on our online platforms, net of cancellations and returns. We define GMV as the total dollar value of products sold on our websites and third-party marketplace platforms, directly to customers and by our Marketplace sellers through Newegg Marketplace, net of returns, discounts, taxes, and cancellations. GMV also includes the services fees charged through our NPS in rendering services for our 3PL, SBN, SLS, staffing and media ad services, as well as the sales made by our Asia subsidiaries. We generate GMV and net sales primarily from the following sources:

- *Direct sales*, where we control inventories sourced from suppliers and directly sell goods to our customers on our platforms or certain other third-party platforms. Our direct sales revenues include net sales generated from sales of products directly by us to customers on our Newegg platforms (including wholesale where we sell inventories in bulk and mostly at a discount), sales through third-party websites of products we source from suppliers, and freight revenues from fees we charge for delivery of goods that we directly sell to customers.
- *Newegg Marketplace*, where third-party sellers sell products through our Newegg Marketplace, and we recognize commission and service fees from such third-party sellers in our net sales. The published commission rates are based on a percentage of the GMV transacted, exclusive of the shipping fees charged, which commission rates range from 8% to 14%, depending on the product category. We refer to the net sales generated from Newegg Marketplace as Marketplace revenues.

- *Newegg Partner Services ("NPS"),* where we generate net sales primarily by charging service fees for a range of e-commerce services and solutions rendered to our vendor partners, Marketplace sellers and various types of customers and businesses, including 3PL and other fulfillment and logistics services, advertising services, and online marketing services. We refer to such net sales as services revenues.

Factors Affecting Newegg's Results of Operations

Our financial condition and results of operations have been, and will continue to be, affected by a number of important factors, including the following:

Newegg's ability to grow our customer base and increase their engagement level

We monitor the following key operating metrics to evaluate our user traffic and the engagement of our customer base.

	For the Year Ended December 31,		
Key Operating Metrics:	**2022**	**2021**	**2020**
Number of active customers[(1)]	2.7 million	3.5 million	4.7 million
Repeat purchase rate[(2)]	31.3%	31.9%	32.5%
Average order value[(3)]	$ 411	$ 442	$ 301

Note:

1. Active customers as of a given date are calculated by unique customer ID with at least one transaction purchased on our platforms during the relevant 12-month measurement period.
2. Measured by the percentage of customers who made at least two purchases on Newegg platforms during the relevant 12-month measurement period.
3. Calculated by dividing sales volume by number of transactions during the relevant 12-month measurement period.

We use the above operating metrics to measure our overall customer engagement with our platforms. Our operating metrics vary from time to time due to factors including economic trends, new product releases, the level of competition we face, and the purchase patterns of our customers. The number of active customers, repeat purchase rates, and average order value are indicators of the size and engagement of our customer base.

Newegg's product mix

We offer a wide range of technology products from a broad mix of brands and sellers. As of December 31, 2022, we offered approximately 20.2 million SKUs across over 1,605 categories. Products are offered on our online platforms across a range of types, brands, and price points. We believe that customers are attracted to our online platforms primarily by the breadth and depth of our product offerings, a critical component of our ability to increase sales and drive long-term profitability. In addition to core technology products, in recent years we have also complemented our product assortment in areas such as apparel and accessories, home furnishings, home automation, personal goods and certain other products of IT — adjacent categories.

Our results of operations are affected by our merchandise mix, as products of different categories, brands and price points have a range of margin and profitability profiles. For example, categories where we hold lower market share and we strive to grow at an accelerated rate over market may offer relatively lower margins. Our merchandise mix may shift over time due to the combination of a variety of factors, including consumer demands and preferences, average selling prices, our ability to maintain and expand our supplier relationships, our ability to forecast market trends, and our marketing and promotional efforts. We continuously monitor the GMV and margin mix of our product offerings and we seek to increase the percentage of GMV and net sales from categories and brands with attractive margin profiles.

Success of Newegg Marketplace

A key component of our long-term strategy is the success of our Newegg Marketplace, which we believe is an important driver of future profitable growth.

For the years ended December 31, 2022, 2021, and 2020, our Newegg Marketplace generated GMV of $552.2 million, $742.4 million, and $663.7 million, respectively, and accounted for approximately 25.1%, 24.5% and 24.2%, respectively, of our total GMV. During the same periods, our Newegg Marketplace generated net sales of $47.0 million, $63.5 million, and $57.6 million, respectively, and accounted for 2.7%, 2.7%, and 2.7%, respectively, of our total net sales. There are a few factors that led to the decrease in GMV and net sales in our Marketplace business for the year ended December 31, 2022 versus prior years: (i) a reduction in the number of Marketplace sellers and SKUs due to fraud and counterfeit prevention initiatives; and (ii) category consolidation initiatives designed to streamline our Marketplace catalogue.

Our results of operations have been, and will continue to be, influenced by shifts over time in the GMV mix between direct sales and Marketplace. This is primarily due to the difference in revenue recognition — we recognize revenues from direct sales on a gross basis, while we recognize revenues from the Newegg Marketplace on a net basis. See "— Key Components of Results of Operations" for details. Accordingly, for the same amount of GMV, direct sales generates more net sales than Marketplace and, therefore, an increase in the GMV contribution of Marketplace as a portion of the total GMV would have a negative impact on our net sales.

Newegg's ability to forecast consumer needs and preferences

The IT/CE e-commerce market in North America and globally is characterized by rapidly evolving technologies, fast-changing consumer requirements and preferences and frequent releases of new products and introductions of updated industry standards and practices. We must effectively respond to these changes to remain competitive. We may have difficulty anticipating consumer demand and preferences, and the goods offered on our online platforms may not be accepted by the market or may be rendered obsolete or uneconomical. Our inability to adapt to these developments may lead to excessive or deficient inventories or a failure to attract new customers and retain existing customers, which could materially and adversely affect our financial condition and results of operations.

Newegg's ability to source products from key suppliers on favorable terms

As of December 31, 2022, we offered over 124,000 direct sales SKUs sourced from at least 395 suppliers globally. We maintain extensive, long-standing and mutually beneficial relationships with many of the biggest tech product brands and distributors globally. However, our contracts or arrangements with such suppliers generally do not guarantee the availability of merchandise or provide for the continuation of particular pricing or other practices. Our suppliers may not continue to sell their inventory to us on current terms or at all, and, if the terms are changed, we may not be able to establish new supply relationships on similar or better terms.

We compete with other retailers and direct marketers for favorable product allocations and vendor incentive programs from product manufacturers and distributors. Some of our competitors could enter into exclusive or favorable distribution arrangements for certain products with our vendors, which would deny us complete or partial access to those products and marketing and promotional resources. In addition, some vendors whose products are offered on our online platforms also sell their products directly to customers. If we are unable to develop and maintain relationships with suppliers that permit us to obtain sufficient quantities of desirable merchandise on favorable terms, our results of operations could be adversely impacted.

Segment Information

Our chief operating decision maker (i.e. chief executive officer) reviews financial information presented on a consolidated basis, accompanied by disaggregated information about revenue by countries or regions for purposes of allocating resources and evaluating financial performance. There are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. Based on qualitative and quantitative criteria established by Accounting Standards Codification ("**ASC**") 280, "Segment Reporting," we consider ourselves to be operating within one reportable segment.

A. Operating Results

Key Components of Results of Operations

Net Sales

Our net sales consist of direct sales revenues, Marketplace revenues and services revenues. See "— Newegg's Business Model" for more information about these sources of net sales.

Our net sales are reported net of anticipated discounts, returns, allowances, sales tax and credit card chargebacks, which are all estimated from historical experience. We also offer customer promotional programs, which we record as reductions in sales based on anticipated redemption rates estimated from historical experience.

The following table sets forth the components of our net sales in absolute amounts and as percentages of total net sales, for the periods indicated.

	For the Year Ended December 31,					
	2022		2021		2020	
	(in millions, except for percentages)					
Net sales	**Amount**	**%**	**Amount**	**%**	**Amount**	**%**
Direct sales revenues	$ 1,607.0	93.4	$ 2,243.4	94.4	$ 1,974.9	93.4
Marketplace revenues	47.0	2.7	63.5	2.7	57.6	2.7
Services revenues	66.3	3.9	69.3	2.9	82.4	3.9
Total	$ 1,720.3	100.0	$ 2,376.2	100.0	$ 2,114.9	100.0

Cost of Sales

The largest component of our cost of sales is the purchase price of goods that we directly sell to customers. Cost of sales also includes (i) costs relating to our service revenues, which include personnel expenses and other costs relating to our third-party logistics services; (ii) inbound and outbound freight costs; and (iii) inventory write-offs relating to refurbished, slow-moving and obsolete inventories and adjustments for vendor incentives related to inventory still on hand at the reporting date.

Cost of sales is partially offset by payments we earn under vendor incentive programs, or VIPs, such as purchase rebates, marketing development funds that vendors give us to advertise their products, cooperative marketing programs jointly funded with vendors, and price protection refunds to offset reductions in the manufacturer's suggested retail price. These VIPs are sometimes tied to the volume of our purchases or sales and represent an indirect or effective reduction of the selling price of the suppliers' products. Therefore, we treat these program payments as reductions to cost of sales.

The following table sets forth the components of our cost of sales, in absolute amounts and as percentages of total net sales, for the periods indicated.

	For the Year Ended December 31,					
	2022		2021		2020	
	(in millions, except for percentages)					
Cost of sales	**Amount**	**%**	**Amount**	**%**	**Amount**	**%**
Purchase price of goods sold by us directly	$ 1,405.0	93.4	$ 1,916.3	93.5	$ 1,678.3	91.2
Costs related to Marketplace & service revenues	49.4	3.3	59.6	2.9	69.9	3.8
Inbound and outbound freight costs	49.2	3.3	64.5	3.1	84.8	4.6
Inventory write-downs	6.0	0.4	8.2	0.4	4.7	0.3
Addition to (release of) inventory reserves	(6.0)	(0.4)	1.6	0.1	3.5	0.1
Total	**$ 1,503.6**	**100.0**	**$ 2,050.2**	**100.0**	**$ 1,841.2**	**100.0**

Selling, General and Administrative Expenses

The largest component of our selling, general and administrative expenses ("SG&A expenses"), is salary and other compensation costs, consisting of expenses relating to the employment of our employees, as well as temporary personnel to meet our needs in areas such as customer service and fulfillment during seasonal peaks in orders.

Other significant components of SG&A expenses include advertising and marketing expenses, merchant processing fees, depreciation and amortization, rent expenses, warehouse costs, office expenses, professional fees, and other general corporate costs.

The following table sets forth the components of our SG&A expenses, in absolute amounts and as percentages of net sales, for the periods indicated.

	For the Year Ended December 31,					
	2022		2021		2020	
	(in millions, except for percentages)					
Selling, general and administrative expenses	**Amount**	**%**	**Amount**		**Amount**	**%**
Salary and other compensation costs	$ 134.5	50.5	$ 126.6	43.3	$ 107.1	42.8
Merchant processing fees	42.7	16.0	59.3	20.3	51.5	20.6
Advertising and marketing	14.7	5.5	32.8	11.2	29.0	11.6
Depreciation and amortization	11.0	4.1	11.1	3.8	9.1	3.6
Others	63.3	23.9	62.7	21.4	53.5	21.4
Total	**$ 266.2**	**100.0**	**$ 292.5**	**100.0**	**$ 250.2**	**100.0**

Results of Operations

The following table summarizes our consolidated results of operations in absolute amounts and as percentages of our net sales for the periods indicated. Period-to-period comparisons of historical results of operations should not be relied upon as indicative of future performance.

	For the Year Ended December 31,					
	2022		2021		2020	
	(in millions, except for percentages and net earnings per share)					
	Amount	% of Net Sales	Amount	% of Net Sales	Amount	% of Net Sales
Net Sales	**$ 1,720.3**	**100.0**	**$ 2,376.2**	**100.0**	**$ 2,114.9**	**100.0**
Cost of sales	1,503.6	87.4	2,050.2	86.3	1,841.2	87.1
Gross profit	216.7	12.6	326.0	13.7	273.7	12.9
Selling, general and administrative expenses[(1)]	266.2	15.5	292.5	12.3	250.2	11.8
Income (loss) from operations	(49.5)	(2.9)	33.5	1.4	23.5	1.1
Interest income	1.2	0.1	1.1	0.0	1.1	0.1
Interest expense	(0.7)	(0.0)	(0.6)	(0.0)	(0.7)	(0.0)
Other income, net	5.2	0.2	1.8	0.1	5.2	0.2
Impairment of equity method investment	(2.3)	(0.1)	—	—	—	—
Income (loss) from equity method investment	—	—	(7.4)	(0.3)	3.2	0.2
Gain from sale of investment	1.7	0.1	—	—	—	—
Gain from disposal of subsidiary	—	—	2.0	0.1	—	—
Change in fair value of warrants liabilities	1.1	0.1	0.1	0.0	—	—
Income (loss) before provision for income taxes	(43.3)	(2.5)	30.5	1.3	32.3	1.5
Provision for (benefit from) income taxes	14.1	0.8	(5.8)	(0.2)	1.9	0.1
Net income (loss)	**$ (57.4)**	**(3.3)**	**$ 36.3**	**1.5**	**$ 30.4**	**1.4**
Net earnings (loss) per share, basic	$ (0.15)		$ 0.10		$ 0.08	
Net earnings (loss) per share, diluted	$ (0.15)		$ 0.08		$ 0.08	
Weighted average number of common stock outstanding used in computing per share amounts, basic	373.1	—	366.7	—	363.3	—
Weighted average number of common stock outstanding used in computing per share amounts, diluted	373.1	—	432.2	—	385.0	—

Note:

(1) Includes share-based compensation expenses of $33.9 million, $6.3 million, and $1.6 million, respectively, in years ended December 31, 2022, 2021, and 2020.

Year Ended December 31, 2022 Compared to Year Ended December 31, 2021

Net sales

Net sales decreased by 27.6% for the year ended December 31, 2022 compared to the comparable prior year period from $2,376.2 million in 2021 to $1,720.3 million in 2022, which was mainly due to the decrease in GMV from our direct sales and marketplace businesses from $2,195.9 million and $742.4 million for the year ended December 31, 2021, respectively, to $1,544.8 million and $552.2 million for the year ended December 31, 2022, respectively.

The decrease in GMV was primarily due to a downward trend in consumer spending in technology products in light of economic uncertainty and recession fears as consumers reduced their discretionary spending. In addition, recent consumer purchases of technology products during the pandemic, along with longer expected product lifespans, have extended the upgrade cycle. As a result, the customer demand for technology products has significantly decreased compared to the prior year period.

Cost of sales & gross profit

For the year ended December 31, 2022, our cost of sales decreased by 26.7% compared to the comparable prior year period from $2,050.2 million in 2021 to $1,503.6 million in 2022, generally reflective of the decrease in our net sales. During the same period, our gross profit decreased by 33.5% from $326.0 million for the year ended December 31, 2021 to $216.7 million for the year ended December 31, 2022.

Our profit margin decreased to 12.6% for the year ended December 31, 2022 from 13.7% for the year ended December 31, 2021, primarily due to the significant decline in consumer demand caused by reduction in consumer discretionary spending for certain products such as video graphic cards, hard disk and solid-state drives which led to excess inventory in 2022. We implemented aggressive promotions in 2022 to move inventory which caused a significant drop in margin.

Selling, general and administrative expenses ("SG&A")

For the year ended December 31, 2022, SG&A expenses decreased to $266.2 million from $292.5 million for the year ended December 31, 2021, which mainly resulted from (i) a decrease in merchant payment fee by $16.6 million which is variable to sales and (ii) a decrease in marketing expense by $18.1 million, partially offset by an increase in salary and other compensation cost of $7.8 million mainly due to an increase in stock-based compensation by $27.6 million and a decrease in personnel expense by $19.8 million.

Interest income and expense

Interest income is earned on (i) our loans to affiliates; and (ii) cash invested in money market accounts or certificates of deposit. See "Related Party Transactions" for more information about our loans to affiliates. Interest expense represents the interest we are charged on our borrowings, including term loan, line of credit and capital leases.

Interest income remained consistent at $1.2 million and $1.1 million for the year ended December 31, 2022 and 2021, respectively.

Interest expense remained consistent at $0.7 million and $0.6 million for the year ended December 31, 2022 and 2021, respectively.

Other income, net

For the year ended December 31, 2022 and 2021, we recorded other income, net of $5.2 million and $1.8 million, respectively. For the year ended December 31, 2022, other income, net, primarily consisted of sales tax rebate from Texas of $1.2 million, property rental income of $1.4 million, sales tax discount income of $0.4 million, foreign exchange gain of $0.9 million and other miscellaneous income of $1.3 million. For the year ended December 31, 2021, other income, net, primarily consisted of sales tax rebate from Texas of $1.3 million, insurance proceeds of approximately $1.0 million related to the inventory loss in the U.S., property rental income of $1.6 million, sales tax discount income of $0.4 million, and other miscellaneous income of $0.8 million, which was partially offset by foreign exchange loss of $3.3 million.

Impairment of equity method investment

For the year ended December 31, 2022, we impaired our equity method investment of $2.3 million on our investment in Mountain Capital Fund L.P. ("Mountain Capital"). See Note 6 to the consolidated financial statements for further information.

Gain from sale of investment

For the year ended December 31, 2022, we sold 25% of our investment in Bitmain Technologies Holding Company for $5.4 million and recorded a gain on sale of investment of $1.7 million. See Note 6 to the consolidated financial statements for further information.

Change in fair value of warrants liabilities

Warrants are remeasured at fair value with changes in fair value recorded in earnings in each reporting period. For the year ended December 31, 2022 and 2021, we recorded gain on the change in fair value of warrant liabilities of $1.1 million and $0.1 million, respectively.

Provision for/(benefit from) income taxes

Our provision for income taxes was $14.1 million for the year ended December 31, 2022 compared to a benefit of $5.8 million for the year ended December 31, 2021. The increase in our provision for income taxes was mainly due to the recording of the valuation allowance of $17.5 million.

Net income/(loss)

For the year ended December 31, 2022, we recorded a net loss of $57.4 million in 2022, as compared to a net income of $36.3 million for the same period in 2021. The decrease in net income is primarily driven by a decline in our net sales and gross margin.

Year Ended December 31, 2021 Compared to Year Ended December 31, 2020

Net sales

Net sales increased by 12.4% for the year ended December 31, 2021 compared to the comparable prior year period from $2,114.9 million in 2020 to $2,376.2 million in 2021, which was mainly due to the increase in GMV from our direct sales and marketplace businesses from $1,968.7 million and $663.7 million for the year ended December 31, 2020, respectively, to $2,195.9 million and $742.4 million for the year ended December 31, 2021, respectively.

Such increase in GMV was primarily due to the optimization of products with high demand, refinement of our product selection, increase in the number of SKUs offered in our platforms, and improvement in relationships with key suppliers that helped them make strategic decisions in their product offerings. Overall, the customer demand for technology products has also remained strong in 2021 as customers tend to find better solutions to help them work, learn, entertain, and stay connected while being at home.

Cost of sales & gross profit

For the year ended December 31, 2021, our cost of sales increased by 11.4% compared to the comparable prior year period from $1,841.2 million in 2020 to $2,050.2 million in 2021, generally reflective of the increase in our net sales. During the same period, our gross profit increased by 19.1% from $273.7 million for the year ended December 31, 2020 to $326.0 million for the year ended December 31, 2021.

Our profit margin increased to 13.7% for the year ended December 31, 2021 from 12.9% for the year ended December 31, 2020 primarily due to the significant growth in sales of our private label brand, ABS, that has higher margin, and increased demand for certain products such as video graphic cards, hard disk and solid-state drives, where aggressive promotions are not required to move inventories.

Selling, general and administrative expenses

For the year ended December 31, 2021, SG&A expenses increased to $292.5 million from $250.2 million for the year ended December 31, 2020, which mainly resulted from (i) an increase in salary and other compensation costs by $19.5 million due to an increase in North America headcount to 1,216 as of December 31, 2021 from 1,005 as of the same period in 2020, (ii) an increase in merchant payment fees by $7.8 million which is variable to sales, and (iii) an increase in other expenses by $9.2 million related to professional fees incurred for the recapitalization.

Interest income and expense

Interest income is earned on (i) our loans to affiliates; and (ii) cash invested in money market accounts or certificates of deposit. See "Related Party Transactions" for more information about our loans to affiliates. Interest expense represents the interest we are charged on our borrowings, including term loan, line of credit and capital leases.

Interest income remained consistent at $1.1 million and $1.1 million for the year ended December 31, 2021 and 2020, respectively.

Interest expense remained consistent at $0.6 million and $0.7 million for the year ended December 31, 2021 and 2020, respectively.

Other income, net

For the year ended December 31, 2021 and 2020, we recorded other income, net of $1.8 million and $5.2 million, respectively. For the year ended December 31, 2021, other income, net, primarily consisted of sales tax rebate from Texas of $1.3 million, insurance proceeds of approximately $1.0 million related to the inventory loss in the United States, property rental income of $1.6 million, sales tax discount income of $0.4 million, and other miscellaneous income of $0.8 million, which was partially offset by foreign exchange loss of $3.3 million. For the year ended December 31, 2020, other income, net, primarily consisted of partnership incentives of $1.5 million, sales tax rebates and discounts of $1.4 million, and insurance proceeds of $0.8 million.

Equity income from equity method investment

For the year ended December 31, 2021, we recorded a loss on equity method investment of $7.4 million on our investment in Mountain Capital. For the year ended December 31, 2020, we recorded a gain on equity method investment of $3.2 million on our investment in Mountain Capital.

Gain from disposal of subsidiary

On May 19, 2021, we disposed all of LLIT's legacy business contemplated by that certain Equity Transfer Agreement dated October 23, 2020, by and among LLIT, our wholly owned subsidiary, Lianluo Connection and Beijing Fenjin. We sold all of our equity interests in Lianluo Connection to Beijing Fenjin immediately following completion of the Merger for a purchase price of RMB 0.

We recognized a $2.0 million gain from disposal of Lianluo Connection for the year ended December 31, 2021.

Change in fair value of warrants liabilities

Warrants are remeasured at fair value with changes in fair value recorded in earnings in each reporting period. We recorded a gain on the change in fair value of warrant liabilities of $0.1 million due to the increase in stock price as of December 31, 2021, as compared to the stock price as of May 19, 2021. There were no warrant liabilities as of December 31, 2020.

Provision for/(benefit from) income taxes

Our benefit from income taxes was $5.8 million for the year ended December 31, 2021 compared to a provision of $1.9 million for the year ended December 31, 2020. The decrease in our provision for income taxes was mainly due to the net change of the valuation allowance of $13.9 million, partially offset by $3.2 million provision for income tax for Canada.

Net income

For the year ended December 31, 2021, we recorded a net income of $36.3 million in 2021, as compared to a net income of $30.4 million for the same period in 2020. The increase in net income is primarily driven by a growth in our net sales and improvement in our gross margin.

Non-GAAP Financial Measures

We have included GMV and Adjusted EBITDA, non-GAAP financial measures, in this annual report. We believe that these are key measures used by our management and board of directors to evaluate our operating performance, generate future operating plans, and make strategic decisions regarding the allocation of capital.

GMV

GMV is the total dollar value of products sold on our websites and third-party marketplace platforms (including Nutrend, an online retailer specialized in automotive, motorcycle, ATV, and RV products, and Rosewill sales), directly to customers and by our Marketplace sellers through Newegg Marketplace, net of returns, discounts, taxes, and cancellations. GMV also includes the services fees charged through our NPS in rendering services such as 3PL, SBN, SLS, staffing and media ad services, as well as the sales made by our Asia subsidiaries. It helps us assess and analyze changes in revenues, and if reviewed in conjunction with net sales and other GAAP financial measures, it can provide more information in evaluating our current performance and in assessing our future performance. See "— Newegg's Business Model."

GMV, in previous filings, was defined as the total dollar value of products sold on our websites, directly to customers and by our Marketplace sellers through Newegg Marketplace, net of returns, discounts, taxes and cancellations. We redefined GMV, as of the date of the filing of our Annual Report on Form 20-F for the year ended December 31, 2021, to include Nutrend and Rosewill sales through third-party marketplace platforms, service and other revenues through NPS, such as 3PL, SBN, SLS, staffing, and media ad services, as well as sales made by our Asia subsidiaries. The change was warranted to ensure that we report GMV to include all revenues of the company across all our revenue streams that will allow the readers to better understand our overall performance. The change in the GMV definition resulted in an increase in GMV for 2020 of $110.7 million.

	For the Year Ended December 31,		
	2022	2021	2020
		(in millions)	
Net Sales	$ 1,720.3	$ 2,376.2	$ 2,114.9
Adjustments:			
GMV – Marketplace	552.2	742.4	663.7
Marketplace Commission	(49.6)	(67.0)	(58.5)
Deferred Revenue	(9.3)	(8.3)	16.4
Other	(17.5)	(14.9)	8.7
GMV	**$ 2,196.1**	**$ 3,028.4**	**$ 2,745.2**

Adjusted EBITDA

Adjusted EBITDA is a financial measure that includes the removal of various one-time, irregular, and non-recurring items from EBITDA. We believe that exclusion of certain expenses in calculating Adjusted EBITDA facilitates operating performance comparisons on a period-to-period basis and excludes items that we do not consider to be indicative of our core operating performance. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not consider the potentially dilutive impact of stock-based compensation;
- Adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us; and
- Other companies, including companies in our industry, may calculate Adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including various cash flow metrics, operating profit and our other GAAP results.

The following table reflects the reconciliation of net income (loss) to Adjusted EBITDA for each of the periods indicated.

	For the Year Ended December 31,		
	2022	2021	2020
	(in millions)		
Net income (loss)	$ (57.4)	$ 36.3	$ 30.4
Adjustments:			
Stock-based compensation expenses	33.9	6.3	1.6
Interest income, net	(0.5)	(0.5)	(0.4)
Income tax (benefit) provision	14.1	(5.8)	1.9
Depreciation and amortization	11.0	10.8	9.1
Impairment of equity method investment	2.3	—	—
Loss (income) from equity method investment	—	7.4	(3.2)
Gain from sale of investment	(1.7)	—	—
Gain from disposal of subsidiary	—	(2.0)	—
Gain from change in fair value of warrants liabilities	(1.1)	(0.1)	—
Adjusted EBITDA	**$ 0.6**	**$ 52.4**	**$ 39.4**

B. Liquidity and Capital Resources

Cash flows and working capital

We have historically funded our operations through existing working capital, credit facilities, bank loans, return from investing activities, and equity financings. See Notes 8 and 9 to our consolidated financial statements included elsewhere in this annual report for more information about the line of credit and long-term debt that we obtain from financial institutions.

Our cash and cash equivalents consist primarily of cash on deposit, certificates of deposit, and money market accounts. Cash equivalents are all highly liquid investments with original maturities of three months or fewer. Amounts receivable from payment processors are also considered cash equivalents as they are both short term and highly liquid in nature and are typically converted to cash within three business days. Amounts due to us from payment processors that are classified as cash and cash equivalents totaled $13.0 million and $14.3 million at December 31, 2022 and December 31, 2021, respectively. We anticipate that our existing cash and funds generated from operations will be sufficient to meet our working capital needs and expected capital expenditures for at least 12 months from the date of the filing of this annual report. Our cash and cash equivalents are primarily denominated in U.S. dollars.

We historically experience higher sales in the fourth quarter due to the holiday season. In anticipation of such higher sales, we typically begin building up our inventory levels in the late third quarter. Such inventory build-up may require us to expend cash faster than we generate by our operations during these periods. Also, as a result of this inventory build-up and faster inventory turnover during the fourth quarter, our accounts payable are typically at their highest levels at year-end, as compared to the first, second and third quarters when sales are lower.

We intend to finance our future working capital requirements and capital expenditures from cash generated from operating activities, borrowings from our existing credit facilities, funds raised from financing activities, and returns from investing activities. Our future capital requirements may, however, vary materially from those now planned or anticipated. Changes in our operating plans, lower than anticipated net sales, increased expenses or other events, including those described in "Risk Factors," may cause us to seek additional debt or equity financing in the future. If our existing cash is insufficient to meet our requirements, we may seek to issue debt or equity securities or obtain additional credit facilities. Financing may not be available on acceptable terms, on a timely basis, or at all, and our failure to raise adequate capital when needed could negatively impact our growth plans and our financial condition and results of operations. Issuance of additional equity securities, including convertible debt securities, would dilute our earnings per share. The incurrence of debt would divert cash for working capital and capital expenditures to service debt obligations and could result in operating and financial covenants that restrict our operations and our ability to pay dividends to our shareholders. If we are unable to obtain additional equity or debt financing as required, our business operations and prospects may suffer.

Historical Cash Flows

The following table sets forth our selected consolidated cash flow data for the years ended December 31, 2022, 2021, and 2020.

	For the Year Ended December 31,		
	2022	2021	2020
Summary Consolidated Cash Flow Data:		(in millions)	
Net cash provided by (used in) operating activities	$ 20.5	$ (53.3)	$ 84.5
Net cash used in investing activities	(3.8)	(13.8)	(5.2)
Net cash provided by (used in) financing activities	1.5	12.7	(1.7)
Foreign currency effect on cash, cash equivalents and restricted cash	1.0	1.0	(0.4)
Net increase (decrease) in cash and cash equivalents	19.2	(53.4)	77.2
Cash, cash equivalents and restricted cash at beginning of the year	104.3	157.7	80.5
Cash, cash equivalents and restricted cash at end of the year	**$ 123.5**	**$ 104.3**	**$ 157.7**

Operating activities

Net cash provided by operating activities was $20.5 million in 2022. Net loss was $57.4 million for the period. The adjustments for non-cash expenses are primarily comprised of (i) $11.0 million of depreciation and amortization that was associated with property and equipment; (ii) $9.5 million of provision for obsolete and excess inventory; (iii) $33.9 million of stock-based compensation; (iv) $2.3 million loss from impairment of equity method investment; (v) $12.5 million from deferred income taxes and partially offset by (a) $1.7 million gain from sale of investment and (b) $1.1 million change in fair value of warrant liabilities. The changes in operating assets and liabilities represented $10.2 million cash provided by (i) a decrease in inventory of $78.8 million; (ii) a decrease in prepaid expenses of $0.9 million; (iii) a decrease in other assets of $10.0 million, partially offset by (a) an increase in accounts receivable of $22.0 million, (b) a decrease in accounts payable of $14.1 million; (c) a decrease in accrued liabilities and other liabilities of $34.4 million; and (d) a decrease in deferred revenue of $8.9 million.

Net cash used in operating activities was $53.3 million in 2021. Net income was $36.3 million for the period. The adjustments for non-cash expenses are primarily comprised of (i) $10.8 million of depreciation and amortization that was associated with property and equipment; (ii) $8.3 million of provision for obsolete and excess inventory; (iii) $6.3 million of stock-based compensation; (iv) $7.4 million equity loss from equity method investments; and partially offset by $12.7 million from deferred income taxes. The changes in operating assets and liabilities represented $109.1 million cash used in (i) an increase in inventory of $70.8 million; (ii) an increase in other assets of $50.9 million; (iii) a decrease in accounts payable of $20.1 million; (iv) a decrease in deferred revenue of $7.4 million; and (v) an increase in prepaid expenses of $2.2 million, partially offset by (a) an increase in accrued liabilities and other liabilities of $41.5 million; and (b) a decrease in accounts receivable of $0.8 million.

Net cash provided by operating activities was $84.5 million in 2020. Net income was $30.4 million for the period. The adjustments for non-cash expenses are primarily comprised of (i) $9.1 million of depreciation and amortization that was associated with property and equipment; (ii) $7.3 million of bad debt expense, and (iii) $4.2 million of provision for obsolete and excess inventory. The changes in operating assets and liabilities represented a $34.4 million increase in cash provided by (i) an increase in accounts payable of $76.3 million; (ii) an increase in accrued liabilities and other liabilities of $44.6 million; and (iii) an increase in deferred revenue of $21.8 million, partially offset by (a) an increase in inventory of $76.2 million; (b) an increase in accounts receivable of $14.1 million; (c) an increase in other assets of $10.5 million; and (d) an increase in prepaid expenses of $7.5 million.

Investing activities

Net cash used in investing activities was $3.8 million for the year ended December 31, 2022, which was primarily attributable to the payments made to acquire property and equipment of $9.2 million and partially offset by the proceeds received from sale of investment of $5.4 million.

Net cash used in investing activities was $13.8 million for the year ended December 31, 2021, which was primarily attributable to the payments made to acquire property and equipment.

Net cash used in investing activities was $5.2 million for the year ended December 31, 2020, which was primarily attributable to the payments made to acquire property and equipment of $6.2 million partially offset by the proceeds from insurance of $0.8 million and disposal of fixed assets of $0.1 million.

Financing activities

Net cash provided by financing activities was $1.5 million for the year ended December 31, 2022, which was mainly due to (i) borrowings under line of credit of $46.2 million; and (ii) proceeds from exercise of stock options of $2.9 million, partially offset by (a) the repayment of line of credit of $45.7 million; and (b) payments for employee taxes related to stock compensation of $1.5 million.

Net cash provided by financing activities was $12.7 million for the year ended December 31, 2021, which was mainly due to (i) cash received from common control asset transaction of $11.4 million; and (ii) borrowings under line of credit of $0.8 million.

Net cash used in financing activities was $1.7 million for the year ended December 31, 2020, due to the repayment of our line of credit.

Capital Expenditures

Our capital expenditures are incurred primarily in connection with purchases of property and equipment and leasehold improvements. Our capital expenditures were $9.2 million, $13.8 million, and $6.2 million for the years ended December 31, 2022, 2021, and 2020, respectively.

Credit Agreements

We entered into a credit agreement in August 2021 with several financing institutions that provided a revolving credit facility of up to $100 million with a maturity date of August 20, 2024. Prior to August 20, 2023 and subject to certain terms and conditions, the Maximum Revolving Advance Amount, as defined in the credit agreement, could be increased up to $150.0 million. The revolving credit facility includes a letter of credit sublimit of $30.0 million, which can be used to issue standby and trade letters of credit, and a $20.0 million sublimit for swingline loans. In April 2023, we amended the credit agreement in order to transition the benchmark rate for certain loans made under the credit agreement from LIBOR to SOFR. In general, advances from this line of credit will be subject to interest at the Term SOFR Rate plus the Applicable Margin, as defined in the credit agreement, so long as the Term SOFR Reference Rate or Term SOFR is offered, ascertainable, and not unlawful, or the Alternate Base Rate (to be defined as the highest of the (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day plus 0.50%, or (c) the daily Term SOFR Rate plus 1.0%) plus the Applicable Margin. For Term SOFR Rate loans, we may select interest periods of one or three months. Interest on Term SOFR Rate loans shall be payable at the end of the selected interest period. Interest on Alternate Base Rate loans is payable monthly. In the event of the permanent or indefinite cessation of the Term SOFR Rate, the Benchmark Replacement will replace the Term SOFR Rate. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. As of December 31, 2022 and December 31, 2021, there was no balance outstanding under this line of credit.

The line of credit is secured by certain of our U.S. subsidiaries and is collateralized by certain of our assets. Such assets include all receivables, equipment and fixtures, general intangibles, inventory, subsidiary stock, securities, investment property, and financial assets, contract rights, and ledger sheets, as defined in the loan agreement. To maintain availability of funds under the loan agreement, we will pay on a quarterly basis, an unused commitment fee of 0.15% per annum on the unused amount for the facility. The credit facility contains customary covenants, including covenants that limit or restrict our ability to incur capital expenditures and lease payments, make certain investments and enter into certain related-party transactions. The credit facility also requires us to maintain certain minimum financial ratios and maintain operation banking relationship with the financial institutions. As of December 31, 2022 and December 31, 2021, we were in compliance with all covenants related to the line of credit.

C. Research and Development, Patents and Licenses, etc.

See Item 4.B under the subheadings, “Technology” and “Intellectual Property.”

D. Trend information

Other than as disclosed in this annual report, we are not aware of any trends, uncertainties, demands, commitments or events for the current fiscal year that are reasonably likely to have a material effect on our net revenues, income, profitability, liquidity or capital resources, or that caused the disclosed financial information to be not necessarily indicative of future operating results or financial conditions.

E. Critical Accounting Estimates

Our consolidated financial statements are prepared in accordance with GAAP. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, net sales, costs and expenses, as well as the disclosure of contingent assets and liabilities and other related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about carrying values of our assets and liabilities that are not readily apparent from other sources. In many instances, we could have reasonably used different accounting estimates. Actual results could differ from those estimates, and we include any revisions to our estimates in our results for the period in which the actual amounts become known.

We believe the critical accounting policies described below affect the more significant judgments and estimates used in the preparation of our consolidated financial statements. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our historical consolidated financial condition and results of operations:

Incentives Earned from Vendors

We participate in various vendor incentive programs that include, but are not limited to, purchasing-based volume discounts, sales-based volume incentives, marketing development funds, including for certain cooperative advertising, and price protection agreements. Vendor incentives may include estimates and are calculated based on the terms of vendor incentive agreements which may include non-standard contract terms. Vendor incentives are recognized in the consolidated statements of operations as an offset to marketing and promotional expenses to the extent that they represent reimbursement of advertising costs incurred by us on behalf of the vendors that are specific, incremental, and identifiable. Reimbursements that are in excess of such costs and all other vendor incentive programs are accounted for as a reduction of cost of sales, or if the related product inventory is still on hand at the reporting date, inventory is reduced in the consolidated balance sheets.

Income Taxes

The Company is subject to federal and state income taxes in the United States and taxes in foreign jurisdictions. In accordance with ASC Topic 740, the Company uses the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities, using tax rates expected to be in effect during the years in which the bases differences are expected to reverse. A valuation allowance is established against deferred tax assets when it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company considers a number of factors in assessing the realizability of a deferred tax asset associated with net operating losses and tax credit carryforwards, including the reversal of temporary differences and future taxable income. The Company also considers the uncertainty posed by the current economic environment and the effect of this uncertainty on the various factors that the Company takes into account in evaluating the need for valuation allowance.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained upon examination by the taxing authorities based on the technical merits of the position. The Company measures the recognized tax benefit as the largest amount of tax benefit that has greater than a 50% likelihood of being realized upon the ultimate settlement with a taxing authority. The Company reverses a previously recognized tax benefit if it determines that the tax position no longer meets the more-likely-than-not threshold of being sustained. The Company accrues interest and penalties related to unrecognized tax benefits in income tax expense.

Expense and Valuation of Shares of our Common Stock

The measurement and recognition of compensation expense for all stock-based payment awards made to employees, consultants and directors, including employee stock options and restricted stock, is based on estimated fair value of the awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as expense on a straight-line basis over the requisite service periods in the consolidated statements of operations.

For detailed discussion on stock-based compensation, see Note 14 to the consolidated financial statements.

Recent Accounting Pronouncements

For detailed discussion on recent accounting pronouncements, see Note 3 to the consolidated financial statements of Newegg Commerce, Inc. included elsewhere in this annual report.

Item 6. Directors, Senior Management and Employees

A. Directors and Senior Management

Set forth below is information concerning our directors, executive officers and other key employees.

MANAGEMENT

Set forth below is information concerning our directors, executive officers and other key employees as of the date of this annual report.

Name*	Age	Position(s)
Zhitao He	41	Chairman and Director
Fred Faching Chang	66	Vice Chairman and Director
Yingmei Yang	52	Director
Fuya Zheng	56	Independent Director
Gregory Moore	73	Independent Director
Poi (Paul) Wu	52	Independent Director
Anthony Chow	57	Chief Executive Officer and Director
Robert Chang	55	Chief Financial Officer
Jamie Spannos	45	Chief Operating Officer
Montaque Hou	42	Chief Information Security Officer
Michael Chen	38	Chief Legal Officer
Christina Ching	55	Chief Accounting Officer

* Except as otherwise indicated below, the business address of our directors and executive officers is 17560 Rowland Street, City of Industry, CA, United States 91748.

Mr. Zhitao He. Mr. He has served as a director of the Company since October 2016 and has been chairman of the board of directors since March 2018 (other than a brief hiatus in 2020-2021). He has been a director of Newegg Inc. since March 2017. Mr. He served as the Chief Executive Officer of Lianluo Smart Limited from April, 2020 to August 2020. Mr. Zhitao He is also the Chairman of the Board of Hangzhou Lianluo, a China-listed company and parent of Newegg. Mr. He successfully led Hangzhou Lianluo to list on China's A share market (ticker: 002280). He was named one of the "10 Top Entrepreneurs of Post-1980s" by Hurun Report and "Top Ten Entrepreneurial Leader of Listed Companies" by Securities Times. Under his leadership, Hangzhou Lianluo has moved into the field of smart hardware, including the purchase of Newegg, investments in American virtual reality ("VR") device manufacturer Avegant and hardware corporation Razer, and promotion of the world's biggest VR Operating System OSVR in China together with Razer. This investment plan has allowed Hangzhou Lianluo to become a closed loop of "Software and Hardware + Platform + Channels." Mr. He currently serves on the board of directors of Hangzhou Lianluo, Avegant Light Field Technology, Beijing Digital Grid Technology Co., Ltd., Shenzhen Ailianluo Investment Co., Ltd., Hangzhou Lianluo Holding CO., Ltd., Beijing Lianluo Youjia Technology Co., Ltd. and Shenyang Zhitongrong Networking Technology Co., Ltd. Mr. He received his master's degree from Beijing University of Posts and Telecommunications. Mr. He founded Hangzhou Lianluo in 2007, which was then-known as Beijing Digital Grid Technology Co.

Mr. Fred Faching Chang (or Mr. Fred Chang). Mr. Chang currently serves as the Vice Chairman of our board of directors. He has been a member of Newegg Inc.'s board from September 2019 to the present. He was previously a director of Newegg Inc. from June 2005 to August 2018 and was a member of the compensation committee of Newegg Inc.'s board of directors from 2017 to 2018. During the periods from October 2005 to August 2008, January 2013 to January 2015, and October 2019 to March 2020, Mr. Chang was also Newegg Inc.'s Chief Executive Officer.

Ms. Yingmei Yang. Ms. Yang has served as a director of the Company since April 2020, and as a director of Newegg Inc. since July 2018. Ms. Yang served as interim Chief Financial Officer of Lianluo Smart Limited from March 2018 to May 2021. In addition, she has acted as the Vice President of Hangzhou Lianluo Information Technology Co., Ltd. from February 2018 to September 2020. From January 2015 to February 2018, Ms. Yang served as Chief Financial Officer and Vice President of Hangzhou Lianluo. From February 2013 to January 2015, Ms. Yang was the Chief Financial Officer and Secretary of the Board of Beijing Digit Horizon Technology Limited, the predecessor of Hangzhou Lianluo.

Mr. Fuya (Frank) Zheng. Mr. Zheng was appointed as an independent director in April 2020. Mr. Zheng has extensive experience in corporate finance and investment management. He has served as Chief Financial Officer of X Financial since August 2020. He was a consultant of Yingde Gases Group Company ("Yingde Gases"), a leading industrial gas supplier in China, from September 2017 to March 2020. Mr. Zheng was an independent director of Yingde Gases from September 2009 to September 2017. From February 2018 until May 2019, Mr. Zheng was also an independent director of ChinaCache International Holdings Ltd. (CCIHY). From January 2008 to November 2012, Mr. Zheng was Chief Financial Officer of Cogo Group, Inc., a then Nasdaq listed company that provided customized module design solutions and manufactured electronic products in China. Mr. Zheng was also a director of the same company from January 2005 to November 2012. Prior to that, Mr. Zheng was vice president of travel service at eLong, Inc., one of the leading online travel service companies in China and listed on Nasdaq, where he was responsible for the overall operation of eLong Inc.'s travel services. Mr. Zheng received a Bachelor of Business Administration majoring in accounting from City University of New York in 1994.

Mr. Gregory Moore. Mr. Moore has been a member of our board of directors since May 2021, and has been a member of Newegg Inc.'s board of directors since July 2011. Mr. Moore previously served as the Senior Vice President and Controller of Yum! Brands, Inc. until he retired in 2005. Yum! Brands is the worldwide parent company of Taco Bell, KFC and Pizza Hut. Prior to becoming Yum! Brands' Controller, Mr. Moore was the Vice President and General Auditor of Yum! Brands. Before that, he was with PepsiCo, Inc. and held the position of Vice President, Controller of Taco Bell and Controller of PepsiCo Wines & Spirits International, a division of PepsiCola International. Before joining PepsiCo he was an Audit Manager at Arthur Young & Company in its New York, New York and Stamford, Connecticut offices. Mr. Moore also serves as Chairman of the Board of Texas Roadhouse Inc. (Nasdaq: TXRH). Mr. Moore holds a Bachelor's degree in Business Administration from University of Texas at Austin, and a Master of Business Administration from St. Johns University.

Mr. Poi (Paul) Wu. Mr. Poi (Paul) Wu has been a member of our board since May 2021, and has been a member of Newegg Inc.'s board of directors since February 2020. Mr. Wu is the founder and CEO of Carota, a supplier of connected car services. Mr. Wu is also the co-founder of the MOX mobile accelerator. He previously served as the CEO of Pocketnet Tech, a mobile content provider, and has also served in various roles with MediaTek, Hon Hai Foxconn Technology Group and Hong Kong Hutchison Wampoa's TOM Group. Mr. Wu obtained his bachelor's degree from the Department of Agricultural Economics at Taiwan University, and obtained an MBA from RSM Rotterdam Business School in the Netherlands.

Mr. Anthony Chow. Mr. Chow is the Global Chief Executive Officer of Newegg. He sets the Company's strategic direction and works closely with Newegg's executives for consistent execution across the organization. In addition to Mr. Chow's role as Global CEO, he also serves on the Company's board of directors. Mr. Chow's leadership has guided Newegg through some of the Company's most transformative years. He first served as Vice President of Newegg Inc.'s North American business from 2006 until 2008, before moving to Shanghai to oversee Newegg Inc.'s China operation, as well as OZZO Logistics, a Newegg subsidiary providing 3PL support for other e-commerce companies based in China. In 2011, Mr. Chow left Newegg to become CEO of OTTO Group China, the Chinese subsidiary of Germany's largest online retailer of fashion and lifestyle products. In this role, he helped the company extend its reach beyond Europe and into key parts of Asia. Then in 2015, he was appointed Vice President of Haier China, a global home appliance and consumer electronics manufacturer based in Qingdao, China. Upon rejoining Newegg Inc. in 2019, Mr. Chow made sweeping changes to position the Company for continued success in the rapidly expanding e-commerce space. Consequently, Newegg remains one of the leading tech e-commerce companies with strong market share in consumer sales, and a growing portfolio of services for the Company's vendor partners, Marketplace sellers and 3PL clients. Mr. Chow holds a Bachelor's degree in Electrical & Electronics Engineering from the University of Toledo, and a Master of Business Administration from the UCLA Anderson School of Management.

Mr. Robert Chang. Mr. Chang is the Chief Financial Officer of Newegg. In this role, he is responsible for overseeing all aspects of the Company's financial performance, including forecasting, evaluation and reporting. Mr. Chang has served Newegg Inc. in various finance-related roles for more than two decades, first joining in 1999 and later being appointed to the CFO role in 2015. Prior to Newegg Inc., Mr. Chang spent five years as an Operational Analyst at Taiwan YFY Paper Manufacturers. Mr. Chang holds a Bachelor's degree in Economics from Soochow University, and a Master's degree in Finance from University of La Verne.

Mr. Jamie Spannos. Mr. Spannos is the Global Chief Operating Officer of Newegg. In this role, he is responsible for the strategic direction and development of Newegg's operations as well as executing the Company's long term goals. Mr. Spannos also oversees Newegg Media Services, a separate Newegg business unit that provides brand marketing services to other e-commerce companies. Prior to joining Newegg Inc. in 2018, Mr. Spannos was Senior Vice President of North America Fulfillment and Logistics at FTD.com from 2017 to 2018, where he oversaw all FTD.com and sub-brand operations across all drop-ship and internal distribution centers. Before his time at FTD.com, Mr. Spannos spent five years heading up distribution for Kraft Heinz Company, managing the company's robust network of 3PL and Kraft Heinz employees across all distribution locations. In that role, he also played an instrumental part in providing strategic and executional direction in optimizing the company's warehousing infrastructure, in turn unifying several distribution partnership models related to a multitude of company mergers and divestitures. His experience of more than 20 years across a broad range of business functions uniquely qualifies Mr. Spannos to continue to expand Newegg's operational excellence, positively impacting Newegg's customers and the many businesses that rely on Newegg's Media Services.

Mr. Montaque Hou. Mr. Hou has served as Newegg's Chief Information Security Officer since December 2022. In this role, Mr. Hou has broad oversight over identifying and mitigating cyber threats, developing security policies and procedures, and ensuring compliance with industry regulations and standards. He also works closely with other executives and departments to ensure that security is integrated into all aspects of the organization's operations. From January 2016 to November 2022, he served as our Chief Technology Officer and was Chief Technology Officer of Newegg Inc. from January 2016 to May 2021. In his prior role as Chief Technology Officer, he was responsible for all technical aspects of the Newegg shopping experience, including the website, mobile app and other touchpoints including SMS and email interaction. Mr. Hou's global technology team designs, develops and deploys the technology that underpins site design, customer service, Newegg's Marketplace, resource planning, logistics and inventory management. The technical development under Mr. Hou's direction infuses data science, machine learning and artificial intelligence to enhance the shopping experience with search personalization and product recommendations, as well as safeguards that deter fraudulent activity and eliminate counterfeit product listings on Newegg's Marketplace. Prior to Mr. Hou's tenure as CTO, he held various technical positions at Newegg, including Solutions Architect, Director of Technology Strategy and Chief Architecture Engineer. Mr. Hou holds a Master of Science in analytical chemistry from Tongji University in Shanghai.

Mr. Michael Chen. Mr. Chen has served as Newegg's Chief Legal Officer since October 2022. His responsibilities extend across all aspects of Newegg's legal and corporate affairs, including securities, corporate governance, commercial transactions, employment, litigation, intellectual property and data privacy. In addition, Mr. Chen also maintains responsibility for Newegg's risk management program. Mr. Chen has over a decade of legal experience advising public and private companies on a wide variety of corporate matters. Prior to joining Newegg, Mr. Chen served as in-house counsel at Emerald Holding, Inc. (NYSE: EEX), an NYSE-listed company in the trade show and live event industry, from May 2017 to October 2022. Before joining Emerald Holding, Inc., he served as an attorney at top international law firms in New York and Hong Kong, where he specialized in securities and capital markets transactions. Mr. Chen holds a Juris Doctor degree from Northwestern University Pritzker School of Law and a Bachelor's degree in International Political Economy from the University of California, Berkeley.

Ms. Christina S. Ching has served as Newegg's Chief Accounting Officer since September 2022. From 2013 to 2022, Ms. Ching served as the Chief Financial Officer for North American and Asia regions for Kriss USA Inc. a leading Swiss Defense Manufacture company. From 2004 to 2013, Ms. Ching served as Newegg Senior Director of Accounting overseeing accounting department. From 2001 to 2004, she served as the Accounting Manager at GVison USA Inc., a US division for Taiwan manufacturing company specialized in liquid-crystal display (LCD) display supplied to Best Buy & CompUSA. She holds a Bachelor's degree of Science in Accounting from University of Phoenix, Arizona.

B. Compensation

2022 Compensation of Directors and Executive Officers

For the year ended December 31, 2022, the aggregate cash compensation accrued for directors, as a group, was approximately $0.9 million, of which about $0.1 million is related to the proceeds from the exercise of stock options. Employee directors did not receive any compensation for their services as directors. Non-employee directors were entitled to receive payment for serving as directors and may receive option grants or restricted stock units.

For the year ended December 31, 2022, the aggregate cash compensation accrued for our executive officers, as a group, was approximately $4.3 million, of which approximately $1.7 million was related to 2022 bonus payments that were paid out in February 2023. In addition, the executive officers exercised stock options for the year ended December 31, 2022 that resulted in aggregate proceeds of $3.3 million. We did not separately set aside any amounts for pensions, retirement, or other benefits for our executive officers, other than pursuant to relevant statutory requirements.

For the year ended December 31, 2022, the aggregate cash compensation accrued for our CEO was approximately $2.3 million, of which $1.2 million was for a 2022 bonus that was paid in February 2023. In addition, during the year, Mr. Chow exercised stock options with total proceeds of $1.9 million.

Discretionary Bonus and Profit Sharing Program

Newegg's CEO and other executive officers are eligible to participate in the Company's annual Discretionary Bonus Program and Profit Sharing Program. Under the Discretionary Bonus Program, executives are eligible to receive an annual cash bonus payment based upon corporate and individual performance, as determined in the discretion of the Compensation Committee, with target bonus amounts ranging from 5% of base salary to 30% of base salary for plan year 2022. Under the annual Profit Sharing Program, the CEO and other executive officers are entitled to an annual cash bonus, as determined in the discretion of the Compensation Committee, based upon the Company's GMV and adjusted EBITDA for the year, with the bonus payout weighted 70% based on GMV performance and 30% based upon adjusted EBITDA performance for program year 2022. Bonus awards under the Profit Sharing Program start at 30% of base salary (60% for the CEO) based upon meeting the threshold level of performance and are subject to increase based upon performance above threshold. Payments under both the Discretionary Bonus Program and the Profit Sharing Program are contingent upon the executive remaining employed with the Company through the date bonuses are paid.

Stock Option Plans

Newegg 2005 Incentive Award Plan

In September 2005, the Newegg 2005 Incentive Award Plan was approved and subsequently amended in January 2008, October 2009, December 2011 and September 2015. Under the Newegg 2005 Incentive Award Plan, we may grant equity incentive awards to employees, directors, and consultants based on our common shares. A committee of our board of directors determines the eligibility, types of equity awards, vesting schedules, and exercise prices for equity awards granted. Subject to certain adjustments in the event of a change in capitalization or similar transaction, we may issue a maximum of 82,952,149 common shares under the Newegg 2005 Incentive Award Plan. We issue new common shares from this authorized share pool to settle stock-based compensation awards. The exercise price of options granted under the plan shall not be less than the fair value of our common shares as of the date of grant. Options typically vest over a term of four years, and are typically exercisable for a period of 10 years after the date of grant, except when granted to a holder who, at the time the option is granted, owns stock representing more than 10% of the voting power of all classes of stock of Newegg or any subsidiaries, in which case, the term of the option shall be no more than five years from the date of grant. In September 2015, the Newegg 2005 Incentive Award Plan was amended to permit additional awards to be made after the tenth anniversary of the original adoption of said plan.

2021 Equity Incentive Plan

In November 2021, the Newegg 2021 Equity Incentive Plan was approved, with 7,374,900 common shares reserved for issuance thereunder. In November 2021, all shares reserved under the 2021 Equity Incentive Plan were granted to our executive officers and key employees in the form of restricted stock unit awards. These grants vest over four years, with 25% vesting on the one-year anniversary of grant, and the remainder vesting monthly over the following three years, such that they will be fully vested after four years. One half of the grants, or 3,687,450 RSUs, were granted to the Chief Executive Officer, Anthony Chow. Our other executive officers received a combined total of 680,000 RSUs. The remaining 3,007,450 RSUs were granted or reserved for 252 other key employees or expected new hires.

In July 2022, the Board of Directors approved an amendment of the 2021 Plan to increase the maximum share pool from 7,374,900 to 16,374,900 shares. In August 2022, 5,560,780 performance-based vesting restricted stock units ("PRSUs") were granted to the Chief Executive Officer, Anthony Chow, vesting over four performance periods. The vesting of each PRSU is based on financial performance tied to Budgeted GMV as defined in the grant agreement. The vesting of PRSUs is determined at the end of each of the four-year performance periods. The payout can vary from zero to 100% based on actual results and performance goals may be adjusted by the Compensation Committee from time to time in its sole discretion.

In addition, a combined total of 225,000 RSUs were granted to two executive officers who joined the Company in September and October of 2022.

Agreements with Executive Officers

Pursuant to our standard employment agreements with each of our executive officers (excluding our Chief Executive Officer), the employment with each of such executive officers is for a single three-year term, renewable thereafter in one-year increments. The employment is "at will" and can be terminated by us or each such executive officer at any time and for any reason, with or without notice, with or without cause. If the executive is terminated by us without cause or by the executive for good reason, then the executive is entitled to receive severance of 12 months' base salary and a prorated bonus. If such termination is also made in conjunction with a change of control, then the severance amount will increase to 24 months' base salary and 200% of the executive's target bonus. The agreements also contain customary confidentiality, non-solicit and invention assignment provisions.

On November 19, 2021, we entered into an employment agreement with our Chief Executive Officer, Anthony Chow. The employment is "at will" and can be terminated by us or Mr. Chow at any time and for any reason, with or without notice, with or without cause. Under the terms of the agreement, Mr. Chow is guaranteed a base salary of $1.1 million per year and a target bonus of 160% to 200% of his base salary. The employment agreement has a four-year term, and guarantees that Mr. Chow will receive the base salary component for the entire term, even if he is terminated during the term, unless he is terminated for cause. If Mr. Chow's employment is terminated by us without cause or by Mr. Chow for good reason, then he is entitled to receive severance of 12 months' base salary and a bonus equal to the average of the prior three years' annual bonuses at the time of termination (this severance amount is in addition to the remaining owed guaranteed base salary for the rest of term). In addition, all unvested equity incentive awards that are outstanding and due to be vested within one year of his termination are subject to accelerated vesting if he is terminated by us without cause or by Mr. Chow for good reason. If termination without cause or for good reason occurs in the context of a change in control of Newegg, then the severance increases to 24 months' base salary (instead of 12 months') and all unvested equity incentive awards that are outstanding at the time of his termination (not just those that vest within one year) are subject to accelerated vesting. The agreement also contains customary confidentiality, non-solicit and invention assignment provisions.

C. Board Practices

Board of Directors

Our Board currently consists of seven directors. None of our directors has a service contract with us that provides for benefits upon termination of service as a director.

A director may vote in respect of any contract or transaction in which he or she is interested, provided, however that the nature of the interest of any director in any such contract or transaction shall be disclosed by him or her at or prior to the consideration and vote on that matter. A general notice or disclosure to the directors or otherwise contained in the minutes of a meeting or a written resolution of the directors or any committee thereof of the nature of a director's interest shall be sufficient disclosure and after such general notice it shall not be necessary to give special notice relating to any particular transaction. A director may be counted for a quorum upon a motion in respect of any contract or arrangement which he or she shall make with our company, or in which he or she is so interested and may vote on such motion. There are no membership qualifications for directors. Further, there are no share ownership qualifications for directors unless so fixed by us in a general meeting.

The Nasdaq Listing Rules generally require that a majority of an issuer's board of directors must consist of independent directors. However, the Nasdaq Listing Rules permit foreign private issuers like us to follow "home country practice" in certain corporate governance matters. We rely on this "home country practice" exception and do not have a majority of independent directors serving on our Board. Mr. Gregory Moore, Mr. Poi (Paul) Wu, and Mr. Fuya (Frank) Zheng are our independent directors.

We do not have a lead independent director because we believe our independent directors are encouraged to freely voice their opinions on a relatively small company board.

Our Amended and Restated Memorandum and Articles of Association, subject to compliance with applicable laws and Nasdaq Listing Rules, provides that Digital Grid and Mr. Fred Chang, acting as the "Minority Representative," shall be entitled to designate nominees to our Board in a number that is proportionate to the voting power of Digital Grid and its affiliates, and our Legacy Shareholders, respectively.

Digital Grid has nominated Mr. Zhitao He, Ms. Yingmei Yang, Mr. Poi (Paul) Wu, and Fuya (Frank) Zheng to serve as directors. Mr. Fred Chang has nominated Mr. Fred Chang, Mr. Gregory Moore and Mr. Anthony Chow to serve as directors.

Duties of Directors

Under British Virgin Islands law, our directors have duties to act honestly, in good faith and with a view to our best interests. Our directors also have a duty to exercise the care, diligence and skills that a reasonably prudent person would exercise in comparable circumstances. In fulfilling their duty of care to us, our directors must oversee the Company, including our compliance with our Amended and Restated Memorandum and Articles of Association. We have the right to seek damages if a duty owed by our directors is breached. The functions and powers of our board include, among others:

- appointing officers and determining the term of office of the officers;
- authorizing the payment of donations to religious, charitable, public or other bodies, clubs, funds or associations as deemed advisable;
- exercising the borrowing powers of the Company and mortgaging the property of the Company;
- executing checks, promissory notes and other negotiable instruments on behalf of the Company; and
- maintaining or registering a register of mortgages, charges or other encumbrances of the Company.

Limitation of Director and Officer Liability

British Virgin Islands law does not limit the extent to which a company's memorandum and articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the British Virgin Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime.

Under our Amended and Restated Memorandum and Articles of Association, we may indemnify our directors, officers and liquidators against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with civil, criminal, administrative or investigative proceedings to which they are party or are threatened to be made a party by reason of their acting as our director, officer or liquidator. To be entitled to indemnification, these persons must have acted honestly and in good faith with a view to the best interest of the Company and, in the case of criminal proceedings, they must have had no reasonable cause to believe their conduct was unlawful.

We have entered into indemnification agreements with our directors and executive officers. These agreements require us to indemnify these individuals, to the fullest extent permitted by law, for certain liabilities to which they may become subject as a result of their affiliation with us.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted for our directors or officers under the foregoing provisions, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable as a matter of United States law.

Involvement in Certain Legal Proceedings

On August 6, 2020, Hangzhou Lianluo and Mr. Zhitao He received an investigation notice from the China Securities Regulatory Commission ("CSRC") for alleged violation of laws and regulations regarding information disclosures of Hangzhou Lianluo. Hangzhou Lianluo is a PRC company with shares listed on the Shenzhen Stock Exchange and is a majority owner of Newegg through Digital Grid, a wholly-owned subsidiary. Mr. He is the Chairman and Chief Executive Officer of Hangzhou Lianluo. Mr. He was the former Chairman and the former Chief Executive Officer of Lianluo Smart Limited (the predecessor company of Newegg prior to the Merger) and is currently the chairman of our board.

On October 19, 2020, Hangzhou Lianluo announced that it has received a notice of administrative punishment from the Zhejiang Regulatory Bureau of CSRC, which provided, among other things, that (i) Hangzhou Lianluo received a warning and would be required to correct its unlawful acts and pay a fine of RMB 300,000, and (ii) Mr. Zhitao He received a warning and was required to pay a fine of RMB 400,000.

Further, the shares of our common stock owned by Digital Grid have been pledged to Bank of China Limited Zhejiang Branch, or BOC, as collateral to support working capital loans and letters of credit provided by BOC to Hangzhou Lianluo. The loans have been guaranteed jointly and severally by Beijing Digital Grid Technology Co., Ltd., a subsidiary of Hangzhou Lianluo, and by Mr. Zhitao He. The total principal amount owed under these loans as of March 31, 2023 was RMB150 million in RMB-denominated loans plus USD$66.5 million in U.S. dollar-denominated loans. In May 2020, BOC filed several lawsuits against Hangzhou Lianluo, Digital Grid, Beijing Digital Grid Technology Co., Ltd. and Mr. Zhitao He in the Hangzhou Intermediate People's Court in China alleging that Hangzhou Lianluo has failed to repay the loans when due and is in breach of the loan agreements. The court has ruled that the loans are in default in a final, non-appealable judgment. On December 19, 2022, Digital Grid, BOC, Newegg, and Hangzhou Lianluo entered into a supplemental agreement (the "Supplemental Agreement") to agree upon procedures to temporarily remove BOC's lien on Digital Grid's Newegg Common Shares to enable their sale and use of proceeds to repay BOC. Such sales of our common stock could cause the market price of our common stock to drop significantly.

In addition, on April 11, 2023, Hangzhou Lianluo announced that the Industrial and Commercial Bank of China ("ICBC") filed a lawsuit against Hangzhou Lianluo in the Hangzhou Intermediate People's Court in China alleging that Hangzhou Lianluo failed to repay when due three separate loans, provided by ICBC to Hangzhou Lianluo, and was in breach of the related loan agreements. The estimated total amount owed under the loans, including interest, fees, expenses and penalties, as of March 31, 2023 was approximately RMB448 million . Hangzhou Lianluo did not pledge any Common Shares owned by it or Digital Grid as collateral to support the ICBC loans.

As of the date hereof, to the best of our knowledge, no Common Shares have been sold by Hangzhou Lianluo in connection with the repayment of the BOC or ICBC loans.

To the best of our knowledge, except as disclosed herein, none of our directors or executive officers has been convicted in a criminal proceeding, excluding traffic violations or similar misdemeanors, or has been a party to any judicial or administrative proceeding during the past ten years that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities or commodities laws, any laws respecting financial institutions or insurance companies, any law or regulation prohibiting mail or wire fraud in connection with any business entity or been subject to any disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization, except for matters that were dismissed without sanction or settlement.

Terms of Directors and Executive Officers

Each of our directors holds office until a successor has been duly elected and qualified unless the director was appointed by the Board, in which case such director holds office until the next annual meeting of shareholders at which time such director is eligible for re-election. All of our executive officers are appointed by and serve at the discretion of our board.

Qualification

There is currently no shareholding qualification for directors, although a shareholding qualification for directors may be fixed by our shareholders by ordinary resolution.

Committees of the Board of Directors

Currently, three committees have been established under the Board: the audit committee, the compensation committee and the nominating committee. Each committee's members and functions are described below.

Audit Committee

Our audit committee currently consists of Mr. Gregory Moore, Mr. Poi (Paul) Wu, and Mr. Fuya (Frank) Zheng. Mr. Moore is the chairman of our audit committee. We have determined that Mr. Moore, Mr. Wu, and Mr. Zheng satisfy the "independence" requirements of Section 5605(a)(2) of the Nasdaq Listing Rules and Rule 10A-3 under the Exchange Act. Our board also has determined that Mr. Moore qualifies as an audit committee financial expert within the meaning of the SEC rules or possesses financial sophistication within the meaning of the Nasdaq Listing Rules. The audit committee oversees our accounting and financial reporting processes and the audits of the financial statements of our company. The audit committee is responsible for, among other things:

- appointing the independent auditors and pre-approving all auditing and non-auditing services permitted to be performed by the independent auditors;
- reviewing with the independent auditors any audit problems or difficulties and management's response;
- discussing the annual audited financial statements with management and the independent auditors;
- reviewing the adequacy and effectiveness of our accounting and internal control policies and procedures and any steps taken to monitor and control major financial risk exposures;
- reviewing and approving all proposed related party transactions;
- meeting separately and periodically with management and the independent auditors; and
- monitoring compliance with our code of business conduct and ethics, including reviewing the adequacy and effectiveness of our procedures for proper compliance.

Compensation Committee

Our compensation committee currently consists of Mr. Gregory Moore, Mr. Poi (Paul) Wu, and Mr. Fuya (Frank) Zheng. Mr. Wu is the chairman of our compensation committee. The compensation committee assists the board in reviewing and approving the compensation structure, including all forms of compensation relating to our directors and executive officers. Our chief executive officer may not be present at any committee meeting during which his compensation is deliberated. The compensation committee is responsible for, among other things:

- reviewing and recommending to the board the total compensation package for our most senior executive officers;
- approving and overseeing the total compensation package for our executives other than the most senior executive officers;
- reviewing and recommending to the board the compensation of our directors;
- reviewing periodically and approving any long-term incentive compensation or equity plans;
- selecting compensation consultants, legal counsel or other advisors after taking into consideration all factors relevant to that person's independence from management; and
- reviewing all other compensation and benefit plans as appropriate.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee currently consists of Mr. Gregory Moore, Mr. Poi (Paul) Wu, and Mr. Fuya (Frank) Zheng. Mr. Zheng is the chairperson of our nominating and corporate governance committee. The nominating and corporate governance committee assists the Board in selecting individuals qualified to become our directors and in determining the composition of the board and its committees. The nominating and corporate governance committee is responsible for, among other things:

- identifying and recommending nominees for election or re-election to our Board or for appointment to fill any vacancy;
- reviewing annually with our Board its current composition in light of the characteristics of independence, age, skills, experience and availability of service to us;
- identifying and recommending to our Board which directors to serve as members and chairpersons of committees of the Board;
- reviewing our corporate governance principles and advising the Board periodically of any significant developments as appropriate; and
- reviewing related person transactions as well as the policies and procedures for the review, approval and ratification of related person transactions.

D. Employees

As of December 31, 2022 and 2021, we employed a total of 1,355 and 2,205 full-time employees, respectively. The reduction in our employee count was primarily due to workforce optimization measures made in response to changing macroeconomic conditions and shifting consumer demand for our products. The following table gives a breakdown of our full-time employees as of December 31, 2022 by region.

Location	Count
China	525
Taiwan	92
U.S.	714
Canada	24
Total	**1,355**

During the holiday season, we have historically added temporary workers to augment our full-time work force. We believe we have a good working relationship with our employees and we have not experienced any significant labor disputes.

E. Share Ownership

For information regarding the share ownership of our directors and executive officers, see Item 7 under the heading "Principal Shareholders."

Item 7. Major Shareholders and Related Party Transactions

A. Major Shareholders

The following table sets forth information with respect to the beneficial ownership, within the meaning of Rule 13d-3 under the Exchange Act, of our common shares as of March 31, 2023 for:

- each of our directors and executive officers;
- all of our directors and executive officers as a group; and
- each shareholder or group of shareholders known to us to own beneficially more than 5% of our common shares.

Beneficial ownership includes voting or investment power with respect to the securities. Except as indicated below, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all common shares shown as beneficially owned by them. In computing the number of common shares beneficially owned by a person listed below and the percentage ownership of such person, common shares underlying options, warrants, restricted stock units, or convertible securities held by each such person that are exercisable or convertible within 60 days of March 31, 2023 are deemed outstanding.

The ownership information shown in the column titled "Percentage of Common Shares Beneficially Owned" in the table below is based on 377,758,760 common shares outstanding as of March 31, 2023.

Name and Address of Beneficial Owner	Number of Common Shares Beneficially Owned	Percentage of Common Shares Beneficially Owned
5% or Greater Shareholders		
Zhitao He[(1)]	230,488,957	57.2%
Fred Chang[(2)]	134,897,509	33.5%
Executive Officers and Directors		
Anthony Chow[(3)]	7,087,426	1.8%
Robert Chang[(3)]	1,601,973	*
Jamie Spannos[(3)]	2,673,318	*
Montaque Hou[(3)]	1,654,024	*
Michael Chen	—	*
Christina Ching	—	*
Fred Chang[(2)]	134,897,509	33.5%
Fuya Zheng	—	*
Gregory Moore	—	*
Zhitao He[(1)]	230,488,957	57.2%
Yingmei Yang[(4)]	613,952	*
Poi (Paul) Wu	—	*
All Directors and Executive Officers as a Group (12 persons)	379,017,159	94.0%

* Less than 1% of total outstanding shares

(1) Comprised of (i) 222,821,592 Common Shares owned by Digital Grid, (ii) 473,388 Common Shares and warrants to purchase 125,000 Common Shares at an exercise price of $17.60/share owned by Hangzhou Lianluo, (iii) 58,937 Common Shares owned by Hyperfinite Galaxy Holding Limited and (iv) vested stock options exercisable for 7,010,040 Common Shares at an exercise price of $0.55/share held by Mr. Zhitao He. All of those persons are affiliated with each other and under the control of Mr. Zhitao He.

The Common Shares owned by Digital Grid have been pledged to Bank of China Limited Zhejiang Branch, or BOC, as collateral to support working capital loans and letters of credit provided by BOC to Hangzhou Lianluo. The loans have been guaranteed jointly and severally by Beijing Digital Grid Technology Co., Ltd., a subsidiary of Hangzhou Lianluo, and by Mr. Zhitao He. The total principal amount owed under these loans as of March 31, 2023 was RMB150 million in RMB plus $66.5 million in U.S. dollars. In May 2020, BOC filed several lawsuits against Hangzhou Lianluo, Digital Grid, Beijing Digital Grid Technology Co., Ltd. and Mr. Zhitao He in the Hangzhou Intermediate People's Court in China alleging that Hangzhou Lianluo has failed to repay the loans when due and is in breach of the loan agreements. The court has ruled that the loan is in default in a final, non appealable judgment.

(2) Comprised of (i) 89,091,406 Common Shares held by Tekhill USA, LLC, (ii) 23,624,115 Common Shares held by Fred Chang Partners Trust, (iii) 9,158,558 Common Shares held by Nabal Spring, LLC, (iv) 5,435,754 Common Shares held by Chang Trust 2008, (v) 797,625 Common Shares held by Chang 2009 Annuity Trust No. 1, (vi) 332,340 Common Shares held by Chang 2009 Annuity Trust No. 2, (vii) 664,691 Common Shares held by Chang 2009 Annuity Trust No. 3, (viii) vested stock options exercisable for 5,461,990 Common Shares at an exercise price of $1.19/share held by Fred Chang, and (ix) 331,030 stock options that will vest within 60 days of March 31, 2023. All of those persons are affiliated with each other and under the control of Fred Chang.

Tekhill USA, LLC previously pledged 32,713,520 Common Shares as collateral to Preferred Bank, securing a loan from Preferred Bank to Fred Chang with a principal amount of $7.1 million. In early 2022, this loan was paid off and the pledge of common shares was released. Contemporaneously, Fred Chang entered into a new loan with East West Bank, pursuant to which Tekhill USA, LLC pledged a total of 18,208,303 common shares as collateral to East West Bank to secure a loan from East West Bank to Fred Chang with a principal amount of $20.0 million.

(3) Comprised of (i) Common Shares, (ii) vested stock options, and (iii) stock options and restricted stock units that will vest within 60 days of March 31, 2023 for the indicated number of Common Shares for each person. The exercise price for all of these stock options is $0.55/share.

(4) Comprised of vested stock options exercisable for the indicated number of Common Shares for each person. The exercise price for all of these stock options is $0.55/share.

Rights of Certain Principal Shareholders

See Item 10.B. "Memorandum and Articles of Association" under the subheadings "Rights of Certain Principal Shareholders" and "Requirements of Board Approval on Certain Matters."

B. Related Party Transactions

For a description of our related party transactions, see "Related Party Transactions" as discussed in Note 18 of the consolidated financial statements to this annual report on Form 20-F.

C. Interest of Experts and Counsel

Not applicable.

Item 8. Financial Information

A. Consolidated Statements and Other Financial Information

Refer to "Item 18. Financial Statements" for our Consolidated Financial Statements as of December 31, 2022 and December 31, 2021 and for the years ended December 31, 2022, December 31, 2021 and December 31, 2020 and report of our independent registered public accounting firm included herein.

Legal or Arbitration Proceedings

In December 2014, an individual plaintiff sued our subsidiary, *Newegg.com* Americas Inc. ("***Newegg.com* Americas**"), in Superior Court in Los Angeles County, California, alleging that *Newegg.com* Americas had engaged in deceptive advertising practices and seeking to certify a class action. In 2016, the trial court sustained *Newegg.com* Americas' demurrer to the plaintiff's claims without leave to amend. The plaintiff appealed, and in July 2018 an appellate court reversed the decision of the trial court, thus allowing the case to proceed. The matter is now pending in the trial court, with Newegg Inc. having been added as a defendant. We intend to vigorously defend ourselves and our subsidiaries. Depending on the amount and timing, an unfavorable result could materially affect our business, consolidated results of operations, financial position or cash flows.

In September 2021, two subsidiaries of the Company were served with a complaint filed in the Superior Court for Los Angeles County, California, alleging various wage and hour violations and seeking to certify a class action. In October 2021, a second complaint was filed as a representative action pursuant to the Private Attorneys General Act of 2004 against the same two subsidiaries in the Superior Court for Los Angeles County, California, alleging various violations of the California Labor Code. The Company intends to vigorously defend its subsidiaries in both matters. The outcome of these matters is uncertain. Depending on the amount and timing, an unfavorable result in either matter could materially affect our business, consolidated results of operations, financial position or cash flows.

From time to time, we may be subject to legal proceedings, investigations and claims incidental to the conduct of our business. Except as disclosed above, we are not currently a party to any legal proceeding or investigation which, in the opinion of our management, is likely to have a material adverse effect on our business, financial condition or results of operations.

Dividend Policy

To date, we have not paid any cash dividends on our shares. As a BVI company, we may only declare and pay dividends if our directors are satisfied, on reasonable grounds, that immediately after the distribution (i) the value of our assets will exceed our liabilities and (ii) we will be able to pay our debts as they fall due. We currently anticipate that we will retain any available funds to finance the growth and operation of our business and we do not anticipate paying any cash dividends in the foreseeable future. Additionally, our cash held in foreign countries may be subject to certain control limitations or repatriation requirements, limiting our ability to use this cash to pay dividends.

B. Significant Changes

Except otherwise disclosed within this annual report on Form 20-F, no significant change has occurred since December 31, 2022.

Item 9. The Offer and Listing

A. Offering and Listing Details

Not applicable.

B. Plan of Distribution

Not applicable.

C. Markets

Our common shares are traded on the Nasdaq Capital Market ("Nasdaq") under the symbol "NEGG."

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the Issue

Not applicable.

Item 10. Additional Information

A. Share Capital

Description of Shares

We are a company incorporated in the British Virgin Islands with limited liability and our affairs are governed by our Amended and Restated Memorandum and Articles of Association, the Companies Act, the common law of the British Virgin Islands, our corporate governance documents and rules and regulations of the stock exchange on which our common shares are traded.

Rights and Obligations of Shareholders

Each of common shares confers on its holder:

- the right to vote;
- the right to an equal share in any dividend paid by the Company in accordance with the Companies Act; and
- the right to an equal share in the distribution of the surplus of the Company.

Voting Rights. Holders of common shares shall at all times vote together as one class on all resolutions submitted to a vote by the shareholders. Each common share is entitled to one (1) vote on all matters subject to vote at general meetings of the Company.

Dividends. The holders of shares are entitled to such dividends as may be declared by the directors of the Company at such time and of such an amount as the directors think fit if they are satisfied, on reasonable grounds, that immediately after the distribution, the value of Company assets exceeds the Company's liabilities and the Company will be able to pay its debts as they fall due.

Pre-emptive rights. Except as set forth in the Amended Shareholders Agreement, there are no pre-emptive rights applicable to the issue by the Company of new shares under either the Companies Act or our Amended and Restated Memorandum and Articles of Association.

Warrants

On April 28, 2016, the Company closed the sale of warrants to purchase 125,000 of our common shares to Hangzhou Lianluo pursuant to the terms of a certain securities purchase agreement. These warrants are exercisable at any time for an exercise price of $17.60 per share, with no expiration date.

B. Memorandum and Articles of Association

We are incorporated in the British Virgin Islands and have been assigned company number 553525 in the Register of Companies in the BVI. Our registered office is at the offices of Vistra Corporate Services Center, Wickhams Cay II, Road Town, Tortola, VG1110, British Virgin Islands.

Objects of the Company

Under our Amended and Restated Memorandum and Articles of Association, the objects of our Company are unrestricted and we have the full power and authority to carry out any object not prohibited by the law of the British Virgin Islands.

Amendment

Clause 12.1 of our Amended and Restated Memorandum provides that the Company may amend the Memorandum or the Articles of Association by Resolution of Shareholders or by Resolution of Directors, provided that no amendment may be made by Resolution of Directors: (a) to restrict the rights or powers of the Shareholders to amend the Memorandum or the Articles of Association; (b) to change the percentage of Shareholders required to pass a Resolution of Shareholders to amend the Memorandum or the Articles of Association; (c) in circumstances where the Memorandum or the Articles of Association cannot be amended by the Shareholders; and (d) provided that the Directors may not amend certain sections of the Amended and Restated Memorandum and Articles of Association that would negatively affect existing shareholders.

Rights of Certain Principal Shareholders

Appointment and Removal of the Directors

Pursuant to the Amended and Restated Memorandum and Articles of Association and subject to compliance with applicable laws and Nasdaq Listing Rules, the board of the Company shall consist of up to seven directors. Initially, four of the directors shall be appointed by Digital Grid, and three of the directors shall be appointed by the Minority Representative.

If the number of Shares or other Equity Interests (as defined in the Amended and Restated Memorandum and Articles of Association) of the Company held by the Legacy Shareholders represents (i) more than two sevenths (2/7) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then the Minority Representative shall be entitled to appoint and replace three directors, (ii) less than or equal to two sevenths (2/7) and more than one seventh (1/7) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then the Minority Representative shall be entitled to appoint and replace two directors, (iii) less than or equal to one seventh (1/7) and more than five percent (5%) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then the Minority Representative shall be entitled to appoint and replace one director, and (iv) less than or equal to five percent (5%) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then the Minority Representative shall no longer be entitled to appoint or replace any directors.

If the number of Shares or other Equity Interests held by Digital Grid or its affiliates represents (i) more than fifty percent (50%) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then Digital Grid shall be entitled to appoint and replace four directors, (ii) less than or equal to fifty percent (50%) and more than two sevenths (2/7) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then Digital Grid shall be entitled to appoint and replace three directors, (iii) less than or equal to two sevenths (2/7) and more than one seventh (1/7) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then Digital Grid shall be entitled to appoint and replace two directors, (iv) less than or equal to one seventh (1/7) and more than five percent (5%) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then Digital Grid shall be entitled to appoint and replace one director, and (v) less than or equal to five percent (5%) of the total voting power of all outstanding Shares or other Equity Interests of the Company, then Digital Grid shall no longer be entitled to appoint or replace any directors.

Any director positions which neither Digital Grid nor the Minority Representative are entitled to appoint under the Amended and Restated Memorandum and Articles of Association shall be appointed by a majority of the remaining directors, or by any other means allowed under the Amended and Restated Memorandum and Articles of Association and the Companies Act.

A director or member of a committee of the Board or the board of a subsidiary may be removed from his or her position, with cause, by the majority of the shareholders or the majority of the Board; provided that

i. Any director or member of a committee of the Board or the board of a subsidiary that is appointed or nominated by the Minority Representative shall be removed from their position upon and only upon, the written request of the Minority Representative; and

ii. Any director or member of a committee of the Board or the board of a subsidiary that is appointed or nominated by Digital Grid shall be removed from their position upon and only upon, the written request of Liaison.

Requirements of Board Approval on Certain Matters

In addition, the Amended and Restated Memorandum and Articles of Association also provides that, as long as the number of common shares held by Legacy Shareholders represents more than ten percent (10%) of the total voting power of all outstanding common shares of the Company, the Company agrees not to take, or permit our subsidiaries to take, certain actions, without the approval of the affirmative vote of not less than a majority of the number of votes represented by the directors, which majority must include one of the directors designated by the Minority Representative as being the Primary Minority Board Appointee. Such actions include the following:

i. initiate any liquidation, dissolution, bankruptcy filing or similar action, recapitalization, share combination or division, restructuring or reorganization of the Company or any of its subsidiaries;

ii. other than to the Company or a wholly-owned subsidiary thereof, sell, license, transfer or otherwise dispose of (including through merger or consolidation) all or substantially all of the assets or properties of the Company or any of its subsidiaries in any transaction or series of related transactions;

iii. agree to any merger, consolidation or combination of the Company or any of its subsidiaries, or to a sale of all or substantially all of the assets of the Company in connection with a Company Sale (as defined in the Amended and Restated Memorandum and Articles of Association);

iv. commence or undertake any Reorganization (as defined in the Amended and Restated Memorandum and Articles of Association);

v. issue, directly or indirectly, any equity interest of the Company or permit any of the subsidiaries to issue any equity interest other than, in each case, any Excluded Issuance (as defined in the Amended and Restated Memorandum and Articles of Association);

vi. materially alter or fundamentally change the nature of the business of the Company and its Subsidiaries;

vii. amend, change, or waive any provision of, the memorandum and articles of association of the Company;

viii. purchase or otherwise acquire all or any part of the assets or business of, or Equity Interests or other evidences of beneficial ownership of, invest in or participate in any joint venture, partnership or similar arrangement with, any Person (other than the Company or any of its subsidiaries), in each case in any transaction or series of related transactions involving a commitment in excess of $10,000,000;

ix. other than to the Company or a wholly-owned subsidiary thereof, sell, license, transfer or otherwise dispose of (including through merger or consolidation) any assets or properties of the Company or any of its subsidiaries, in each case in any transaction or series of related transactions involving a commitment in excess of $10,000,000;

x. other than loans to wholly-owned subsidiaries, (A) extend any credit or make any loans to any Person, (B) incur, assume, guarantee, endorse or otherwise become responsible for indebtedness, or (C) amend, modify or supplement in any material respect the agreements governing (or otherwise extend or refinance) existing indebtedness;

xi. appoint or remove the Chief Executive Officer of the Company;

xii. enter into any Affiliate Transactions (as defined in the Amended and Restated Memorandum and Articles of Association);

xiii. amend, change or waive any of the actions of the Company described in the Fifth Amended and Restated Articles of Association or the required voting threshold specified herein; and

xiv. agree or commit to do any of the foregoing, or delegate any of the foregoing to the Company or any of its subsidiaries or any officer or agent of the Company or subsidiary thereof.

The rights granted to the Principal Shareholders are in addition to and not intended to limit in any way the rights that the Principal Shareholders or any of their affiliates may have to appoint, elect or remove our directors under our Amended and Restated Memorandum and Articles of Association or laws of the British Virgin Islands.

Pre-emptive Rights of the Principal Shareholders

Newegg, Digital Grid, the Principal Shareholders and we agreed to enter into the Amended Shareholders Agreement, pursuant to which we agreed to assume all of the rights and obligations of Newegg under the original Shareholders Agreement.

Under the Amended Shareholders Agreement, the Principal Shareholders have pre-emptive rights to acquire additional shares when the Company issues or sells additional securities in the future, except for the "excluded issuance" as defined in the Amended Shareholders Agreement or common shares offered pursuant to a registration statement filed with the SEC.

For the purpose of the Amended Shareholders Agreement, the "excluded issuance" means (i) any equity interests issued as share dividends, or pursuant to share splits, recapitalization or other similar events that do not adversely affect the proportionate amount of the common shares held by the Principal Shareholders, and (ii) common shares issuable pursuant to any stock option or any similar equity incentive plan of the Company approved by the Board; and (iii) equity interests issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company provided that any such issuance shall only be to an entity (or to the equity holders of an entity) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing equity interests primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

The Company is required to give Principal Shareholders a notice stating the price (or formula by which the price will be determined, which may refer to a future contingent event) and terms of issuance of new securities and to remain the offer to issue the Principal Shareholders their Pro Rata Shares of such new securities (as defined below) open until the 15th calendar day following the receipt of such notice. The Principal Shareholders shall deliver an exercise notice along with payment to exercise their pre-emptive rights.

In the event that the Principal Shareholder fails to give an exercise notice timely, or elects to purchase fewer than all of its Pro Rata Share of such new securities, then the Company shall send written notice to any Principal Shareholder who has elected to purchase all of its Pro Rata Share of such new securities, who will then have the right, by giving written notice to the Company within two business days upon receiving notice from the Company, to purchase its Pro Rata Share of such unsubscribed portion, and such right shall continue to apply repeatedly and iteratively until all of such new securities have been allocated to the Principal Shareholders or none of the Principal Shareholders have elected to participate in such further purchase. If, at the end of such process, there are new securities that have not been subscribed for by the Principal Shareholders, the Company may, for a period of time not to exceed 60 days, sell such unsubscribed new securities, on the same times to a third-party purchaser. If, however, at the end of such 60-day period, the Company has not consummated a sale of any of such unsubscribed new securities, the Company shall no longer be permitted to sell such new securities without again complying with these provisions of pre-emptive rights in the Amended Shareholders Agreement.

Right of First Refusal of the Company and Principal Shareholders

Pursuant to the Amended Shareholders Agreement, subject to compliance with applicable laws and Nasdaq's Listing Rules, if any Principal Shareholders or any of their affiliates, receives a bona fide offer from any person other than its affiliate for any of the common shares such Principal Shareholders received in connection with the Merger (the "ROFR Shares"), then the Company has a right of first refusal, but not the obligation, to elect to purchase all (and not less than all) of the ROFR Shares, at the same price, and on the same terms and conditions offered by the purchaser (the "ROFR Terms"). In the event the Company does not decide to purchase such ROFR Shares or decides to purchase for less than all of the ROFR Shares, then each of the Principal Shareholders other than the selling Principal Shareholders shall have a right of first refusal to elect to purchase all (and not less than all) of its Pro Rata Share of the ROFR Shares on the ROFR Terms. By amendment dated August 2022, the Amended and Restated Shareholders Agreement was amended such that the Company's right of first refusal would apply only to 80% of the shares of the Company's common shares subject to such ROFR Right collectively owned by each Principal Shareholder and its Affiliates. For the purpose of this Amended Shareholders Agreement, "Pro Rata Share" means the percentage which corresponds to the ratio which each selling Principal Shareholder's "Percentage Interest" (which is calculated by dividing (i) the number of the common shares owned by such Principal Shareholder, by (ii) total number of the then outstanding shares of the common shares held by all Principal Shareholders) bears to the total Percentage Interests of all Principal Shareholders exercising their right of first refusal. In the event that the ROFR Shares are in exchange for non-cash consideration, then such right of first refusal shall be exercisable based on the fair market value determined in good faith by the board of such non-cash consideration. Such rights of first refusal may delay or prevent us from raising other funding in the future and may have an adverse impact on the liquidity and market price of our common shares.

Limitations on Right to Own Shares

British Virgin Islands law and our Amended and Restated Memorandum and Articles of Association impose no limitations on the right of nonresident or foreign owners to hold or vote our securities. There are no provisions in the Amended and Restated Memorandum and Articles of Association governing the ownership threshold above which shareholder ownership must be disclosed.

Anti-Takeover Provisions

Some provisions of our Amended and Restated Memorandum and Articles of Association may discourage, delay or prevent a change of control of our Company or management, that shareholders may consider favorable, including provisions that limit the ability of shareholders to requisition and convene general meetings of shareholders. Our Amended and Restated Memorandum and Articles of Association allow our shareholders holding shares representing in aggregate not less than thirty percent (30%) of our voting shares to requisition a special meeting of shareholders, in which case our directors are obliged to call such meeting and to put the resolutions so requisitioned to a vote at such meeting.

However, under British Virgin Islands law, our directors may only exercise the rights and powers granted to them under our Amended and Restated Memorandum and Articles of Association for a proper purpose and for what they believe in good faith to be in the best interests of our Company.

Register of Members

The Company is required to keep a register of members containing (i) the names and addresses of the shareholders, (ii) the number of each class and series of shares held by each shareholder, (iii) the date on which the name of each shareholder was entered in the register of members, and (iv) the date on which any person ceased to be a shareholder. A share is deemed to be issued when the name of the shareholder is entered in the register of members and the entry of the name of a person in the register of members as a holder of a share is prima facie evidence that legal title in the share vests in that person.

Variation of Rights of Shareholders

If at any time the shares are divided into different classes, the rights attached to any class may only be varied, whether or not the Company is in liquidation, by a resolution passed at a meeting by a majority of the votes cast by those entitled to vote at a meeting of the holders of the issued shares in that class.

Meetings

Any action required or permitted to be taken by the shareholders may be effected at a duly called annual or special meeting of the shareholders entitled to vote on such action. An action that may be taken by the shareholders at a meeting (other than the election of Directors) may also be taken by a resolution of shareholders consented to in writing, without the need for any notice, but if any resolution of shareholders is adopted otherwise than by the unanimous written consent of all shareholders, a copy of such resolution shall forthwith be sent to all shareholders not consenting to such resolution. All meetings of shareholders (whether annual or special) will be held on such dates and at such places as may be fixed from time to time by the directors. The Company is not required to hold an annual general meeting in any calendar year. However, where so determined by the directors of the Company, an annual general meeting shall be held once in each calendar year at such date and time as may be determined by the directors of the Company.

At any meeting of shareholders, a quorum will be present if there are one or more shareholders present in person or by proxy representing not less than 50% of the issued shares entitled to vote on the resolutions to be considered at the meeting. The shareholders present at a duly called or held meeting of shareholders at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

A shareholder may be represented at a meeting of shareholders by a proxy who may speak and vote on behalf of the shareholder. A shareholder will be deemed to be present at the meeting if he participates by telephone or other electronic means and all shareholders participating in the meeting are able to hear each other.

Transfer of Shares

Subject to the restrictions and conditions in our Amended and Restated Memorandum and Articles of Association, as amended, and the Amended Shareholders Agreement, any shareholder may transfer all or any of his or her shares by written instrument of transfer signed by the transferor and containing the name and address of the transferee. The transfer of a share is effective when the name of the transferee is entered on the register of members of the Company.

Redemption of Shares

The Company may purchase, redeem or otherwise acquire any of its own shares for such consideration as the directors of the Company may determine if the directors are satisfied, on reasonable grounds, that immediately after the acquisition the value of the Company's assets will exceed its liabilities and the Company will be able to pay its debts as they fall due. Shares that the Company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares except to the extent that such shares are in excess of 50% of the issued shares in which case, they shall be cancelled to the extent of such excess, but they shall be available for reissue.

Differences Between the Law of Different Jurisdictions

We were incorporated under, and are governed by, the laws of the BVI. Set forth below is a summary of some of the differences between provisions of the Companies Act applicable to us and the laws application to companies incorporated in Delaware and their shareholders.

Director's Fiduciary Duties

Under Delaware corporate law, a director of a Delaware corporation has a fiduciary duty to the corporation and its shareholders. This duty has two components: the duty of care and the duty of loyalty. The duty of care requires that a director act in good faith, with the care that an ordinarily prudent person would exercise under similar circumstances. Under this duty, a director must inform himself of, and disclose to shareholders, all material information reasonably available regarding a significant transaction. The duty of loyalty requires that a director act in a manner he reasonably believes to be in the best interests of the corporation. He must not use his corporate position for personal gain or advantage. This duty prohibits self-dealing by a director and mandates that the best interest of the corporation and its shareholders take precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the shareholders generally. In general, actions of a director are presumed to have been made on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the corporation. However, this presumption may be rebutted by evidence of a breach of one of the fiduciary duties. Should such evidence be presented concerning a transaction by a director, a director must prove the procedural fairness of the transaction, and that the transaction was of fair value to the corporation.

BVI law provides that every director of a BVI company in exercising his powers or performing his duties shall act honestly and in good faith and in what the director believes to be in the best interests of the company. Additionally, the director shall exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances, taking into account the nature of the company, the nature of the decision and the position of the director and his responsibilities. In addition, BVI law provides that a director shall exercise his powers as a director for a proper purpose and shall not act, or agree to the company acting, in a manner that contravenes the Companies Act or the memorandum of association or articles of association of the company.

Amendment of Governing Documents

Under Delaware corporate law, with very limited exceptions, a vote of the shareholders is required to amend the certificate of incorporation. Under BVI law and our Amended and Restated Memorandum and Articles of Association, we may amend the Amended and Restated Memorandum and Articles of Association by resolution of shareholders or by resolution of directors, provided that no amendment may be made by resolution of directors: (a) to restrict the rights or powers of the shareholders to amend the memorandum of association or the articles of association; (b) to change the percentage of shareholders required to pass a resolution of shareholders to amend the memorandum of association or the articles of association; (c) in circumstances where the memorandum of association or the articles of association cannot be amended by the shareholders; and (d) provided that the directors may not amend certain sections of the Amended and Restated Memorandum and Articles of Association that would negatively affect existing shareholders.

Written Consent of Directors

Under Delaware corporate law, directors may act by written consent only on the basis of a unanimous vote. Under BVI law, directors' consents need only a majority of directors signing to take effect. Under our Amended and Restated Memorandum and Articles of Association, directors may act by written consents of all directors.

Written Consent of Shareholders

Under Delaware corporate law, unless otherwise provided in the certificate of incorporation, any action to be taken at any annual or special meeting of shareholders of a corporation, may be taken by written consent of the holders of outstanding stock having not less than the minimum number of votes that would be necessary to take such action at a meeting. As permitted by BVI law, shareholders' consents need only shareholders representing a majority of votes of the shares entitled to vote signing to take effect. Our Amended and Restated Memorandum and Articles of Association provide that an action that may be taken by the shareholders at a meeting (other than the election of directors) may also be taken by a resolution of shareholders consented to in writing, without the need for any notice, but if any resolution of shareholders is adopted otherwise than by the unanimous written consent of all shareholders, a copy of such resolution shall forthwith be sent to all shareholders not consenting to such resolution.

Shareholder Proposals

Under Delaware corporate law, a shareholder has the right to put any proposal before the annual meeting of shareholders, provided it complies with the notice provisions in the governing documents. A special meeting may be called by the board of directors or any other person authorized to do so in the governing documents, but shareholders may be precluded from calling special meetings. BVI law and our Amended and Restated Memorandum and Articles of Association provide that our directors shall call a meeting of the shareholders in respect of the matter for which the meeting is requested in writing by shareholders entitled to exercise 30% or more of the voting rights.

Sale of Assets

Under Delaware corporate law, a vote of the shareholders is required to approve the sale of assets only when all or substantially all assets are being sold. In the BVI, shareholder approval is required when more than 50% of a company's total assets by value are being disposed of or sold.

Dissolution; Winding Up

Under Delaware corporate law, unless the board of directors approves the proposal to dissolve, dissolution must be approved by shareholders holding 100% of the total voting power of the corporation. Only if the dissolution is initiated by the board of directors may it be approved by a simple majority of the corporation's outstanding shares. Delaware corporate law allows a Delaware corporation to include in its certificate of incorporation a supermajority voting requirement in connection with dissolutions initiated by the board. As permitted by BVI law and our Amended and Restated Memorandum and Articles of Association, we may by a resolution of shareholders or, subject to the requirements under our Amended and Restated Memorandum and Articles of Association, by resolution of directors appoint a voluntary liquidator to undertake the liquidation of the Company.

Redemption of Shares

Under Delaware corporate law, any stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock provided there remains outstanding shares with full voting power. Such stock may be made redeemable for cash, property or rights, as specified in the certificate of incorporation or in the resolution of the board of directors providing for the issue of such stock. As permitted by BVI law and our Amended and Restated Memorandum and Articles of Association, we may purchase, redeem or otherwise acquire any of our own shares for such consideration as our directors may determine if the directors are satisfied, on reasonable grounds, that immediately after the acquisition the value of our assets will exceed our liabilities and we will be able to pay our debts as they fall due. Shares that the Company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares except to the extent that such shares are in excess of 50% of the issued shares in which case they shall be cancelled to the extent of such excess but they shall be available for reissue.

Variation of Rights of Shares

Under Delaware corporate law, a corporation may vary the rights of a class of shares with the approval of a majority of the outstanding shares of such class, unless the certificate of incorporation provides otherwise. As permitted by BVI law and our Amended and Restated Memorandum and Articles of Association, if at any time the shares are divided into different classes, the rights attached to any class may only be varied, whether or not the Company is in liquidation, by a resolution passed at a meeting by a majority of the votes cast by those entitled to vote at a meeting of the holders of the issued shares in that class.

Removal of Directors

Under Delaware corporate law, a director of a corporation with a classified board may be removed only for cause with the approval of a majority of the outstanding shares entitled to vote, unless the certificate provides otherwise. As permitted by BVI law and our Amended and Restated Memorandum and Articles of Association, a director or member of a committee of the board or the board of a subsidiary may be removed from his or her position, with cause, by the majority of the shareholders or the majority of the board; provided that (i) any director or member of a committee of the board or the board of a subsidiary that is appointed or nominated by the minority representative shall be removed from their position upon and only upon, the written request of the minority representative; and (ii) any director or member of a committee of the board or the board of a subsidiary that is appointed or nominated by Digital Grid shall be removed from their position upon and only upon, the written request of Digital Grid.

Mergers

Under Delaware corporate law, one or more constituent corporations may merge into and become part of another constituent corporation in a process known as a merger. A Delaware corporation may merge with a foreign corporation as long as the law of the foreign jurisdiction permits such a merger. To effect a merger under Delaware General Corporation Law §251, an agreement of merger must be properly adopted and the agreement of merger or a certificate of merger must be filed with the Delaware Secretary of State. In order to be properly adopted, the agreement of merger must be adopted by the board of directors of each constituent corporation by a resolution or unanimous written consent. In addition, the agreement of merger generally must be approved at a meeting of shareholders of each constituent corporation by a majority of the outstanding stock of the corporation entitled to vote, unless the certificate of incorporation provides for a supermajority vote. In general, the surviving corporation assumes all of the assets and liabilities of the disappearing corporation or corporations as a result of the merger.

Under the Companies Act, two or more companies may merge or consolidate in accordance with the statutory provisions. A merger means the merging of two or more constituent companies into one of the constituent companies, and a consolidation means the uniting of two or more constituent companies into a new company. In order to merge or consolidate, the directors of each constituent company must approve a written plan of merger or consolidation which must be authorized by a resolution of shareholders.

Shareholders not otherwise entitled to vote on the merger or consolidation may still acquire the right to vote if the plan of merger or consolidation contains any provision which, if proposed as an amendment to the memorandum association or articles of association, would entitle them to vote as a class or series on the proposed amendment. In any event, all shareholders must be given a copy of the plan of merger or consolidation irrespective of whether they are entitled to vote at the meeting or consent to the written resolution to approve the plan of merger or consolidation.

Inspection of Books and Records

Under Delaware corporate law, any shareholder of a corporation may for any proper purpose inspect or make copies of the corporation's stock ledger, list of shareholders and other books and records.

Under the Companies Act, members of the general public, on payment of a nominal fee, can obtain copies of the public records of a company available at the office of the Registrar which will include the company's certificate of incorporation, its memorandum and articles of association (with any amendments) and records of license fees paid to date and will also disclose any articles of dissolution, articles of merger and a register of charges if the company has elected to file such a register.

A member of a company is entitled, on giving written notice to the company, to inspect:

a. the memorandum and articles;

b. the register of members;

c. the register of directors; and

d. the minutes of meetings and resolutions of members and of those classes of members of which he is a member; and to make copies of or take extracts from the documents and records referred to in (a) to (d) above.

Subject to our Amended and Restated Memorandum and Articles of Association, the directors may, if they are satisfied that it would be contrary to the company's interests to allow a member to inspect any document, or part of a document, specified in (b), (c) or (d) above, refuse to permit the member to inspect the document or limit the inspection of the document, including limiting the making of copies or the taking of extracts from the records.

Where a company fails or refuses to permit a member to inspect a document or permits a member to inspect a document subject to limitations, that member may apply to the British Virgin Islands Court for an order that he should be permitted to inspect the document or to inspect the document without limitation.

Transactions with Interested Shareholders

Delaware corporate law contains a business combination statute applicable to Delaware public corporations whereby, unless the corporation has specifically elected not to be governed by such statute by amendment to its certificate of incorporation, it is prohibited from engaging in certain business combinations with an "interested shareholder" for three years following the date that such person becomes an interested shareholder. An interested shareholder generally is a person or group who or that owns or owned 15% or more of the target's outstanding voting stock within the past three years. This has the effect of limiting the ability of a potential acquirer to make a two-tiered bid for the target in which all shareholders would not be treated equally. The statute does not apply if, among other things, prior to the date on which such shareholder becomes an interested shareholder, the board of directors approves either the business combination or the transaction that resulted in the person becoming an interested shareholder. This encourages any potential acquirer of a Delaware public corporation to negotiate the terms of any acquisition transaction with the target's board of directors.

BVI law has no comparable provision.

Cumulative Voting

Under Delaware corporate law, cumulative voting for elections of directors is not permitted unless the company's certificate of incorporation specifically provides for it. Cumulative voting potentially facilitates the representation of minority shareholders on a board of directors since it permits the minority shareholder to cast all the votes to which the shareholder is entitled on a single director, which increases the shareholder's voting power with respect to electing such director. There are no prohibitions to cumulative voting under the laws of the BVI, but our Amended and Restated Memorandum and Articles of Association do not provide for cumulative voting.

C. **Material Contracts**

Except as otherwise disclosed in this annual report (including the Exhibits under Item 19), we are not currently, nor have we been for the past two years, party to any material contract, other than contracts entered into in the ordinary course of business.

D. **Exchange Controls**

BVI Exchange Controls

There are no material exchange controls restrictions on payment of dividends, interest or other payments to the holders of our common shares or on the conduct of our operations in the BVI, where we were incorporated. There are no material BVI laws that impose any material exchange controls on us or that affect the payment of dividends, interest or other payments to nonresident holders of our common shares. BVI law and our Amended and Restated Memorandum and Articles of Association do not impose any material limitations on the right of non-residents or foreign owners to hold or vote our common shares.

E. **Taxation**

BVI, PRC AND U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following is a general summary of certain material BVI, PRC and U.S. federal income tax considerations. The discussion is not intended to be, nor should it be construed as, legal or tax advice to any particular shareholder or prospective shareholder. The discussion is based on laws and relevant interpretations thereof in effect as of the date hereof, all of which are subject to change or different interpretations, possibly with retroactive effect.

BVI Taxation

The BVI does not impose a withholding tax on dividends paid to holders of our common shares, nor does the BVI levy any capital gains or income taxes on us. Further, a holder of our common shares who is not a tax resident of the BVI is exempt from the BVI income tax on dividends paid with respect to the common shares. Holders of common shares are not subject to the BVI income tax on gains realized on the sale or disposition of the common shares.

Our common shares are not subject to transfer taxes, stamp duties or similar charges in the BVI. However, as a company incorporated under the Companies Act, we are required to pay the BVI government an annual license fee based on the number of shares we are authorized to issue.

There is no income tax treaty or convention currently in effect between the United States and the BVI.

PRC Taxation

We are a holding company incorporated in the BVI, which directly holds our equity interests in our PRC operating subsidiaries. The EIT Law and its implementation rules, both of which became effective as of January 1, 2008, as amended on February 24, 2017, provide that a PRC enterprise is subject to a standard income tax rate of 25% and China-sourced income of foreign enterprises, such as dividends paid by a PRC subsidiaries to its overseas parent, will normally be subject to PRC withholding tax at a rate of 10%, unless there are applicable treaties between the overseas parent's jurisdiction of incorporation and China to reduce such rate.

The EIT Law also provides that enterprises organized under the laws of jurisdictions outside China with their "de facto management bodies" located within China may be considered PRC resident enterprises and therefore subject to PRC enterprise income tax at the rate of 25% on their worldwide income. Its implementation rules further define the term "de facto management body" as the management body that exercises substantial and overall management and control over the business, personnel, accounts and properties of an enterprise. We do not consider the Company to be a PRC resident enterprise since our management team, which exercises substantial and overall management and control over the Company and its overseas subsidiaries, is located in the United States. If the PRC tax authorities determine that our BVI holding company is a "resident enterprise" for PRC enterprise income tax purposes, a number of unfavorable PRC tax consequences could follow. Under the EIT Law and its implementation regulations issued by the State Council, a 10% PRC withholding tax is applicable to dividends paid to investors that are non-resident enterprises, which do not have an establishment or place of business in the PRC or which have such establishment or place of business but the dividends are not effectively connected with such establishment or place of business, to the extent such dividends are derived from sources within the PRC. In addition, any gain realized on the transfer of shares by such investors is also subject to PRC tax at a rate of 10%, if such gain is regarded as income derived from sources within the PRC. If we are deemed a PRC resident enterprise, dividends paid on our common shares, and any gain realized from the transfer of our common shares, may be treated as income derived from sources within the PRC and may as a result be subject to PRC taxation. Furthermore, if we are deemed a PRC resident enterprise, dividends paid to individual investors who are non-PRC residents and any gain realized on the transfer of common shares by such investors may be subject to PRC tax at a current rate of 20% (which in the case of dividends may be withheld at source). Any PRC tax liability may be reduced under applicable tax treaties or tax arrangements between China and other jurisdictions. If we or any of our subsidiaries established outside China are considered a PRC resident enterprise, it is unclear whether holders of our common shares would be able to claim the benefit of income tax treaties or agreements entered into between China and other countries or areas.

U.S. Federal Income Taxation

We believe that we are an inverted corporation for U.S. federal tax purposes. This means that, notwithstanding that we are a company incorporated in the BVI, we believe that we will be treated for all U.S. federal tax purposes as if we are a U.S. corporation and that a holder of our common shares will be treated for all U.S. federal tax purposes as holding the stock of a U.S. corporation.

The following discussion is a summary of certain U.S. federal income tax considerations generally applicable to the ownership and disposition of our common shares but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state or local tax laws are not discussed. This discussion is based on the Internal Revenue Code and U.S. Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service, or the IRS, in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect owners of our common shares. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the ownership and disposition of our common shares.

This discussion is limited to beneficial owners that hold our common shares as a "capital asset" within the meaning of Section 1221(a) of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to certain types of investors subject to special rules, including, without limitation:

- financial institutions or financial services entities;
- broker-dealers;
- governments or agencies or instrumentalities thereof;
- regulated investment companies;
- real estate investment trusts;
- expatriates or former long-term residents of the U.S.;
- persons that actually or constructively own five percent or more (by vote or value) of our shares;
- insurance companies;
- dealers or traders subject to a mark-to-market method of accounting with respect to the securities;
- persons holding the securities as part of a "straddle," constructive sale, hedge, conversion or other integrated or similar transaction;
- persons that purchase or sell our securities as part of a wash sale for U.S. federal income tax purposes;
- U.S. holders (as defined below) whose functional currency is not the U.S. dollar;
- partnerships (or entities or arrangements classified as partnerships or other pass-through entities for U.S. federal income tax purposes) and any beneficial owners of such entities;
- tax-exempt entities;
- controlled foreign corporations;
- passive foreign investment companies; and
- persons that acquired our securities as compensation or in connection with services.

If you are a partnership or other pass-through entity (including an entity or arrangement treated as a partnership or other pass-through entity for U.S. federal income tax purposes), the U.S. federal income tax treatment of your partners, members or other beneficial owners will generally depend on the status of the partners, members or other beneficial owners, your activities, and certain determinations made at the partner, member or other beneficial owner level. If you are a partner, member or other beneficial owner of a partnership or other pass-through entity that acquires our securities, you are urged to consult your tax advisor regarding the tax consequences of acquiring, owning and disposing of our securities.

U.S. Holders

For purposes of this discussion, a "U.S. holder" is any beneficial owner of our common shares that is:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity or arrangement taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is includable in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust, if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons (as defined in the Code) have authority to control all substantial decisions of the trust or (ii) it has a valid election in effect under Treasury regulations to be treated as a U.S. person.

Taxation of Distributions

If we pay distributions in cash or other property (other than certain distributions of our common shares or rights to acquire our common shares) to U.S. holders of our common shares, such distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of current and accumulated earnings and profits will constitute a return of capital that will be applied against and reduce (but not below zero) the U.S. holder's adjusted tax basis in our common shares. Any remaining excess will be treated as gain realized on the sale or other disposition of the common shares and will be treated as described under "U.S. Holders — Sale, Taxable Exchange or Other Taxable Disposition of Our common shares" below.

Dividends we pay to a U.S. holder that is a taxable corporation generally will qualify for the dividends received deduction if the requisite holding period is satisfied. With certain exceptions and provided certain holding period requirements are met, dividends we pay to a non-corporate U.S. holder may constitute "qualified dividend income" that will be subject to tax at the applicable tax rate accorded to long-term capital gains. If the holding period requirements are not satisfied, then a corporation may not be able to qualify for the dividends received deduction and would have taxable income equal to the entire dividend amount, and non-corporate holders may be subject to tax on such dividend at regular ordinary income tax rates instead of the preferential rate that applies to qualified dividend income.

Sale, Taxable Exchange or Other Taxable Disposition of Our Common Shares

Subject to the discussion below under "U.S. Holders — Redemption of Our Common Shares," upon a sale, taxable exchange or other taxable disposition of our common shares, a U.S. holder generally will recognize capital gain or loss in an amount equal to the difference between the amount realized and the U.S. holder's adjusted tax basis in such common shares. Any such capital gain or loss generally will be long-term capital gain or loss if the U.S. holder's holding period for the common shares so disposed of exceeds one year. Long-term capital gains recognized by non-corporate U.S. holders currently will be eligible to be taxed at reduced rates. The deductibility of capital losses is subject to limitations.

Redemption of Our Common Shares

In the event that a U.S. holder's common shares is redeemed or if we purchase a U.S. holder's common shares in an open market transaction (such open market purchase of common shares by us is referred to as a "redemption" for the remainder of this discussion), the treatment of the transaction for U.S. federal income tax purposes will depend on whether the redemption qualifies as a sale of the common shares under Section 302 of the Code. Under these rules, the redemption generally will be treated as a sale of the common shares (rather than as a distribution) if the redemption (i) is "substantially disproportionate" with respect to the U.S. holder, (ii) results in a "complete termination" of the U.S. holder's interest in us or (iii) is "not essentially equivalent to a dividend" with respect to the U.S. holder. In determining whether any of these tests have been met, shares considered to be owned by the U.S. holder by reason of certain constructive ownership rules set forth in the Code, as well as shares actually owned, must generally be taken into account. Because the determination as to whether any of the alternative tests of Section 302 of the Code is satisfied with respect to any particular holder of the stock will depend upon the facts and circumstances as of the time the determination is made, U.S. holders should consult their tax advisors to determine such tax treatment.

If the redemption qualifies as a sale of common shares, the U.S. holder will be treated as described under "U.S. Holders — Sale, Taxable Exchange or Other Taxable Disposition of Our Common Shares" above. If the redemption does not qualify as a sale of our common shares, the U.S. holder will be treated as receiving a distribution with the tax consequences described above under "U.S. Holders — Taxation of Distributions." The amount of the distribution would be measured by the amount of cash and the fair market value of any property received by the U.S. holder and any remaining tax basis of the U.S. holder in the redeemed common shares would be added to the U.S. holder's adjusted tax basis in its remaining common shares. If the U.S. holder has no remaining common shares, such basis may, under certain circumstances, be transferred to a related person or it may be lost entirely.

Information Reporting and Backup Withholding

In general, information reporting requirements may apply to dividends paid to a U.S. holder and to the proceeds of the sale, taxable exchange or other taxable disposition of our common shares unless the U.S. holder is an exempt recipient. Backup withholding may apply to such payments if the U.S. holder fails to provide a taxpayer identification number, a certification of exempt status or has been notified by the IRS that it is subject to backup withholding (and such notification has not been withdrawn).

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a credit against a U.S. holder's U.S. federal income tax liability and may entitle such holder to a refund, provided the required information is timely furnished to the IRS.

Non-U.S. Holders

For purposes of this discussion, a Non-U.S. holder is any beneficial owner of our common shares that is neither a "U.S. person" nor an entity or arrangement treated as a partnership for U.S. federal income tax purposes.

Taxation of Distributions

If we pay distributions in cash or other property (other than certain distributions of our common shares or rights to acquire our common shares) to Non-U.S. holders of our common shares, such distributions generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Distributions in excess of current and accumulated earnings and profits will constitute a return of capital that will be applied against and reduce (but not below zero) the Non-U.S. holder's adjusted tax basis in our common shares. Any remaining excess will be treated as gain realized on the sale or other disposition of the common shares and will be treated as described under "Non-U.S. Holders — Sale, Taxable Exchange or Other Taxable Disposition of Our Common Shares."

Subject to the discussions below on effectively connected income, dividends paid to a Non-U.S. holder of our common shares will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If dividends paid to a Non-U.S. holder are effectively connected with the Non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. holder generally must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. holder's conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net basis at the regular graduated rates. A Non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items.

Non-U.S. holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sale, Taxable Exchange or Other Taxable Disposition of Our Common Shares

Subject to the discussion below under "Non-U.S. Holders — Redemption of Our Common Shares," a Non-U.S. holder will not be subject to U.S. federal income tax on any gain realized upon the sale, taxable exchange or other taxable disposition of our common shares unless:

- the gain is effectively connected with the Non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our common shares constitute a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. holder, provided the Non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. holder of our common shares will not be subject to U.S. federal income tax if our common shares is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. holder owned, actually and constructively, 5% or less of our common shares throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition and the Non-U.S. holder's holding period.

Non-U.S. holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Redemption of Our Common Shares

The characterization for U.S. federal income tax purposes of the redemption of a Non-U.S. holder's common shares generally will correspond to the U.S. federal income tax characterization of such a redemption of a U.S. holder's common shares, as described under "U.S. Holders — Redemption of Our common shares" above, and the consequences of the redemption to the Non-U.S. holder will be as described above under "Non-U.S. Holders — Taxation of Distributions" and "Non-U.S. Holders — Sale, Taxable Exchange or Other Taxable Disposition of Our common shares," as applicable. Because it may not be certain at the time a Non-U.S. holder is redeemed whether such Non-U.S. holder's redemption will be treated as a sale of shares or a distribution constituting a dividend, and because such determination will depend in part on a Non-U.S. holder's particular circumstances, we or the applicable withholding agent may not be able to determine whether (or to what extent) a Non-U.S. holder is treated as receiving a dividend for U.S. federal income tax purposes. Therefore, we or the applicable withholding agent may withhold tax at a rate of 30% on the gross amount of any consideration paid to a Non-U.S. holder in redemption of such Non-U.S. holder's common shares unless special procedures are available to Non-U.S. holders to certify that they are entitled to exemptions from, or reductions in, such withholding tax. However, there can be no assurance that such special certification procedures will be available. A Non-U.S. holder generally may obtain a refund of any such excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding the application of the foregoing rules in light of their particular facts and circumstances.

Information Reporting and Backup Withholding

Payments of dividends on our common shares will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the Non-U.S. holder is a United States person and the Non-U.S. holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our common shares paid to the Non-U.S. holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale, taxable exchange or other taxable disposition of our common shares within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such Non-U.S. holder is a United States person, or the Non-U.S. holder otherwise establishes an exemption. Proceeds of a disposition of our common shares conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

All Non-U.S. holders should consult their tax advisors regarding the application of information reporting and backup withholding to them.

FATCA Withholding Taxes

Sections 1471 through 1474 of the Code and the Treasury Regulations and administrative guidance promulgated thereunder (commonly referred to as the "Foreign Account Tax Compliance Act" or "FATCA") generally impose withholding of 30% on payments of dividends (including constructive dividends) on our common shares to "foreign financial institutions" (which is broadly defined for this purpose and in general includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied by, or an exemption applies to, the payee (typically certified as to by the delivery of a properly completed IRS Form W-8BEN-E). The IRS has issued proposed regulations (on which taxpayers may rely until final regulations are issued) that provide that these withholding requirements would generally not apply to gross proceeds from sales or other dispositions of our common shares. However, there can be no assurance that final Treasury regulations will provide the same exceptions from FATCA withholding as the proposed Treasury regulations. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules. Under certain circumstances, a Non-U.S. holder might be eligible for refunds or credits of such withholding taxes, and a Non-U.S. holder might be required to file a U.S. federal income tax return to claim such refunds or credits. Similarly, dividends in respect of our common shares held by an investor that is a non-financial non-U.S. entity that does not qualify under certain exceptions will generally be subject to withholding at a rate of 30%, unless such entity either (1) certifies to us or the applicable withholding agent that such entity does not have any "substantial United States owners" or (2) provides certain information regarding the entity's "substantial United States owners," which will in turn be provided to the U.S. Department of Treasury. Prospective investors should consult their tax advisors regarding the effects of FATCA on their investment in our common shares.

F. Dividends and Paying Agents

Not applicable.

G. Statement by Experts

Not applicable.

H. Documents on Display

The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including the Company, at http://www.sec.gov. The address of the SEC's website is provided solely for information purposes and is not intended to be an active link.

We also make our periodic reports as well as other information filed with or furnished to the SEC available through our website, at www.Newegg.com, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. The information on our website is not incorporated by reference in this document.

I. Subsidiary information

Not applicable.

J. Annual Report to Security Holders

Not applicable.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

We do not use financial instruments for speculative trading purposes, and do not hold any derivative financial instruments that could expose us to significant market risk. Our primary market risk exposures are changes in interest rates and foreign currency fluctuations.

Interest rate risk

Our main interest rate exposure relates to long-term borrowings that we obtain from banks and financial institutions to meet our working capital expenditure requirements. We also have interest-bearing assets, including cash and cash equivalents, restricted cash and loans to affiliates. We manage our interest rate exposure with a focus on reducing our overall cost of debt and exposure to changes in interest rates. As of December 31, 2022 and 2021, we had outstanding long-term borrowings in the aggregate amount of $1.7 million and $2.1 million, respectively, with the majority of our long-term borrowings having floating interest rates.

We have not used derivative financial instruments to hedge the interest rate risk. We have not been exposed to material risks due to changes in market interest rates. However, we cannot provide assurance that we will not be exposed to material risks due to changes in market interest rates in the future.

Foreign currency risk

We have currency fluctuation exposure arising from both sales and purchases denominated in foreign currencies. Significant changes in exchange rates between foreign currencies in which we transact business and the U.S. dollar may adversely affect our results of operations and financial condition. Historically, we have not entered into any hedging activities, and, to the extent that we continue not to do so in the future, we may be vulnerable to the effects of currency exchange-rate fluctuations.

We expect our exposure to foreign currency risk will increase as we increase our operations and sales in Canada and other countries and regions. Although the effect of currency fluctuations on our financial statements has not been material in the past, there can be no assurance that the effect of currency fluctuations will not be material in the future. For the years ended December 31, 2022, 2021, and 2020, we recorded foreign exchange gain of $0.9 million, loss of $3.3 million, and loss of $0.7 million, respectively. Based on the balance of our foreign-denominated cash and cash equivalents as of December 31, 2022, 2021, and 2020, an assumed 10% negative currency movement would not have a material impact.

To date, we have not entered into any hedging transactions in an effort to reduce our exposure to foreign currency exchange risk.

Item 12. Description of Securities Other than Equity Securities

Not applicable.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

None.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds

See "Item 10. Additional Information—B. Memorandum and Articles of Association— Rights of Certain Principal Shareholders" for a description of the rights of securities holders, which remain unchanged.

Item 15. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2022. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Based on the evaluation performed as of December 31, 2022, as a result of the material weaknesses in internal control over financial reporting that are described below in Management's Report on Internal Control Over Financial Reporting, our Chief Executive Officer and Chief Financial Officer determined that our disclosure controls and procedures were not effective as of such date.

Management's Annual Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). A company's internal control over financial reporting is a process designed by, or under the supervision of, its Chief Executive Officer and Chief Financial Officer, and effected by such company's board of directors, management and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management, with the participation of our Chief Executive Officer and Chief Financial Officer, has conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022, based on the framework set forth in Internal Control-Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). While progress was made towards remediating material weaknesses over the course of the year, based on the assessment, management has concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2022 due to the material weaknesses described below.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Notwithstanding the material weaknesses in our internal control over financial reporting, we have concluded that the consolidated financial statements included in this annual report on Form 20-F fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America.

Material Weaknesses

Control Activities and Information & Communication

The material weaknesses below impacted internal controls within the revenue, inventory, financial reporting & close, payroll, accounts payable, fixed assets, enterprise incentives, stock compensation, treasury, and tax business cycles.

- Management did not maintain effective general controls over information systems that support the financial reporting process. Specifically, management did not design and maintain effective (i) program change management and program development controls for financial systems relevant to our financial reporting and (ii) logical user access controls, including user access reviews, to ensure appropriate segregation of duties and adequate restrictions of users, including those with privileged access.
- Management did not implement controls to address relevant risks in certain business processes.
- Management did not implement and operate review controls with a sufficient precision level or threshold of investigation to detect material misstatements within its financial statements.
- Management did not retain documentation to sufficiently evidence that certain review procedures were performed.
- Management did not implement and operate controls over the completeness and accuracy of certain reports and underlying data used in the operation of certain controls within its financial reporting process.

Remediation of Previously Reported Material Weakness in Internal Control over Financial Reporting

As previously disclosed in our Annual Report on Form 20-F for the year ended December 31, 2021, a material weakness in our internal controls existed as of December 31, 2021 relating to Control Environment and Risk Assessment. During the year ended December 31, 2022, we implemented the following remedial actions that addressed this material weakness:

- Hired qualified resources including a Chief Accounting Officer, a Chief Legal Officer, a Director of Human Resources, and a VP of Internal Audit to oversee risk assessment procedures and remedial actions over internal controls.
- Contracted with a qualified firm to support management's remedial actions related to internal control, internal audit and technical accounting.
- Conducted internal control trainings for business process owners and control owners.
- Enhanced controls over review and approval of technical memorandums related to accounting areas in revenue recognition and leases.

During 2022, management continued to make progress towards remediating prior year material weaknesses and enhancing internal controls including the following:

- Continued to enhance controls around segregations of duties over the IT function including segregations of development and production environments and organizational segregations for developers and IT operational roles.
- Continued to enhance controls around program change management and system development controls over key financial systems.
- Continued to enhance controls around logical user access controls, including system enforced preventative controls and periodic user access reviews.
- Continued to enhance controls around system administrators.
- Continued to enhance controls around automated completeness and accuracy testing over several key reports as a year-end control.

Changes in Internal Control Over Financial Reporting.

Except as described above, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that occurred during the period covered by this annual report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 16. [Reserved]

Item 16A. Audit Committee Financial Expert

Our board of directors has determined that each director appointed to the audit committee is financially literate and is independent as defined under Nasdaq Listing Rules. Our board also has determined that Mr. Gregory Moore qualifies as an audit committee financial expert within the meaning of the SEC rules or possesses financial sophistication within the meaning of the Nasdaq Listing Rules. Refer to "Item 6 Directors, Senior Management and Employees" for further detail on each of their backgrounds.

Item 16B. Code of Ethics

We have adopted a Code of Business Conduct and Ethics, which is posted on our website at www.newegg.com/corporate/about, that applies to all employees and each of officers, including our Chief Executive Officer, Chief Financial Officer and Chief Accounting Officer. Written copies of the Code of Business Conduct and Ethics are available free of charge upon written request to us at the address on the first page of this annual report. If we make any substantive amendments to the code of ethics or grant any waivers, including any implicit waiver, from a provision of these codes to our chief executive officer or chief financial officer, we will disclose the nature of such amendment or waiver on our website.

Item 16C. Principal Accountant Fees and Services

Our principal accountants for the years ended December 31, 2022 and December 31, 2021 were BDO USA, LLP ("BDO USA"). We incurred the following fees from BDO USA for professional services for the years ended December 31, 2022 and 2021, respectively:

Principal Accountant Fees	December 31, 2022	December 31, 2021
	(U.S. Dollars in thousands)	
Audit Fees	$ 1,708	$ 1,209
Tax fees	-	-
Audit-related fees	-	-
All other fees	-	-
Total fees	$ 1,708	$ 1,209

"Audit fees" are the aggregate fees earned by BDO USA for the audit of our consolidated annual financial statements, reviews of interim financial statements and attestation services that are provided in connection with statutory and regulatory filings or engagements. The audit fees for the year ended December 31, 2021 include one off fees related to the IPO and Merger.

"Tax fees" are the aggregate fees charged by BDO USA for professional services rendered for tax compliance activities.

"Audit-related fees" are fees charged by the BDO USA for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported under "Audit fees." This category comprises fees for agreed-upon procedures engagements and other attestation services subject to regulatory requirements.

"All other fees" are fees billed in each of the last two fiscal years for products and services provided by BDO USA, other than the services reported in the aforementioned categories in this section.

The policy of our audit committee or our board of directors is to pre-approve all audit and non-audit services provided by our principal accountant, including audit services, audit-related services, and other services as described above.

Item 16D. Exemptions from the Listing Standards for Audit Committees

Not applicable.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 16F. Change in Registrant's Certifying Accountant

Not applicable.

Item 16G. Corporate Governance

Newegg Commerce, Inc. (previously known as "Lianluo Smart Limited") was incorporated as an international business company under the International Business Companies Act, 1984, in the British Virgin Islands on July 22, 2003.

We are a foreign private issuer within the meaning of the rules under the Exchange Act. As such we are exempt from certain provisions of the securities rules and regulations in the United States that are applicable to U.S. domestic issuers. As a foreign private issuer, the information we are required to file with or furnish to the SEC will be less extensive and less timely compared to that required to be filed with the SEC by U.S. domestic issuers. In addition, as a company incorporated in the British Virgin Islands, we are permitted to adopt certain home country practices in relation to corporate governance matters that differ significantly from the Nasdaq Listing Rules. We rely on home country practice to be exempted from some of Nasdaq's corporate governance requirements. For instance, unlike the requirements of Nasdaq, we are not required, under the BVI Business Companies Act, 2004, as amended (the "Companies Act"), to have our board consist of a majority of independent directors, nor are we required to have a compensation committee or a nominating and corporate governance committee consisting entirely of independent directors or have regular executive sessions with only independent directors each year. These practices may afford less protection to shareholders than they would enjoy if we complied fully with the Nasdaq Listing Rules.

Item 16H. Mine Safety Disclosure

Not applicable.

Item 16I. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

Item 17. Financial Statements

We have responded to Item 18 in lieu of responding to this item.

Item 18. Financial Statements

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULE

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Newegg Commerce, Inc.
City of Industry, California

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Newegg Commerce, Inc. and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022**,** in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Vendor Incentive Receivables

As described in Note 3 to the consolidated financial statements, the Company's vendor incentive receivables totaled $63.6 million as of December 31, 2022. The Company participates in various vendor incentive programs that include, but are not limited to, purchasing-based volume discounts, sales-based volume incentives, marketing development funds, including certain cooperative advertising and price protection agreements.

We identified management's measurement of vendor incentive receivables as a critical audit matter because the Company has a significant number of vendor agreements with various terms and conditions may require estimates in order to determine the receivable amounts earned. Auditing these vendor incentive receivables was complex due to the extent of audit effort required to evaluate whether the vendor incentive receivables were earned and recorded in accordance with the terms and conditions of vendor agreements.

The primary procedures we performed to address this critical audit matter included:

- Evaluating management's accounting policies and practices including the reasonableness of management's judgments and assumptions relating to the Company's accounting for vendor incentive receivables.
- Testing a sample of vendor agreements and underlying relevant supporting documents to evaluate the appropriateness of management's recording vendor incentive receivables including assessment of various terms and conditions in these agreements.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2019.

Los Angeles, California
April 27, 2023

NEWEGG COMMERCE, INC.
Consolidated Balance Sheets
December 31, 2022 and 2021
(In thousands, except par value)

	2022	2021
Assets		
Current assets:		
Cash and cash equivalents	$ 122,559	$ 99,993
Restricted cash	947	4,337
Accounts receivable, net	83,517	62,373
Inventories, net	156,016	245,078
Income taxes receivable	5,173	1,303
Prepaid expenses	16,999	17,946
Other current assets	5,611	7,931
Total current assets	390,822	438,961
Property and equipment, net	45,075	50,149
Noncurrent deferred tax assets	868	13,367
Investment at cost	11,250	15,000
Right of use assets, net	84,161	94,581
Other noncurrent assets	9,919	14,524
Total assets	$ 542,095	$ 626,582
Liabilities and Equity		
Current liabilities:		
Accounts payable	$ 207,147	$ 220,776
Accrued liabilities	51,003	74,689
Deferred revenue	31,028	39,767
Line of credit	6,056	6,182
Current portion of long-term debt	269	293
Lease liabilities – current	14,265	14,603
Total current liabilities	309,768	356,310
Long-term debt, less current portion	1,404	1,843
Income taxes payable	739	696
Lease liabilities – noncurrent	74,838	84,307
Other liabilities	124	1,144
Total liabilities	386,873	444,300
Commitments and contingencies (Note 16)		
Stockholders' Equity		
Common Stock, $0.021848 par value; unlimited shares authorized; 376,660 and 369,719 shares issued and outstanding as of December 31, 2022 and 2021, respectively	8,230	8,078
Additional paid-in capital	232,776	197,613
Notes receivable – related party	(15,189)	(15,189)
Accumulated other comprehensive income	1,114	6,060
Accumulated deficit	(71,709)	(14,280)
Total stockholders' equity	155,222	182,282
Total liabilities and stockholders' equity	$ 542,095	$ 626,582

See accompanying notes to consolidated financial statements.

NEWEGG COMMERCE, INC.
Consolidated Statements of Operations
Years ended December 31, 2022, 2021 and 2020
(In thousands, except per share data)

	2022	2021	2020
Net sales	$ 1,720,273	$ 2,376,225	$ 2,114,872
Cost of sales	1,503,647	2,050,249	1,841,243
Gross profit	216,626	325,976	273,629
Selling, general, and administrative expenses	266,164	292,464	250,239
Income (loss) from operations	(49,538)	33,512	23,390
Interest income	1,164	1,079	1,124
Interest expense	(685)	(612)	(664)
Other income, net	5,280	1,758	5,320
Impairment of equity method investment	(2,281)	—	—
Income (loss) from equity method investment	—	(7,374)	3,197
Gain from sales of investment	1,669	—	—
Gain from disposal of a subsidiary	—	2,043	—
Change in fair value of warrants liabilities	1,063	61	—
Income (loss) before provision for income taxes	(43,328)	30,467	32,367
Provision for (benefit from) income taxes	14,101	(5,795)	1,941
Net income (loss)	$ (57,429)	$ 36,262	$ 30,426
Basic earnings (loss) per share	$ (0.15)	$ 0.10	$ 0.08
Diluted earnings (loss) per share	$ (0.15)	$ 0.08	$ 0.08
Weighted average shares used in computation of earnings (loss) per share:			
Basic	373,067	366,651	363,326
Diluted	373,067	432,250	385,013

See accompanying notes to consolidated financial statements.

NEWEGG COMMERCE, INC.
Consolidated Statements of Comprehensive Income (Loss)
Years ended December 31, 2022, 2021 and 2020
(In thousands)

	2022	2021	2020
Net income (loss)	$ (57,429)	$ 36,262	$ 30,426
Foreign currency translation adjustments	(4,946)	3,003	3,562
Comprehensive income (loss)	$ (62,375)	$ 39,265	$ 33,988

See accompanying notes to consolidated financial statements.

NEWEGG COMMERCE, INC.
Consolidated Statements of Stockholders' Equity
Years ended December 31, 2022, 2021 and 2020
(In thousands)

	Common stock		Additional paid-In capital	Notes receivable	Accumulated other comprehensive income	(Accumulated deficit)/ Retained earnings	Total stockholders' equity
	Shares	Par value					
Balance at January 1, 2020	363,326	$ 7,938	$ 180,608	$ (15,029)	$ (505)	$ (80,968)	$ 92,044
Net income	—	—	—	—	—	30,426	30,426
Other comprehensive income	—	—	—	—	3,562	—	3,562
Interest on notes receivable	—	—	—	(157)	—	—	(157)
Stock-based compensation	—	—	1,622	—	—	—	1,622
Balance at December 31, 2020	363,326	$ 7,938	$ 182,230	$ (15,186)	$ 3,057	$ (50,542)	$ 127,497
Net income	—	—	—	—	—	36,262	36,262
Other comprehensive income	—	—	—	—	3,003	—	3,003
Exercise of vested options	1,420	31	239	—	—	—	270
Recapitalization transaction, net	4,854	106	8,324	—	—	—	8,430
Exercise of warrants	119	3	535	—	—	—	538
Interest on notes receivable	—	—	—	(3)	—	—	(3)
Stock-based compensation	—	—	6,285	—	—	—	6,285
Balance at December 31, 2021	369,719	$ 8,078	$ 197,613	$ (15,189)	$ 6,060	$ (14,280)	$ 182,282
Net loss	—	—	—	—	—	(57,429)	(57,429)
Other comprehensive loss	—	—	—	—	(4,946)	—	(4,946)
Exercise of vested options	6,016	131	2,759	—	—	—	2,890
Vesting of restricted stock units	1,674	37	(37)	—	—	—	—
Redemption for employee tax withholdings	(749)	(16)	(1,498)	—	—	—	(1,514)
Stock-based compensation	—	—	33,939	—	—	—	33,939
Balance at December 31, 2022	376,660	$ 8,230	$ 232,776	$ (15,189)	$ 1,114	$ (71,709)	$ 155,222

See accompanying notes to consolidated financial statements.

NEWEGG COMMERCE, INC.
Consolidated Statements of Cash Flows
Years ended December 31, 2022, 2021 and 2020
(In thousands)

	2022	2021	2020
Cash flows from operating activities:			
Net income (loss)	$ (57,429)	$ 36,262	$ 30,426
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	11,021	10,838	9,091
Allowance for expected credit losses	697	1,718	7,288
Recovery of related party receivable	(50)	(335)	—
Provision for obsolete and excess inventory	9,537	8,274	4,218
Stock-based compensation	33,939	6,285	1,622
Impairment of equity method investment	2,281	—	—
Loss (income) from equity method investment	—	7,374	(3,197)
Gain from sales of investment	(1,669)	—	—
Change in fair value of warrant liabilities	(1,063)	(61)	—
Loss on disposal of property and equipment	431	83	246
Gain from disposal of subsidiary	—	(2,043)	—
Unrealized loss on marketable securities	55	101	—
Deferred income taxes	12,499	(12,698)	372
Changes in operating assets and liabilities:			
Accounts receivable	(21,969)	788	(14,054)
Inventories	78,766	(70,830)	(76,240)
Prepaid expenses	905	(2,152)	(7,516)
Other assets	9,982	(50,919)	(10,532)
Accounts payable	(14,063)	(20,072)	76,337
Accrued liabilities and other liabilities	(34,449)	41,547	44,636
Deferred revenue	(8,941)	(7,443)	21,817
Dues from affiliate	—	(3)	(2)
Net cash provided by (used in) operating activities	20,480	(53,286)	84,512
Cash flows from investing activities:			
Insurance settlement proceeds	—	—	788
Payments to acquire property and equipment	(9,190)	(13,839)	(6,156)
Proceeds on disposal of property and equipment	1	1	132
Proceeds from sale of investment	5,419	—	—
Net cash used in investing activities	(3,770)	(13,838)	(5,236)
Cash flows from financing activities:			
Borrowings under line of credit	46,188	787	20,000
Repayments under line of credit	(45,742)	—	(21,467)
Repayments of long-term debt	(274)	(285)	(265)
Cash received from common control asset transaction	—	11,426	—
Proceeds from exercise of warrants	—	538	—
Proceeds from exercise of stock options	2,890	270	—
Payments for employee taxes related to stock compensation	(1,514)	—	—
Net cash provided by (used in) financing activities	1,548	12,736	(1,732)
Foreign currency effect on cash, cash equivalents and restricted cash	918	972	(345)
Net increase (decrease) in cash, cash equivalents and restricted cash	19,176	(53,416)	77,199
Cash, cash equivalents and restricted cash:			
Beginning of period	104,330	157,746	80,547
End of period	$ 123,506	$ 104,330	$ 157,746
Supplemental disclosures of cash flow information:			
Cash paid for interest	$ 558	$ 268	$ 270
Cash paid for income taxes	$ 4,963	$ 6,374	$ 261
Supplemental schedule of noncash investing activities			
Cashless exercise of stock options	$ 723	$ 677	$ —
ROU assets exchanged for lease liabilities	$ 7,517	$ 60,672	$ 16,910

See accompanying notes to consolidated financial statements.

1. **Organization and Description of Business**

Newegg Commerce, Inc. ("Newegg" or the "Company") (previously known as "Lianluo Smart Limited" or "LLIT") was incorporated as an international business company under the International Business Companies Act, 1984, in the British Virgin Islands on July 22, 2003.

Newegg is an electronics-focused e-retailer that offers customers a comprehensive selection of the latest consumer electronics products, detailed product descriptions and images, "how-to" information, and customer reviews via its websites. The Company's strategic focus is based on three key areas: (1) providing a differentiated and superior online shopping experience, (2) offering reliable and timely product fulfillment, and (3) delivering superior customer service.

Newegg Inc. was incorporated as Newegg Computers in the state of California on February 4, 2000. In June 2005, Newegg Inc. was incorporated in the state of Delaware. On September 29, 2005, Newegg Computers was merged into Newegg Inc. under Delaware law with Newegg Inc. being the surviving company.

In August 2016, Newegg Inc. entered into a share purchase agreement (the "Purchase Agreement") with Hangzhou Liaison Interactive Information Technology Co., Ltd, ("Hangzhou Lianluo"), a publicly traded company in China. The transaction was completed on March 30, 2017. Pursuant to the Purchase Agreement, Hangzhou Lianluo purchased 490,706 shares of Newegg Inc.'s Class A Common Stock and 12,782,546 shares of Newegg Inc.'s Series A convertible Preferred Stock from existing shareholders for a total consideration of $91.9 million. Additionally, Newegg Inc. issued, and Hangzhou Lianluo purchased, 24,870,027 shares of Newegg Inc.'s Series AA Convertible Preferred Stock for a total consideration of $172.2 million. Upon the close of this transaction, Hangzhou Lianluo, through Digital Grid (Hong Kong) Technology Co., Limited ("Digital Grid"), a fully-owned subsidiary of Hangzhou Lianluo, became the majority owner of Newegg Inc.

On May 19, 2021, the Company closed the merger with Newegg Inc. contemplated by the Agreement and Plan of Merger dated October 23, 2020, by and among LLIT, Lightning Delaware Sub, Inc. ("Merger Sub"), a Delaware corporation and wholly owned subsidiary of the Company, and Newegg Inc. As the consideration for the merger, the Company issued to all the stockholders of Newegg Inc. an aggregate of 363,325,542 common shares. Each issued and outstanding share of Newegg Inc. capital stock was exchanged for 5.8417 shares of common shares of the Company. The Company also converted each Class B common share into one common share immediately prior to completion of the merger.

On May 19, 2021, the Company disposed all of LLIT's legacy business contemplated by that certain Equity Transfer Agreement dated October 23, 2020, by and among LLIT, its wholly owned subsidiary, Lianluo Connection Medical Wearable Device Technology (Beijing) Co., Ltd ("Lianluo Connection"), and Beijing Fenjin Times Development Co., Ltd. ("Beijing Fenjin"). The Company sold all of its equity interests in Lianluo Connection to Beijing Fenjin immediately following completion of the merger for a purchase price of RMB 0.

In May 2021, the Company changed its name from Lianluo Smart Limited to Newegg Commerce, Inc., and on May 20, 2021 changed its Nasdaq stock ticker from LLIT to NEGG.

2. **Basis of Presentation**

The merger is accounted for as a transfer of assets under common control in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). Under this method of accounting, LLIT did not meet the definition of a business as of the close of the transaction and was considered a group of assets. Newegg Inc. was deemed to be the receiving entity in the common control transaction, consequently, the transaction is treated similar to a recapitalization of Newegg Inc. Accordingly, the consolidated assets, liabilities and results of operations of Newegg Inc. became the historical financial statements. The assets and liabilities of LLIT were combined with Newegg Inc. using its carryover basis on the transfer date. The carrying value of the net assets received by Newegg on May 19, 2021 was approximately $8.4 million. The assets were primarily comprised of cash, cash equivalents and restricted cash of $11.4 million, marketable securities of $0.2 million, and prepaid and other assets of $0.5 million. The liabilities received were primarily comprised of warrant liabilities of $1.2 million and accrued expenses and other liabilities of $2.5 million.

The recapitalization of the number of shares of capital stock attributable to Newegg Inc. is reflected retroactively as shares reflecting the exchange ratio of 5.8417 to the earliest period presented and is utilized for calculating earnings per share in all prior periods presented along with certain other related disclosures.

On the date of the transfer, the Company subsequently disposed Lianluo Connection which had a carrying value of negative $2.0 million for $0 consideration and recognized a gain of $2.0 million, which is included in the Company's consolidated statements of operations for the year ended December 31, 2021.

3. **Summary of Significant Accounting Policies**

a. ***Principles of Consolidation***

The accompanying consolidated financial statements are prepared in accordance with U.S. GAAP and include the accounts of all consolidated subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

b. ***Use of Estimates***

The preparation of the Company's consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect amounts reported in the consolidated financial statements and accompanying notes. Estimates are used for, but not limited to, revenue recognition, incentives earned from vendors, allowance for credit losses, investment valuation, valuation allowance for deferred tax assets, and stock-based compensation. Actual results could differ from such estimates.

c. ***Reclassifications***

Certain prior period amounts have been reclassified to conform to the current period presentation.

d. Cash and Cash Equivalents

Cash and cash equivalents consist primarily of cash on deposit, certificates of deposit, and money market accounts. Cash equivalents are all highly liquid investments with original maturities of three months or less. The Company maintains its cash in bank deposits which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk of cash and cash equivalents. Amounts receivable from credit card processors are also considered cash equivalents as they are both short term and highly liquid in nature and are typically converted to cash within three business days. Amounts due to the Company from credit card processors that are classified as cash and cash equivalents totaled $13.0 million and $14.3 million at December 31, 2022 and 2021, respectively.

e. Restricted Cash

Restricted cash includes amounts deposited in commercial bank time deposits and money market accounts to collateralize the Company's deposit obligations. The Company considers restricted cash related to obligations classified as current liabilities to be current assets and restricted cash related to obligations classified as long-term liabilities as noncurrent assets. At December 31, 2022 and 2021, the Company had $0.9 million and $4.3 million, respectively, in restricted cash, primarily related to collateralization required pursuant to a lease agreement, the restricted cash account required under the Company's health insurance plan, and funds held in third-party escrow account associated with the merger. The restricted cash balance is classified as a current asset in the consolidated balance sheets.

The following is a reconciliation of cash and cash equivalents, and restricted cash reported within the consolidated balance sheets that sum to the total of the same such amounts shown in the consolidated statements of cash flows (in thousands):

	December 31,	
	2022	2021
Cash and cash equivalents	$ 122,559	$ 99,993
Restricted cash	947	4,337
Total cash and cash equivalents, and restricted cash	$ 123,506	$ 104,330

f. Accounts Receivable

Accounts receivable consist primarily of vendor receivables, which do not bear interest, and represent amounts due for marketing development funds, cooperative advertising, price protection and other incentive programs offered to the Company by certain vendors. Accounts receivable also include receivables from business customers generally, on 30-day to 60-day credit terms. On January 1, 2020, the Company adopted Accounting Standards Update ("ASU") 2016-13 (as amended through March 2020), Financial Instruments — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments. The Company estimates the provision for credit losses based on historical experience, current conditions, and reasonable and supportable forecasts. Accounts receivables are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received. Amounts receivable from business customers were $19.4 million and $17.6 million, net of allowances of $1.0 million and $1.9 million, at December 31, 2022 and 2021, respectively. See further discussion of amounts receivable related to vendor incentive programs under Incentives Earned from Vendors below.

g. Inventories

Inventories, consisting of products available for sale, are accounted for using the first-in, first-out (FIFO) method and are valued at the lower of cost and net realizable value. In-bound freight-related costs are included as part of the cost of merchandise held for resale. In addition, certain vendor payments are deducted from the cost of merchandise held for resale. The Company records an inventory provision for refurbished, slow-moving, or obsolete inventories based on historical experience and assumptions of future demand for product. These allowances are released when the related inventory is sold or disposed of. Amounts of inventory allowances were $5.5 million and $6.8 million, as of December 31, 2022 and 2021, respectively.

h. Property and Equipment

Property and equipment are stated at cost, less accumulated amortization and depreciation computed using the straight-line method over the estimated useful life of each asset. Leasehold improvements are amortized over the lesser of the remaining lease term or the estimated useful life of the assets. Expenditures for repair and maintenance costs are expensed as incurred, and expenditures for major renewals and improvements are capitalized. Costs incurred during the application development stage of internal-use software and website development are capitalized and included in property and equipment. When assets are retired or otherwise disposed of, the cost and accumulated depreciation or amortization are removed from the accounts, and any gain or loss is reflected in the Company's consolidated statements of operations. The useful lives for depreciable assets are as follows:

Buildings	20 – 39 years
Machinery and equipment	3 – 7 years
Computer and software	3 – 5 years
Leasehold improvements	Lesser of lease term or 10 years
Capitalized software	3 – 5 years
Furniture and fixtures	5– 7 years

i. Leases

The Company defines lease agreements at their inception as either operating or finance leases depending on certain defined criteria. Certain lease agreements may entitle the Company to receive rent holidays, other incentives, or periodic payment increases over the lease term. Accordingly, rent expense under operating leases is recognized on the straight-line basis over the original lease term, inclusive of predetermined minimum rent escalations or modifications and rent holidays.

j. Impairment of Long-Lived Assets

The Company evaluates the recoverability of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The impairment test consists of two steps. The first step compares the carrying amount of the asset to the sum of expected undiscounted future cash flows. If the sum of expected undiscounted future cash flows exceeds the carrying amount of the asset, no impairment is taken. If the sum of expected undiscounted future cash flows is less than the carrying amount of the asset, a second step is warranted and an impairment loss is measured as the amount by which the carrying amount of the asset exceeds its fair value calculated using the present value of estimated net future cash flows. There have been no impairment losses recognized by the Company for the years ended December 31, 2022, 2021 and 2020.

k. Investments

Investments are accounted for using the equity method if the investment provides the Company the ability to exercise significant influence, but not control, over an investee. Significant influence is generally deemed to exist if the Company has an ownership interest in the voting stock of the investee between 20% and 50%, although other factors are considered in determining whether the equity method is appropriate. Also, investments in limited partnerships of more than 3% to 5% are generally viewed as more than minor and are accounted for using the equity method.

The investments for which the Company is not able to exercise significant influence over the investee and which do not have readily determinable fair values were accounted for under the cost method prior to the adoption of ASU 2016-01 *Financial Instruments-Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*. Subsequent to the adoption of this standard as of January 1, 2018, the Company has elected the measurement alternative to measure such investments at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

Equity investments, except for those accounted under ASU 2016-01 equity method, are measured at fair value, and any changes in fair value are recognized in earnings. For equity investments measured at fair value with changes in fair value recorded in earnings, the Company does not assess whether those securities are impaired.

l. Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, a three-tier fair value hierarchy prioritizes the inputs used in measuring fair value. These tiers include Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exist, therefore, requiring the Company to develop its own assumptions to determine the best estimate of fair value.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, and accrued and other liabilities approximate fair value because of the short maturity of these instruments. The carrying amounts of long-term debt and line of credit at December 31, 2022 and 2021 approximate fair value because the interest rate approximates the current market interest rate. The fair value of these financial instruments was determined using level 2 input.

m. Warrant Liability

For warrants that are not indexed to the Company's stock, the Company records the fair value of the issued warrants as a liability at each balance sheet date and records changes in the estimated fair value as a non-cash gain or loss in the consolidated statement of income and comprehensive income. The warrant liability is recognized in the balance sheet at the fair value (level 3). The fair value of these warrants has been determined using the Black-Scholes pricing model. The Black-Scholes pricing model provides for assumptions regarding volatility, call and put features and risk-free interest rates within the total period to maturity (see Note 13 - Warrants).

n. Accumulated Other Comprehensive Income (Loss)

Comprehensive income (loss) consists of net income (loss) and adjustments to stockholders' equity for foreign currency translation adjustments. Accumulated other comprehensive income (loss) consists entirely of foreign currency translation adjustments. The tax impact is not material to the consolidated financial statements.

o. Revenue Recognition

Revenue is recognized when control of a promised product or service transfers to a customer, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for transferring that product or service. Revenue is recognized net of sales taxes and discounts. The Company primarily generates revenue through product and extended warranty sales on its platforms, through fees earned for facilitating marketplace transactions, and services rendered through its Newegg Partner Services ("NPS").

The Company recognizes revenue on product sales at a point in time to customers when control of the product passes to the customer upon delivery to the customer or when service is provided. The Company fulfills orders with its owned inventory or with inventory sourced through its suppliers. The vast majority of the Company's product sales are fulfilled from its owned inventory. The amount recognized in revenue represents the expected consideration to be received in exchange for such goods or services. For orders fulfilled with inventory sourced through the Company's suppliers, and where the products are shipped directly by the Company's supplier to the Company's customer, the Company evaluates the criteria outlined in ASC 606-10-55, *Principal versus Agent Considerations*, in determining whether revenue should be recognized on a gross or net basis. The Company determined that it is the principal in these transactions as it controls the specific good before it is transferred to the customer. The Company is the entity responsible for fulfilling the promise to provide the specified good to the customer and takes responsibility for the acceptability of the goods, assumes inventory risk before the specified good has been transferred to the customer or after transfer of control to the customer, has discretion in establishing the price, and selects the suppliers of products sold. The Company accounts for product sales under these arrangements on a gross basis upon receipt of the product by the customer. Product sales exceeded 94% of consolidated net sales in each of the years ended December 31, 2022, 2021 and 2020.

The Company generally requires payment by credit card upon placement of an order, and to a limited extent, grants credit to business customers, typically on 30-day to 60-day terms. Shipping and handling is considered a fulfillment activity, as it takes place before the customer obtains controls of the good. Amounts billed to customers for shipping and handling are included in net sales upon completion of the performance obligation.

The Company's product sales contracts include terms that could cause variability in the transaction price such as sales returns and credit card chargebacks. As such, the transaction price for product sales includes estimates of variable consideration to the extent it is probable that a significant reversal of revenue recognized will not occur. Sales are reported net of estimated returns and allowances and credit card chargebacks, based on historical experience.

The Company also earns fees for facilitating marketplace transactions and extended warranty sales on its platforms. For marketplace transactions, the Company's websites host third-party sellers and the Company also provides the payment processing function. The Company recognizes revenue upon sale of products made available through its marketplace store. The Company is not the principal in this arrangement and does not control the specific goods sold to the customer. The Company reports the net amount earned as commissions, which are determined using a fixed percentage of the sales price or fixed reimbursement amount. The Company also offers extended warranty programs for various products on behalf of an unrelated third party. The Company reports the net amount earned as revenue at the time of sale, as it is not the principal in this arrangement and does not control the specific goods sold to the customer.

The Company offers its customers the opportunity to purchase goods and services on its websites using deferred financing promotional programs provided by a third-party financing company. These programs include an option to make no payments for a period of six, twelve, eighteen or twenty-four months. The third-party financing company makes all decisions to extend credit to the customer under a separate agreement with the customer, owns all such receivables from the customer, assumes all risk of collection, and has no recourse to the Company in the event the customer does not pay. The third-party financing company pays the Company for the purchase price on behalf of the customer, less certain transaction fees. Accordingly, sales generated through these programs are not reflected in the Company's receivables once payment is received from the third-party financing company. The transaction fee paid by the Company to the third-party financing company is recognized as a reduction of revenue. These transaction fees for the years ended December 31, 2022, 2021 and 2020 were immaterial.

To the extent that the Company sells its products on third-party platforms, the Company incurs incremental contract acquisition costs in the form of sales commissions paid to the platforms. The commissions are generally determined based on the sales price and an agreed-upon commission rate. The Company elects the practical expedient under Accounting Standards Update No. 2014-09 *Revenue From Contracts with Customers (Topic 606)* to recognize sales commission as an expense as incurred, as the amortization period of the asset that the Company otherwise would have recognized is less than one year.

The Company offers e-commerce solutions to its vendors and sellers through its Newegg Partner Services. Part of the services include third-party logistics (3PL), Shipped-by-Newegg (SBN), shipping label service (SLS), staffing, and media services. The fees we earn from these arrangements are recognized when the services are rendered. For 3PL, SBN, and SLS, the revenues are recognized upon the shipment of the product to its end consumer, and upon processing of a returned item for the client. For staffing, revenues are recognized based on when an employee is dispatched to a client, hours are accumulated by the dispatched employees' timecard, or when a direct hire placement is made. For media services, revenues are recognized when the applicable commercial or editorial creative content is delivered.

The Company has two types of contractual liabilities: (1) amounts collected, or amounts invoiced and due, related to product sales where receipt of the product by the customer has not yet occurred or revenue cannot be recognized. Such amounts are recorded in the consolidated balance sheets as deferred revenue and are recognized when the applicable revenue recognition criteria have been satisfied. For all of the product sales, the Company ships a large volume of packages through multiple carriers. Actual delivery dates may not always be available and as such, the Company estimates delivery dates as needed based on historical data. (2) unredeemed gift cards, which are initially recorded as deferred revenue and are recognized in the period they are redeemed. Subject to governmental agencies' escheat requirements, certain gift cards not expected to be redeemed, also known as "breakage," are recognized as revenue based on the historical redemption pattern. These gift cards breakage revenue for the years ended December 31, 2022, 2021, and 2020 were immaterial.

Deferred revenue totaled $31.0 million and $39.8 million at December 31, 2022 and 2021, respectively. During the year ended December 31, 2022, the Company recognized $36.6 million of net revenue included in deferred revenue at December 31, 2021. During the year ended December 31, 2021, the Company recognized $43.7 million of net revenue included in deferred revenue at December 31, 2020.

p. Cost of Sales

The Company's cost of sales represents the purchase price of the products it sells to its customers, offset by incentives earned from vendors, including marketing development funds and other vendor incentive programs. See further discussion of vendor payments under Incentives Earned from Vendors below. Cost of sales also includes freight-in and freight-out costs and charges related to refurbished, slow-moving, or obsolete inventory.

q. Shipping and Handling

The Company records revenue for shipping and handling billed to its customers. Shipping and handling revenue totaled approximately $15.3 million, $25.3 million and $33.7 million for the years ended December 31, 2022, 2021 and 2020, respectively.

The related shipping and handling costs are included in cost of sales. Shipping and handling costs totaled approximately $49.2 million, $64.7 million and $80.1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

r. Incentives Earned from Vendors

The Company participates in various vendor incentive programs that include, but are not limited to, purchasing-based volume discounts, sales-based volume incentives, marketing development funds, including for certain cooperative advertising, and price protection agreements. Vendor incentives are recognized in the consolidated statements of operations as an offset to marketing and promotional expenses to the extent that they represent reimbursement of advertising costs incurred by the Company on behalf of the vendors that are specific, incremental, and identifiable. Reimbursements that are in excess of such costs and all other vendor incentive programs are accounted for as a reduction of cost of sales, or if the related product inventory is still on hand at the reporting date, inventory is reduced in the consolidated balance sheets.

The Company reduced cost of sales by $224.3 million, $140.0 million and $135.8 million for the years ended December 31, 2022, 2021 and 2020, respectively, for these vendor incentive programs. Reductions to advertising and promotional expenses related to direct reimbursements for costs incurred in advertising vendors' products totaled $1.3 million, $1.5 million and $1.1 million for the years ended December 31, 2022, 2021 and 2020, respectively. Amounts receivable related to vendor incentive programs were $63.6 million and $41.5 million, net of allowances of $0.6 million and $0.6 million, at December 31, 2022 and 2021, respectively. Amounts due to the Company are included in accounts receivable in the consolidated balance sheets.

s. Selling, General, and Administrative Expenses

Selling, general, and administrative expenses primarily consist of marketing and advertising expenses, sales commissions, credit card processing fees, payroll and related benefits, depreciation and amortization, professional fees, litigation costs, rent expense, information technology expenses, warehouse costs, office expenses, and other general corporate costs.

The Company recognizes the cost of legal services related to defending litigation when the services are provided.

t. Advertising

Advertising and promotional expenses are charged to operations when incurred and are included in selling, general, and administrative expenses. Advertising and promotional expenses for the years ended December 31, 2022, 2021 and 2020 were $14.7 million, $32.8 million and $29.0 million, respectively.

u. Stock-Based Compensation

The measurement and recognition of compensation expense for all stock-based payment awards made to employees and directors, including employee stock options and restricted stock, is based on estimated fair value of the awards on the date of grant. The value of awards that are ultimately expected to vest is recognized as expense on a straight-line basis over the requisite service periods in the consolidated statements of operations. See Note 14 — Stock-Based Compensation for further information about the Company's stock compensation plans.

v. Income Taxes

The Company is subject to federal and state income taxes in the United States and taxes in foreign jurisdictions. In accordance with ASC Topic 740, the Company uses the asset and liability method of accounting for income taxes. Under the asset and liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax bases of assets and liabilities, using tax rates expected to be in effect during the years in which the bases differences are expected to reverse. A valuation allowance is established against deferred tax assets when it is more likely than not that some portion or all of the deferred tax assets will not be realized.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained upon examination by the taxing authorities based on the technical merits of the position. The Company measures the recognized tax benefit as the largest amount of tax benefit that has greater than a 50% likelihood of being realized upon the ultimate settlement with a taxing authority. The Company reverses a previously recognized tax benefit if it determines that the tax position no longer meets the more-likely-than-not threshold of being sustained. The Company accrues interest and penalties related to unrecognized tax benefits in income tax expense.

w. Concentration of Credit Risk and Significant Customers and Vendors

The Company maintains its cash and cash equivalents in bank deposit accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and does not believe it is exposed to any significant credit risk from cash and cash equivalents.

For the years ended December 31, 2022, 2021 and 2020, the Company had no individual customers that accounted for greater than 10% of net sales.

The Company purchases its products on credit terms from vendors located primarily in the United States. For the years ended December 31, 2022, 2021 and 2020, the Company's cumulative annual purchases from four vendors, three vendors and one vendor, respectively, exceeded 10% of total purchases. The majority of products that the Company sells are available through multiple channels.

The Company has receivables due from vendors related to its advertising and promotional programs and receivables due from business customers with credit terms. As of December 31, 2022, receivables from two vendors exceeded 10% of net receivables. As of December 31, 2021, no receivables from any vendor exceeded 10% of net receivables. As of December 31, 2022 and 2021, no receivables from business customers with credit terms exceeded 10% of net receivables.

x. Foreign Currency Translation

The financial statements of foreign subsidiaries and affiliates where the local currency is the functional currency are translated into U.S. dollars using exchange rates in effect at the balance sheet date for assets and liabilities and average exchange rates during the year for revenues and expenses. Any gain or loss on currency translation is included in stockholders' equity as accumulated other comprehensive income.

y. Recent Accounting Pronouncements

In March 2020, the FASB issued ASU 2020-04 *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting,* as amended and supplemented by subsequent ASUs (collectively, "ASU 2020-04" and "ASU 2022-06"), which provides practical expedients for contract modifications and certain hedging relationships associated with the transition from reference rates that are expected to be discontinued. This guidance is applicable for borrowing instruments, which use LIBOR as a reference rate, and is available through December 31, 2024. The Company is currently evaluating this ASU and does not expect its adoption to have a material impact on its consolidated financial statements.

4. Fair Value

The Company's financial assets and liabilities that are measured at fair value on a recurring basis include cash and cash equivalents, and restricted cash. The carrying amounts of cash and cash equivalents and restricted cash approximate their fair value.

The Company's financial assets that are measured at fair value on a non-recurring basis when impairment is identified include equity method investment and investment in equity securities without readily determinable fair value not accounted for under the equity method. The fair values of these investments are determined based on valuation techniques using the best information available, and may include quoted market prices, market comparables, and discounted cash flow projections. An impairment charge is recorded when the cost of the investment exceeds its fair value. This is considered a Level 3 fair value measurement. See Note 6 — Investment for further information regarding the fair value measurement of these investments.

The Company's notes receivable from affiliate, loans from affiliate (see Note 18 — Related Party Transactions), line of credit and long-term debt are carried at cost with fair value disclosed, if required. The fair value of the amounts outstanding under the line of credit and long-term debt with a floating interest rate approximates the carrying value primarily due to the variable nature of the interest rate of the instruments, which is considered a Level 2 fair value measurement. The fair value of the amounts outstanding under notes receivable from affiliate, loans from affiliate, and line of credit with a fixed interest rate is estimated based on the discounted amount of the contractual future cash flows using an appropriate discount rate. This is considered a Level 3 fair value measurement.

The Company's warrants are measured at fair value on a recurring basis which is considered as a Level 3 fair value measurement (see Note 13 - Warrants).

The following is a summary of the carrying amounts and estimated fair values of these financial instruments as of December 31, 2022 and 2021 (in thousands):

	December 31, 2022		December 31, 2021	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
Notes receivable from affiliate (Level 3)	$ 15,000	$ 15,000	$ 15,000	$ 15,000
Line of credit (Level 2)	$ 4,898	$ 4,898	$ 5,395	$ 5,395
Line of credit (Level 3)	$ 1,158	$ 1,114	$ 787	$ 754
Long-term debt (Level 2)	$ 1,673	$ 1,624	$ 2,136	$ 2,078
Warrants liabilities (Level 3)	$ 28	$ 28	$ 1,091	$ 1,091

5. Property and Equipment, Net

Property and equipment, net consisted of the following (in thousands):

	December 31	
	2022	2021
Land	$ 2,157	$ 2,376
Buildings	32,723	35,659
Machinery and equipment	34,396	35,349
Computer and software	20,590	28,189
Leasehold improvements	8,515	9,991
Capitalized software	28,784	17,031
Furniture and fixtures	3,812	3,604
Construction in progress(1)	1,423	7,654
	132,400	139,853
Accumulated depreciation and amortization	(87,325)	(89,704)
Property and equipment, net	$ 45,075	$ 50,149

(1) Property construction-in-progress is stated at cost and not depreciated. The property would be transferred to its respective account within property, plant and equipment upon completion.

Depreciation and amortization expense associated with property and equipment was $11.0 million, $10.8 million and $9.1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

6. Investment

On April 17, 2018, the Company entered into an agreement to acquire an equity interest in Mountain Capital Fund L.P. (“Mountain”) from Pegasus View Global Ltd., an international business company incorporated in the Republic of Seychelles (“Pegasus”), which is a related party. Mountain is an exempted limited partnership registered under the partnership law in the Cayman Islands and primarily engages in investing. The Company’s equity interest in Mountain was limited to 50% of Mountain’s investment in One97 Communications Limited and PayTM E-Commerce Private Limited (collectively, the “Mountain Investment”). In addition to the $43.0 million initial investment made during 2018, the purchase price in this transaction included a contingent consideration of up to $7.0 million upon satisfaction of certain conditions described in the purchase agreement. This contingent consideration of $7.0 million was paid in April 2019. The Company evaluated the Mountain Investment under the variable interest model and the voting interest model and concluded that Mountain Capital Fund L.P. is not a variable interest entity and no consolidation is needed under either the variable interest model or the voting interest model. The Company recorded an estimate of contingent consideration payable of $7.0 million as of the acquisition date. The Company accounted for the Mountain Investment under the equity method. During the year 2019, Mountain sold a portion of its investment in One97 Communications Limited (“One97”) to various third-party buyers, which resulted in the Company’s disposal of all of its investment in One97.

As of December 31, 2021, the carrying value of the Company’s investment in Mountain was $2.3 million and the Company’s ownership percentage in Mountain was approximately 4%.

In December 2022, the Company was informed that Mountain intends to sell 100% of its shares in PayTM E-Commerce Private Limited to an unrelated third party and effectively dissolve Mountain, in exchange for approximately $0.7 million. Mountain and the unrelated third party buyer entered into a share purchase agreement on December 29, 2022. The Company reached a mutual understanding with Mountain that the Company does not expect to receive any proceeds as part of the final sale and dissolution of Mountain as of December 31, 2022. The Company then reviewed the investment in Mountain and determined an impairment existed as of December 31, 2022 and wrote off the full remaining balance of $2.3 million.

In August 2018, the Company purchased 11,506,695 Series B+ Preferred shares in Bitmain Technologies Holding Company, a privately-held company incorporated in the Cayman Islands, for a total consideration of $15.0 million. Bitmain Technologies Holding Company and its subsidiaries (together “Bitmain”) primarily design and sell cryptocurrency mining hardware, operate cryptocurrency mining pools, and provide mining farm services. As this represents an investment in equity securities without readily determinable fair values, the Company elected the measurement alternative under ASU 2016-01 to measure this investment at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.

In June 2022, Bitmain repurchased 11,149,200 Series B+ shares of Bitmain held by the Company's subsidiary, Newegg Tech Corporation at $0.48605796 per share in accordance with Bitmain's articles of association. The Company reviewed the transaction and concluded that the transaction is not an orderly transaction, and the Company would continue to account for the investment in Bitmain at cost. As a result of the redemption, the Company recognized a gain on sale of investment of $1.7 million in June 2022. The proceeds were received in July 2022.

The Company reviewed the investment in Bitmain for impairment as of December 31, 2022 and 2021, respectively, by evaluating if events or circumstances have occurred that may have a significant adverse effect on the fair value of the investment. The Company concluded there were no impairment indicators as of December 31, 2022 and 2021. In the absence of observable price changes in orderly transactions for the identical or a similar investment of the same issuer during the years ended December 31, 2022 and 2021, the carrying value of the investment remained at $11.3 million and $15.0 million as of December 31, 2022 and 2021.

There was no impairment loss on Bitmain cost method investment for the years ended December 31, 2022, 2021 and 2020.

7. Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

	December 31	
	2022	2021
Sales and other taxes payable	$ 17,250	24,512
Accrued personnel	13,474	21,132
Allowance for sales returns	8,664	9,102
Accrued freight expense	2,522	6,625
Accrued advertising expense	2,513	3,392
Accrued legal expense	1,996	3,338
Accrued inventory	1,374	2,647
Other	3,210	3,941
Total accrued liabilities	$ 51,003	$ 74,689

8. Line of Credit

In July 2018, the Company entered into a credit agreement with several financial institutions that provided a revolving credit facility of up to $100.0 million with a maturity date of July 27, 2021. Prior to July 27, 2020 and subject to certain terms and conditions, the Maximum Revolving Advance Amount, as defined in the loan agreement, could be increased up to $140.0 million. The revolving credit facility included a letter of credit sublimit of $25.0 million, which could be used to issue standby and trade letters of credit, and a $10.0 million sublimit for swingline loans. Advances from this line of credit were subject to interest at LIBOR plus the Applicable Margin, as defined in the loan agreement, or the Alternate Base Rate (defined as the highest of the financial institution's prime rate, the Overnight Bank Funding Rate plus 0.50%, or the daily LIBOR plus 1.0%) plus the Applicable Margin. For LIBOR loans, the Company could select interest periods of one, two, or three months. Interest on LIBOR loans were payable at the end of the selected interest period. Interest on Alternate Base Rate loans was payable monthly. The line of credit was guaranteed by certain of the Company's U.S. subsidiaries and was collateralized by certain of the assets of the Company. Such assets included all receivables, equipment and fixtures, general intangibles, inventory, subsidiary stock, securities, property, and financial assets, contract rights, and ledger sheets, as defined in the loan agreement. To maintain availability of funds under the loan agreement, the Company paid on a quarterly basis, an unused commitment fee of either 0.25% of the difference between the amount available and the amount outstanding under the facility if the difference was less than one-third of the Maximum Revolving Advance Amount or 0.40% of the difference between the amount available and the amount outstanding under the facility if the difference was equal to or greater than one-third of the Maximum Revolving Advance Amount.

The credit facility contains customary covenants, including covenants that limit or restrict the Company's ability to incur capital expenditures and lease payments, make certain investment, enter into certain related-party transactions, and pay dividends. That credit facility also requires the Company to maintain certain minimum financial ratios and maintain an operational banking relationship with the financial institutions.

The Company entered into a credit agreement in August 2021 with several financing institutions that provided a revolving credit facility of up to $100 million with a maturity date of August 20, 2024. Prior to August 20, 2023 and subject to certain terms and conditions, the Maximum Revolving Advance Amount, as defined in the credit agreement, could be increased up to $150.0 million. The revolving credit facility includes a letter of credit sublimit of $30.0 million, which can be used to issue standby and trade letters of credit, and a $20.0 million sublimit for swingline loans. In April 2023, the Company amended the credit agreement in order to transition the benchmark rate for certain loans made under the credit agreement from LIBOR to SOFR (as defined in the credit agreement). In general, advances from this line of credit will be subject to interest at the Term SOFR Rate plus the Applicable Margin, as defined in the credit agreement, so long as the Term SOFR Reference Rate or Term SOFR is offered, ascertainable, and not unlawful, or the Alternate Base Rate (to be defined as the highest of the (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day plus 0.50%, or (c) the daily Term SOFR Rate plus 1.0%) plus the Applicable Margin. For Term SOFR Rate loans, we may select interest periods of one or three months. Interest on Term SOFR Rate loans shall be payable at the end of the selected interest period. Interest on Alternate Base Rate loans is payable monthly. In the event of the permanent or indefinite cessation of the Term SOFR Rate, the Benchmark Replacement will replace the Term SOFR Rate. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

The new line of credit is secured by certain of the Company's subsidiaries and is collateralized by certain of the of the assets of the Company. Such assets include all receivables, equipment and fixtures, general intangibles, inventory, subsidiary stock, securities, property, and financial assets, contract rights, and ledger sheets, as defined in the credit agreement. To maintain availability of funds under the credit agreement, the Company will pay on a quarterly basis, an unused commitment fee of 0.15% per annum on the unused amount for the facility. The new credit facility contains customary covenants, including covenants that limit or restrict the Company's ability to incur capital expenditures and lease payments, make certain investments, and enter into certain related-party transactions. The credit facility also requires the Company to maintain certain minimum financial ratios and maintain an operational banking relationship with the financial institutions.

As of December 31, 2022 and 2021, there was no balance outstanding under this line of credit, and the Company was in compliance with all covenants related to the line of credit. As of December 31, 2022, Newegg has outstanding letters of credit of $2.0 million from the $100 million revolving line of credit.

In July 2015, the Company entered into a credit agreement with a financial institution that provided for a revolving credit facility of up to $5.0 million (150.0 million New Taiwan Dollar) with a maturity date of no later than August 26, 2016. The Company extended the maturity date of this credit agreement to December 15, 2023. Advances from this line of credit are subject to interest at a floating interest rate of the one-year savings account plus 0.78% not to be lower than 1.62% per annum. The interest rate was equivalent to 2.12% as of December 31, 2022. The line of credit is guaranteed by one of the Company's China subsidiaries and is collateralized by a real estate asset of that subsidiary. As of December 31, 2022 and 2021, there was $4.9 million and $5.4 million outstanding under this line of credit, respectively.

In June 2021, a subsidiary of the Company entered into a credit agreement with a financial institution that provided for a revolving credit facility of up to $0.8 million (5.0 million Chinese Yuan) with a maturity date of June 15, 2022. Advances from this line of credit are subject to interest at a fixed interest rate of one-year Loan Prime Rate (LPR) plus 0.50%. In June 2022, the Company paid off the outstanding balance under this line of credit and entered into a new credit agreement with the same financial institution that provided for a revolving credit facility of up to approximately $1.2 million (8.0 million Chinese Yuan) with a maturity date of June 22, 2023. Advances from this line of credit are subject to interest at a fixed rate of one-year Loan Prime Rate plus 0.30%. The interest rate was equivalent to 4.0% and 4.35% as of December 31, 2022 and 2021, respectively. As of December 31, 2022 and 2021, there was $1.2 million and $0.8 million outstanding under this line of credit, respectively.

9. Long-Term Debt

The Company has entered into various loans with financial institutions. Long-term debt consisted of the following (in thousands):

	December 31,	
	2022	2021
Term Loan	$ 1,673	$ 2,136
Less current portion	(269)	(293)
Long-term debt less current portion	$ 1,404	$ 1,843

Term Loan

In 2013, the Company entered into a term loan agreement with a financial institution for $4.1 million with a maturity date of November 26, 2028 (the "Term Loan"). The Term Loan bears a floating interest rate of the one-year savings account plus 0.43% per annum in the first two years and a floating interest rate of the one-year savings account plus 0.61% per annum for the remaining of the term, not to be lower than 1.8% during the entire term. The interest rate was equivalent to 1.95% as of December 31, 2022. The Term Loan is collateralized by a first position security interest in a floor of an office building owned by the Company in Taiwan.

Aggregate maturities of long-term debt, excluding unamortized debt issuance costs, were as follows (in thousands) as of December 31, 2022:

2023	$ 269
2024	275
2025	280
2026	286
2027	291
Thereafter	272
	$ 1,673

10. Lease Obligations

Operating Leases

The Company leases certain office and warehouse facilities and warehouse equipment under various noncancelable operating leases. The Company is also committed under the terms of certain of these operating lease agreements to pay property taxes, insurance, utilities, and maintenance costs.

Most of the Company's leases do not provide an implicit rate that can be readily determined. Therefore, the Company uses a discount rate based on its incremental borrowing rate, which is determined using its credit rating and information available as of the commencement date. The Company's operating lease agreements may include options to extend the lease term. The Company made an accounting policy election to exclude options that are not reasonably certain of exercise when determining the term of the borrowing in the assessment of the incremental borrowing rate. Additionally, the Company also made an accounting policy election to not separate lease and non-lease components of a contract, and to recognize the lease payments under short-term leases as an expense on a straight-line basis over the lease term without recognizing the lease liability and the right of use ("ROU") lease asset.

The Company evaluates whether its contractual arrangements contain leases at the inception of such arrangements. Specifically, the Company considers whether it can control the underlying asset and have the right to obtain substantially all of the economic benefits or outputs from the assets. Substantially all of its leases are long-term operating leases with fixed payment terms. The Company does not have significant financing leases. Its ROU operating lease assets represent the right to use an underlying asset for the lease term, and its operating lease liabilities represent the obligation to make lease payments. ROU operating lease assets are recorded in other noncurrent assets in the consolidated balance sheet. Operating lease liabilities are recorded in other current liabilities or other noncurrent liabilities in the consolidated balance sheets based on their contractual due dates.

The Company's operating lease liability is recognized as of the lease commencement date at the present value of the lease payments over the lease term. The Company's ROU operating lease asset is recognized as of the lease commencement date at the amount of the corresponding lease liability, adjusted for prepaid lease payments, lease incentives received, and initial direct costs incurred. The Company evaluates its ROU lease assets for impairment consistent with its impairment of long-lived assets policy. See Note 3 — Summary of Significant Accounting Policies.

Operating lease expense is recognized on a straight-line basis over the lease term, and is included in selling, general, and administrative expenses in the consolidated statements of operations. Operating lease expense totaled $25.3 million, $20.1 million and $16.5 million, respectively, for the years ended December 31, 2022, 2021 and 2020. The Company has made an accounting policy election by underlying asset class to not apply the recognition requirements of ASC 842 to short-term leases. As a result, certain leases with a term of 12 months or less are not recorded on the balance sheet and expense is recognized on a straight-line basis over the lease term. Cash payments made for operating leases totaled $22.0 million, $17.7 million, and $14.5 million during years ended December 31, 2022, 2021, and 2020 respectively, which were included in cash flows from operating activities in the consolidated statement of cash flows. As of December 31, 2022 and 2021, the Company's ROU operating lease assets were $84.2 million and $94.6 million, and its operating lease liabilities were $89.1 million and $98.9 million, of which $74.8 million and $84.3 million were classified as non-current, respectively. New ROU operating lease assets and liabilities entered into during 2022 were $7.5 million and $7.5 million, respectively. New or modified ROU operating lease assets and liabilities entered into during 2021 were $60.7 million and $60.7 million, respectively. The Company's weighted average remaining lease term and the discount rate for its operating leases were approximately 5.99 years and 3.8% at December 31, 2022. The Company's weighted average remaining lease term and the discount rate for its operating leases were approximately 6.86 years and 3.8% at December 31, 2021.

In January 2023, the Company extended one of its operating leases for an additional 10 years. Modified ROU operating lease assets and liabilities totaled $15.9 million and $15.9 million, respectively. Total future minimum lease payment is $21.2 million.

The Company has certain sublease arrangements for some of the leased office and warehouse facilities. Sublease rental income for the years ended December 31, 2022, 2021, and 2020 was immaterial.

The following table summarizes the future minimum rental payments under noncancelable operating lease arrangements in effect at December 31, 2022 (in thousands):

2023	$	17,996
2024		16,887
2025		16,538
2026		14,307
2027		14,593
Thereafter		19,685
Total minimum payments	$	100,006
Less: Imputed interest		10,903
Present value of lease liabilities	$	89,103

11. Income Taxes

The components of the Company's income tax provision expense are as follows (in thousands):

	Year ended December 31		
	2022	2021	2020
Current provision:			
Federal	$ (68)	$ 2,536	$ 21
State and local	268	795	133
Foreign	1,402	3,572	1,415
	1,602	6,903	1,569
Deferred expense (benefit):			
Federal	8,882	(9,013)	—
State and local	3,552	(3,472)	(118)
Foreign	65	(213)	490
	12,499	(12,698)	372
Provision for (benefit from) income taxes	$ 14,101	$ (5,795)	$ 1,941

Income (loss) before provision for income taxes consisted of the following (in thousands):

	Year ended December 31		
	2022	2021	2020
United States	$ (52,598)	$ 17,018	$ 24,616
International	9,270	13,449	7,751
Total	$ (43,328)	$ 30,467	$ 32,367

Deferred income taxes reflect the tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The 2017 tax reform act amended Internal Revenue Code Section 174, effective for amounts paid or incurred for research and experimentation expenses in tax years beginning after December 31, 2021. Prior to this change taxpayers could elect to expense these costs in the year incurred or amortize these them over 5 years. Under the law as amended research and experimental expenses are capitalized and amortized over five years (15 years for expenditures attributable to foreign research). As such, The Company capitalizing its Section 174 costs for fiscal year 2022 in the amount of 2.6M, net of current year amortization. The Company's deferred income tax assets and liabilities consisted of the following (in thousands):

	December 31	
	2022	2021
Deferred tax assets:		
Accounts receivable	$ 5,123	4,295
Inventories	2,807	4,413
Reserves and other accruals	3,062	5,903
Lease liabilities	20,668	22,203
Section 174 Costs	2,601	—
Credits and other	1,965	2,144
Net operating losses	9,921	6,102
Gross deferred tax assets	46,147	45,060
Valuation allowance	(24,128)	(5,543)
Total deferred tax assets, net	22,019	39,517
Deferred tax liabilities:		
Prepaid expenses	(864)	(798)
Other	(773)	(621)
ROU	(19,514)	(21,212)
Property and equipment	—	(3,219)
Long-term investment	—	(300)
Total deferred tax liabilities	(21,151)	(26,150)
Net deferred tax assets	$ 868	$ 13,367

In accordance with ASC 740, *Income Taxes*, the Company evaluates whether a valuation allowance should be established against the net deferred tax assets based upon the consideration of all available evidence and using a "more-likely than-not" standard. Significant weight is given to evidence that can be objectively verified. The determination to record a valuation allowance is based on the recent history of cumulative losses and losses expected in the near future.

The Company's U.S. federal consolidated filing group includes certain international entities. Based upon results of operations for the years ended December 31, 2022, 2021 and 2020, it is determined that it is not more likely than not that the Company will realize the benefit from the U.S. federal net deferred tax assets. As a result, the Company has recorded a valuation allowance against its net deferred tax assets for the year ended December 31, 2022 for its U.S. operations. The Company maintains valuation allowances against certain non-US loss corporations. Total valuation allowance against U.S. and non-U.S. deferred tax assets was $24.1 million and $5.5 million as of December 31, 2022 and 2021, respectively.

At December 31, 2022, the Company has net operating losses ("NOL") carryforward of $19.6 million and has $22.0 million of apportioned state NOL carryforwards available to reduce future taxable income. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was enacted into law in response to the COVID-19 pandemic. The CARES Act temporarily suspends the 80% of taxable income limitation on the use of NOLs for tax years beginning before January 1, 2021, thereby permitting corporate taxpayers to use NOLs to fully offset taxable income in these years regardless of the year in which the NOL arose. As a result, the Company can fully utilize the remaining cumulative federal NOL for tax years before January 1, 2021, and then will be limited to 80% of taxable income afterwards. The state NOL carryforwards begin to expire in 2028. The Company has $4.6 million of NOL carryforwards in China as of December 31, 2022. The Company has $10.0 million of NOL carryforwards in Taiwan, which will begin to expire in 2024. The Company has $2.3 million NOLs in Hong Kong with indefinite carryforward. A valuation allowance was recorded on the NOLs in China, Taiwan, and Hong Kong. The Company has not provided for deferred income taxes on undistributed earnings of its foreign subsidiaries, as these amounts are considered indefinitely reinvested outside the United States. It is not practicable to determine the estimated income tax liability that might apply if these earnings were to be repatriated.

A reconciliation of the U.S. federal statutory tax rate to the Company's effective tax rate is as follows:

	Year ended December 31		
	2022	**2021**	**2020**
Federal taxes at statutory rate	21.00%	21.00%	21.00%
State taxes, net of federal benefit	2.48	(6.85)	0.04
Permanent items:			
Other nondeductible items	(0.30)	0.48	0.17
Subpart F income	(0.80)	—	0.03
SEC. 956 Income inclusion	—	—	—
Stock-based compensation	(10.88)	0.74	0.07
Foreign withholding tax	—	—	—
Research & development credit	1.57	—	(2.04)
Global intangible low-taxed income	—	—	2.36
Foreign rate differential and foreign tax credits	(0.74)	2.15	1.12
Change in valuation allowance – U.S. Federal	(34.09)	(33.11)	(15.48)
Change in valuation allowance – U.S. States	(11.17)	—	—
Change in valuation allowance – Foreign	0.96	—	—
Change in uncertainty in income taxes ("FIN48")	(0.10)	—	—
Other	(0.01)	(3.43)	(1.27)
Effective tax rate	(32.08)%	(19.02)%	6.00%

The significant items that caused the effective tax rate change related to recording of the U.S. portion of the valuation allowance and equity compensation.

Uncertain Tax Positions

As of the end of fiscal year 2022, the total liability for income tax associated with unrecognized tax benefits was $1.6 million. The Company's effective tax rate will be affected by any portion of this liability we may recognize. The Company does not believe it is reasonably possible that any of the uncertain tax benefits will be recognized in the next 12 months. As such, all uncertain tax positions, including accrued interest, have been classified as long-term taxes payable on the consolidated balance sheets.

A reconciliation of the beginning and ending amounts of uncertain tax positions is as follows (in thousands):

	Year ended December 31	
	2022	**2021**
Beginning balance	$ 1,563	$ 850
Additions based on tax positions related to the prior year	43	713
Ending balance	$ 1,606	$ 1,563

The Company's continuing practice is to recognize interest and penalties related to unrecognized tax benefits as tax expense. As of December 31, 2022 and 2021, interest and penalties related to uncertain tax positions were not material.

The Company files a consolidated federal income tax return in the United States, as well as combined and separate U.S. state income tax returns. Certain subsidiaries of the Company are subject to income tax in China, Taiwan, Hong Kong, and Canada. The Company is still subject to examination for federal income tax returns for the years 2014 through 2021, for certain U.S. state income tax returns for the years 2009 through 2021, and for certain foreign income tax returns for the years 2012 through 2021. The Company is currently under examination by the Internal Revenue Service for the years 2012 through 2014 and by the California Franchise Tax Board for the years 2007 through 2012. The California Franchise Tax Board examination is related to amended tax returns filed for the years under exam. No additional reserve was accrued in 2022 based on the current audit status.

12. Common Stock

The Company is authorized to issue unlimited shares of common stock with a par value of $0.021848. Each share of common stock is entitled to one vote. At December 31, 2022 and 2021, the number of shares of common stock issued and outstanding were 376,660,069 and 369,718,680, respectively.

No Common Stock dividend was declared by the Company's Board of Directors for the years ended December 31, 2022, 2021 and 2020.

13. Warrants

On April 28, 2016, LLIT signed a Share Purchase Agreement ("SPA") with Hangzhou Lianluo. In this SPA, Hangzhou Lianluo was entitled with 125,000 warrants to acquire from the Company 125,000 common shares at a purchase price of $17.60 per share. The warrants are exercisable at any time. The Company recognized the warrants as a derivative liability because warrants can be settled in cash. Warrants are remeasured at fair value with changes in fair value recorded in earnings in each reporting period.

There was a total of 125,000 warrants issued and outstanding as of December 31, 2022.

The fair value of the outstanding warrants was calculated using the Black-Scholes model with the following assumptions:

	December 31, 2022	December 31, 2021
Market price per share (USD/share)	$ 1.31	$ 10.37
Exercise price (USD/share)	17.60	17.60
Risk free rate	4.18%	1.16%
Dividend yield	0%	0%
Expected term/Contractual life (years)	3.32	4.32
Expected volatility	96.90%	147.33%

The following is a reconciliation of the beginning and ending balances of warrants liability measured at fair value on a recurring basis using Level 3 inputs (in thousands):

Beginning balance, May 19, 2021	$ 1,152
Fair value change of the issued warrants included in earnings	(61)
Ending balance, December 31, 2021	1,091

Beginning balance, January 1, 2022	$ 1,091
Fair value change of the issued warrants included in earnings	(1,063)
Ending balance, December 31, 2022	$ 28

14. Stock-Based Compensation

Legacy Newegg Inc. Stock Based Compensation

Newegg Inc.'s stock-based compensation includes stock option awards issued under Newegg Inc.'s employee incentive plan, as further discussed below. There was no income tax benefit recognized in the consolidated statements of income for stock-based compensation arrangements in any of the periods presented.

The exercise prices of stock options and restricted stock granted were determined contemporaneously by the Newegg Inc.'s Board of Directors based on the estimated fair value of the underlying Class A Common Stock and Series A convertible Preferred Stock. The Newegg Inc. Class A Common Stock and Series A convertible Preferred Stock valuations were based on a combination of the income approach and two market approaches, which were used to estimate the total enterprise value of Newegg Inc. The income approach quantifies the present value of the future cash flows that management expects to achieve from continuing operations. These future cash flows are discounted to their present values using a rate corresponding to Newegg Inc.'s estimated weighted average cost of capital. Newegg Inc.'s weighted average cost of capital is calculated by weighting the required return on interest-bearing debt and common equity capital in proportion to their estimated percentages in Newegg Inc.'s capital structure. The market approach considers multiples of financial metrics based on acquisition values or quoted trading prices of comparable public companies. An implied multiple of key financial metrics based on the trading and transaction values of publicly traded peers is applied to Newegg Inc.'s similar metrics in order to derive an indication of value. A marketability discount is then applied to reflect the fact that Newegg Inc.'s Class A Common Stock and Series A convertible Preferred Stock are not traded on a public exchange. The amount of the discount varies based on management's expectation of effecting a public offering of Newegg Inc.'s Class A Common Stock within the ensuing 12 months. The enterprise value indications from the income approach and market approaches were used to estimate the fair value of Newegg Inc.'s Class A Common Stock and Series A convertible Preferred Stock in the context of Newegg Inc.'s capital structure as of each valuation date. Each valuation was based on certain estimates and assumptions. If different estimates and assumptions had been used, these valuations could have been different.

At the close of the merger, the holders of Legacy Newegg Inc. stock options continue to hold such options, and such options remain subject to the same vesting, exercise and other terms and conditions. The holders of Legacy Newegg Inc. options, as applicable, may exercise their options to purchase a number of shares of the Company's Class A Common Stock equal to the number of shares of Legacy Newegg Inc. common stock subject to such Legacy Newegg Inc. options multiplied by the conversion ratio at an exercise price per share divided by the conversion ratio.

2005 Incentive Award Plan:

On September 22, 2005, the Board of Directors approved Newegg Inc.'s 2005 Equity Incentive Plan, which was amended in January 2008, October 2009, December 2011 and September 2015 (the "Incentive Award Plan"). Under the Incentive Award Plan, the Company may grant equity incentive awards to employees, directors, and consultants based on Newegg Inc.'s Class A Common Stock. A committee of the Board of Directors of Newegg Inc. determines the eligibility, types of equity awards, vesting schedules, and exercise prices for equity awards granted. Subject to certain adjustments in the event of a change in capitalization or similar transaction, Newegg Inc. may issue a maximum of 82,952,149 shares of its Class A Common Stock under the Incentive Award Plan. Newegg Inc. issues new shares of Class A Common Stock from its authorized share pool to settle stock-based compensation awards. The exercise price of options granted under the plan shall not be less than the fair value of the Newegg Inc.'s Class A Common Stock as of the date of grant. Options typically vest over the term of four years, and are typically exercisable for a period of 10 years after the date of grant, except when granted to a holder who, at the time the option is granted, owns stock representing more than 10% of the voting power of all classes of stock of Newegg Inc. any subsidiaries, in which case, the term of the option shall be no more than five years from the date of grant. In September 2015, the Incentive Award Plan was amended to permit additional awards to be made after the tenth anniversary of the original adoption of said plan.

The fair value of each option award granted under the Incentive Award Plan is estimated using the Black-Scholes option pricing model on the date of grant. This model requires the input of highly complex and subjective variables. These variables include, but are not limited to, the expected stock price volatility over the expected life of the awards and actual and projected employee stock option exercise behavior with the following inputs: risk-free interest rate, expected stock price volatility, forfeiture rate, expected term, dividend yield and weighted average grant date fair value.

The risk-free interest rate is based on the currently available rate on a U.S. Treasury zero-coupon issue with a remaining term equal to the expected term of the option converted into a continuously compounded rate. The expected volatility of stock options is based on a review of the historical volatility and the implied volatility of a peer group of publicly traded companies comparable to the Company. In evaluating comparability, the Company considered factors such as industry, stage of life cycle, and size. After the adoption of Accounting Standards Update No. 2016-09 *Compensation-Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting* as of January 1, 2017, the Company elected to recognize the effect of awards for which the requisite service is not rendered when the award is forfeited. The expected term assumption used by the Company reflects the application of the simplified method set out in Securities and Exchange Commission Staff Accounting Bulletin No. 110, Shared-Based Payment. The simplified method defines the expected term of an option as the average of the contractual term of the options and the weighted average vesting period for all option tranches. The dividend yield reflects the Company's dividend rate on the date of grant. During the years ended December 31, 2022 and 2021, Newegg Inc. did not grant any stock options representing the right to purchase Newegg Inc. Common Stock.

The following table summarizes the activity for all stock options granted:

	Options outstanding	Weighted average exercise price	Average remaining contractual terms (in years)	Aggregate intrinsic Value (in thousands)
Outstanding at January 1, 2020	15,201,143	$ 0.43	4.80	$ 1,723
Exercised	—			
Grant	51,921,030			
Forfeited or expired	(85,347)	0.73		
Outstanding at December 31, 2020	67,036,826	$ 0.60	8.19	$ 51,754
Exercised	(1,457,517)			
Grant	—			
Forfeited or expired	(178,916)	0.73		
Outstanding at December 31, 2021	65,400,393	$ 0.60	7.30	$ 639,131
Exercised	(6,305,365)	0.61		
Grant	—			
Forfeited or expired	(59,635)	0.73		
Outstanding at December 31, 2022	59,035,393	$ 0.60	6.46	$ 42,143
Vested and expected to vest at December 31, 2022	59,035,393	$ 0.60	6.46	$ 42,143
Exercisable at December 31, 2022	37,637,243	$ 0.57	5.90	$ 27,787

During the year ended December 31, 2022, stock options were exercised for 6,305,365 of the Company's common stock. Cash exercises totaled 4,956,468 shares of the Company's common stock with proceeds of approximately $2.9 million. Cashless exercises totaled 1,348,897 shares which resulted in the Company issuing 1,059,240 net shares. The exercise prices ranged from $0.55 to $0.73 per share during the year ended December 31, 2022.

During the year ended December 31, 2021, stock options were exercised for 1,457,517 of the Company's common stock. Cash exercises totaled 371,527 shares of the Company's common stock with proceeds of approximately $0.3 million. Cashless exercises totaled 1,085,990 shares which resulted in the Company issuing 1,048,298 net shares. The exercise prices ranged from $0.44 to $0.73 per share during the year ended December 31, 2021.

During the years ended December 31, 2022, 2021 and 2020, the total intrinsic value of stock options exercised was $24.3 million, $24.2 million, and $0 million, respectively, and the compensation expense for stock options granted included in "Selling, general and administrative expenses" in the consolidated statements of operations totaled $3.2 million, $3.2 million and $1.6 million, respectively.

As of December 31, 2022 and 2021, there were $4.6 million and $7.8 million, respectively, of unrecognized compensation costs related to nonvested options. The weighted average remaining vesting term of the stock option was 1.46 years, 2.46 years and 3.46 years as of December 31, 2022, 2021 and 2020, respectively.

Newegg Commerce, Inc. Stock Based Compensation

2021 Equity Incentive Plan

On November 26, 2021, the Board of Directors approved the Company's 2021 Equity Incentive Plan (the "2021 Plan"). Under the 2021 Plan, the Company may grant equity incentive awards to employees, directors, and consultants based on the Company's Common Stock. A committee of the Board of Directors of the Company determines the eligibility, types of equity awards, vesting schedules, and exercise prices for equity awards granted. Subject to certain adjustments in the event of a change in control or similar transaction, the Company may issue a maximum of 7,374,900 of its Common Stock under the 2021 Plan. The Company issues new shares of its Common Stock from its authorized share pool to settle stock-based compensation awards.

On July 21, 2022, the Board of Directors approved the amendment of the 2021 Plan to increase the maximum share pool from 7,374,900 to 16,374,900 shares.

The following table summarizes the activity for all restricted stock units granted:

	Shares	Weighted-average grant date fair value
Unvested at January 1, 2020	—	$ —
Granted	7,040,998	18.38
Vested	—	—
Cancelled	—	—
Unvested at December 31, 2021	7,040,998	$ 18.38
Granted	1,671,445	3.69
Vested	(1,675,007)	18.38
Cancelled	(1,022,720)	18.38
Unvested at December 31, 2022	6,014,716	$ 14.30

During the years ended December 31, 2022 and 2021, the Company granted 285,000 and 7,040,998 restricted stock units ("RSUs"), respectively, to its executives and employees. The vesting of each RSU is subject to the employee's continued employment through applicable vesting dates. The RSUs are accounted for as equity awards and are measured at fair value based upon the grant date price of the Company's common stock. Compensation expense is recognized on a straight-line basis over the requisite service period of four years.

On August 13, 2022 the Company issued 5,560,780 performance-based vesting restricted stock units ("PRSUs") to one of its executives over four performance periods where 1,386,445 PRSUs were granted during the year ended December 31, 2022. Each of the four performance periods will have a separate grant date and service inception date, and a separate requisite service period. The PRSUs are accounted for as equity awards and are measured at fair value based upon the grant date price of the Company's common stock. The vesting of each PRSU is based on financial performance tied to GMV. The vesting of PRSUs is determined at the end of each of the four-year performance periods. The payout can vary from zero to 100% based on actual results and performance goals may be adjusted by the Compensation Committee from time to time in its sole discretion.

During the years ended December 31, 2022 and 2021, the compensation expense for restricted stock units granted included in "Selling, general and administrative expenses" in the consolidated statements of operations totaled $30.8 million and $3.1 million, respectively.

As of December 31, 2022, there was $82.9 million unrecognized compensation costs related to restricted stock units.

15. Net Income (Loss) per Share

Basic earnings per share of Common Stock is calculated by dividing net income available to holders of Common stock by the weighted average number of shares of Common Stock outstanding for the period. The diluted earnings per share of Common Stock calculation assumes the issuance of all dilutive potential common shares outstanding. Dilutive potential Common Stock consists of incremental shares of Class A Common Stock issuable upon the exercise of the stock options.

The following table summarizes the calculation of basic and diluted net income (loss) per common share (in thousands, except per share data):

	Year Ended December 31,		
	2022	2021	2020
Net income (loss)	$ (57,429)	$ 36,262	$ 30,426
Basic earnings per share			
Basic weighted average shares outstanding	373,067	366,651	363,326
Basic earnings (loss) per share	$ (0.15)	$ 0.10	$ 0.08
Diluted earnings per share			
Basic weighted average shares outstanding	373,067	366,651	363,326
Dilutive effect of stock options	—	65,599	21,687
Diluted weighted average shares outstanding	373,067	432,250	385,013
Diluted earnings (loss) per share	$ (0.15)	$ 0.08	$ 0.08

The following shares were excluded from the calculation of diluted net loss per share calculation as their effect would have been anti-dilutive (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Stock options	51,845	54	4,329
Restricted stock units	7,084	7,041	—
Warrants	125	125	—

16. Commitments and Contingencies

From time to time, the Company is a party to various lawsuits, claims, and other legal proceedings that arise in the ordinary course of business. The Company discloses contingencies deemed to be reasonably possible and accrues loss contingencies when, in consultation with legal advisors, it is concluded that a loss is probable and reasonably estimable.

In December 2014, an individual plaintiff sued our subsidiary, *Newegg.com* Americas Inc. ("***Newegg.com* Americas**"), in Superior Court in Los Angeles County, California, alleging that *Newegg.com* Americas had engaged in deceptive advertising practices and seeking to certify a class action. In 2016, the trial court sustained *Newegg.com* Americas' demurrer to the plaintiff's claims without leave to amend. The plaintiff appealed, and in July 2018 an appellate court reversed the decision of the trial court, thus allowing the case to proceed. The matter is now pending in the trial court, with Newegg Inc. having been added as a defendant. We intend to vigorously defend ourselves and our subsidiaries. Depending on the amount and timing, an unfavorable result could materially affect our business, consolidated results of operations, financial position or cash flows.

In September 2021, two subsidiaries of the Company were served with a complaint filed in the Superior Court for Los Angeles County, California, alleging various wage and hour violations and seeking to certify a class action. In October 2021, a second complaint was filed as a representative action pursuant to the Private Attorneys General Act of 2004 against the same two subsidiaries in the Superior Court for Los Angeles County, California, alleging various violations of the California Labor Code. The Company intends to vigorously defend its subsidiaries in both matters. The outcome of these matters is uncertain. Depending on the amount and timing, an unfavorable result in either matter could materially affect our business, consolidated results of operations, financial position or cash flows.

In addition to the legal proceedings mentioned above, from time to time, the Company may become involved in legal proceedings arising in the ordinary course of business. There can be no assurance with respect to the outcome of any legal proceeding. The outcome of the litigation described above, the other pending lawsuits filed against the Company and other claims, including those that may be made in the future, may be adverse to the Company, and the monetary liability and other negative operational or financial impact may be material to the Company's consolidated results of operations, financial position, and cash flows.

17. Employee Benefit Plan

The Company maintains a 401(k) defined-contribution plan for the benefit of its eligible employees. All full-time domestic employees who are at least 18 years of age are eligible to participate in the plan. Eligible employees may elect to contribute up to 100% of their eligible compensation. The Company's matching contributions are made at the discretion of the Company's Board of Directors. In addition, the Company may make a profit-sharing contribution at the sole discretion of the Board of Directors. Total contributions by the Company for each of the years ended December 31, 2022, 2021 and 2020 were $1.6 million, $1.9 million and $1.7 million, respectively. Contributions made by the Company are immediately 100% vested.

18. Related Party Transactions

Loans to Affiliate

On December 17, 2019, the Company loaned $15.0 million to Digital Grid under a term loan agreement with a maturity date of April 30, 2020 and a fixed interest rate of 5.0% (the "$15.0 Million Loan"). The $15.0 Million Loan was subsequently extended to June 30, 2023. The $15.0 Million Loan is included as "Notes receivable" at the Stockholders' Equity section of the Consolidated Balance Sheets as of December 31, 2022 and 2021.

During the years ended December 31, 2022, 2021 and 2020, the Company recorded interest income of $0.8 million, $0.8 million and $0.7 million, respectively, from loans to affiliate in interest income in the consolidated statement of operations. As of December 31, 2022 and 2021, the amount of interest receivable on the $15.0 Million Loan outstanding included as a component of "Notes receivable" at the Stockholders' Equity section in the consolidated balance sheets was $0.2 million and $0.2 million, respectively.

Sales to Related Parties

Due from related parties and net sales to related parties primarily reflect sales of finished goods and services with the exception of loans to affiliate as discussed above. Sales during the years ended December 31, 2022, 2021 and 2020 were immaterial.

As of December 31, 2022 and 2021, amount due to related parties was immaterial.

19. Segment Information

The Company's Chief Executive Officer, who is the chief operating decision maker ("CODM"), reviews financial information presented on a consolidated basis. There are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. The Company considers itself to be operating within one reportable segment.

The following table summarizes net sales from external customers (in thousands):

	December 31,		
	2022	**2021**	**2020**
United States	$ 1,553,389	$ 2,101,975	$ 1,906,058
Canada	138,123	211,778	150,707
Rest of world	28,761	62,472	58,107
Total	$ 1,720,273	$ 2,376,225	$ 2,114,872

The following table summarizes net sales by product category and revenue stream (in thousands):

Net Sales by Product Category	Year Ended December 31, 2022	2021	2020
Components & Storage	$ 1,046,095	$ 1,346,053	$ 1,311,608
Computer System	345,949	644,923	403,203
Office Solutions	96,679	155,526	155,592
Software & Services	58,424	56,402	70,558
Electronics	38,302	52,058	46,881
Others	134,824	121,263	127,030
Total Net Sales	$ 1,720,273	$ 2,376,225	$ 2,114,872

Net Sales by Revenue Stream	Year Ended December 31, 2022	2021	2020
Direct sales revenues(1)	$ 1,607,027	$ 2,243,421	$ 1,974,897
Marketplace revenues(2)	47,005	63,492	57,640
Services revenues(3)	66,241	69,312	82,335
Total Net Sales	$ 1,720,273	$ 2,376,225	$ 2,114,872

(1) Includes all first-party product sales where Newegg owns and sells its own inventories within its websites and third-party marketplace platforms.

(2) Includes all the commission revenues earned from sales made by sellers on its websites.

(3) Includes all revenue recognized from providing services to customers, including third-party logistics services, advertising services, and all other third-party seller services.

The following table summarizes net property, plant and equipment by country (in thousands):

	December 31, 2022	2021
United States	$ 21,637	$ 23,178
Canada	94	9
Rest of world	23,344	26,962
Total	$ 45,075	$ 50,149

20. Subsequent Events

On April 21, 2023 (the "Effective Date"), Newegg Inc. entered into a purchase and sale agreement (the "Agreement") to purchase a commercial office building located in Diamond Bar, California for a purchase price of twenty-three million dollars ($23,000,000). As part of the Agreement, Newegg Inc. will pay an initial deposit of six hundred ninety thousand dollars ($690,000) (the "Initial Deposit") and an additional deposit of fifty thousand dollars ($50,000) (the "Additional Deposit") within three business days of the Effective Date. The purchase is subject to a thirty-day inspection period (the "Inspection Period"), and closing is expected to occur fifteen days after the expiration of the inspection period, subject to certain extension rights. The Initial Deposit is refundable if Newegg Inc. elects to terminate the Agreement prior to the expiration of the Inspection Period. The Additional Deposit is non-refundable, except in the event of certain events of default by Seller.

The Company intends to fund the purchase price through a combination of cash on hand and borrowings under our revolving credit facility.

Item 19. Exhibits

Exhibit Number	Description of Documents
1.1	Amended and Restated Memorandum and Articles of Association (incorporated by reference to the Company's Registration Statement on Form F-1/A, filed December 10, 2021).
1.2	Amended and Restated Newegg Inc. Shareholders Agreement (incorporated by reference to the Company's Registration Statement on Form F-1/A, filed December 10, 2021).
1.3	First Amendment to the Amended and Restated Newegg Inc. Shareholders Agreement (incorporated by reference to the Company's Report on Form 6-K filed on April 28, 2022).
1.4	Second Amendment to the Amended and Restated Newegg Inc. Shareholders Agreement (incorporated by reference to the Company's Report on Form 6-K filed on September 2, 2022).
2.1	Description of Securities (incorporated by reference to the Company's Annual Report on Form 20-F filed on April 28, 2022).
2.2	Form of Indemnification Agreement between the Registrant and its directors and executive officers
4.1	Form of Merger Agreement, by and among LLIT, Lightning Delaware Sub, Inc., and Newegg (incorporated by reference to the Company's Registration Statement on Form F-1, filed October 26, 2020).
4.2	Form of Disposition Agreement, by and between LLIT and Beijing Fenjin Times Technology Development Co., Ltd. (incorporated by reference to the Company's Registration Statement on Form F-1/A, filed December 10, 2021).
4.3	Newegg's 2005 Incentive Plan, as Amended (incorporated by reference to the Company's Registration Statement on Form F-1, filed October 26, 2020).
4.5	Employment Agreement by and between Anthony Chow and Newegg Commerce, Inc. (incorporated by reference to the Company's Registration Statement on Form F-1/A, filed December 10, 2021).
4.6	Form of Employment Agreement by and between Newegg Commerce, Inc. and certain of its executive officers
4.7	Revolving Credit and Security Agreement, by and among East West Bank, the Lender Parties thereto, Newegg and Newegg's subsidiaries (incorporated by reference to the Company's Report on Form 6-K filed August 27, 2021).
4.8	First Amendment to Revolving Credit and Security Agreement, by and among East West Bank, the Lender Parties thereto, Newegg and Newegg's subsidiaries
4.9	Pledge Agreement, by and among East West Bank, Newegg and Newegg's subsidiaries (incorporated by reference to the Company's Report on Form 6-K filed August 27, 2021).
4.10	Pledge and Security Agreement, by and among East West Bank, Newegg Tech, Inc. and ChiefValue.com, Inc. (incorporated by reference to the Company's Report on Form 6-K filed August 27, 2021).
4.11	Guaranty and Suretyship Agreement, by and among East West Bank, Newegg Tech, Inc., ChiefValue, Inc. and NuTrend Automotive, Inc. (incorporated by reference to the Company's Report on Form 6-K filed August 27, 2021).
4.12	Intercompany Subordination Agreement, by and East West Bank, Newegg and Newegg's subsidiaries (incorporated by reference to the Company's Report on Form 6-K filed August 27, 2021).
4.13	Letter Agreement, between East West Bank and Newegg (incorporated by reference to the Company's Registration Statement on Form F-1/A, filed December 10, 2021).
4.14	Newegg Commerce, Inc. 2021 Equity Incentive Plan (incorporated by reference to the Company's Report on Form 6-K, filed November 29, 2021).
4.15	Supplemental Agreement dated April 22, 2022 between Digital Grid, Bank of China Limited Zhejiang Branch, Newegg Inc., Newegg Commerce, Inc., and Hangzhou Lianluo (incorporated by reference to the Company's Annual Report on Form 20-F filed on April 28, 2022).
4.16	Amended and Restated Supplemental Agreement dated December 2022 between Digital Grid, Bank of China Limited Zhejiang Branch, Newegg Inc., Newegg Commerce, Inc., and Hangzhou Lianluo.
4.17	Purchase and Sale Agreement by and between BSP Senita Gateway Center, LLC and Newegg Inc.
8.1	List of Significant Subsidiaries.
12.1	Certification of Chief Executive Officer, pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
12.2	Certification of Chief Financial Officer, pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
13.1	Certification of Chief Executive Officer, pursuant to 18 U.S.C. Section 1350.
13.2	Certification of Chief Financial Officer, pursuant to 18 U.S.C. Section 1350.
15.1	Consent of Independent Registered Public Accounting Firm.
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Schema Document.
101.CAL	Inline XBRL Calculation Linkbase Document.
101.DEF	Inline XBRL Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL document and included in Exhibit 101).

Signature

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

Date: April 27, 2023

NEWEGG COMMERCE, INC.

/s/ Anthony Chow
Anthony Chow
Chief Executive Officer

Exhibit 2.2

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of [•] (the "Effective Date") by and between Newegg Commerce, Inc., a British Virgin Islands company (the "Company"), and [•] (the "Indemnitee").

RECITALS

WHEREAS, the Board of Directors has determined that the inability to attract and retain qualified persons as directors and officers is detrimental to the best interests of the Company's shareholders and that the Company should act to assure such persons that there shall be adequate certainty of protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the Company;

WHEREAS, the Company has adopted provisions in its Amended and Restated Memorandum and Articles of Association (the "M&A") providing for indemnification and advancement of expenses of its directors and officers to the fullest extent authorized by the British Virgin Islands Business Companies Act, 2004 as amended (the "BVI Act"), and the Company wishes to clarify and enhance the rights and obligations of the Company and the Indemnitee with respect to indemnification and advancement of expenses;

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Company and in any other capacity with respect to the Company as the Company may request, and to otherwise promote the desirable end that such persons shall resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Company, with the knowledge that certain costs, judgments, penalties, fines, liabilities, and expenses incurred by them in their defense of such litigation are to be borne by the Company and they shall receive appropriate protection against such risks and liabilities, the Board of Directors of the Company has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Company and its shareholders as a whole; and

WHEREAS, the Company desires to have the Indemnitee continue to serve as a director or officer of the Company and in any other capacity with respect to the Company as the Company may request, as the case may be, free from undue concern for unpredictable, inappropriate, or unreasonable legal risks and personal liabilities by reason of the Indemnitee acting in good faith in the performance of the Indemnitee's duty to the Company; and the Indemnitee desires to continue so to serve the Company, provided, and on the express condition, that he or she is furnished with the protections set forth hereinafter.

AGREEMENT

NOW, THEREFORE, in consideration of the Indemnitee's continued service as a director or officer of the Company, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) A "Change in Control" will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors of the Company (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the shareholders of the Company, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

(b) "Disinterested Director" means a director of the Company who is not or was not a party to the Proceeding in respect of which indemnification is being sought by the Indemnitee.

(c) "Expenses" includes, without limitation, expenses incurred in connection with the defense or settlement of any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, attorneys' fees, witness fees and expenses, fees and expenses of accountants and other advisors, retainers and disbursements and advances thereon, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), and any expenses of establishing a right to indemnification or advancement under Sections 9, 11, 13, and 16 hereof, but shall not include the amount of judgments, fines, ERISA excise taxes, or penalties actually levied against the Indemnitee, or any amounts paid in settlement by or on behalf of the Indemnitee.

(d) "Independent Counsel" means a law firm or a member of a law firm that neither is presently nor in the past five years has been retained to represent (i) the Company or the Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a request for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee's right to indemnification under this Agreement.

(e) "Proceeding" means any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee was or is a party or is threatened to be made a party or is otherwise involved in by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity, whether or not the Indemnitee is serving in such capacity at the time any expense, liability, or loss is incurred for which indemnification or advancement can be provided under this Agreement.

2. Service by the Indemnitee. The Indemnitee shall serve and/or continue to serve as a director or officer of the Company faithfully and to the best of the Indemnitee's ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee's successor is elected and qualified or the Indemnitee is removed as permitted by the BVI Act, the common law of the British Virgin Islands, or the M&A or tenders a resignation in writing.

3. Indemnification and Advancement of Expenses. The Company shall indemnify and hold harmless the Indemnitee, and shall pay to the Indemnitee in advance of the final disposition of any Proceeding all Expenses incurred by the Indemnitee in defending any such Proceeding, to the fullest extent authorized by the BVI Act, the common law of the British Virgin Islands, and the M&A, as the same exists or may hereafter be amended, all on the terms and conditions set forth in this Agreement. Without diminishing the scope of the rights provided by this Section, the rights of the Indemnitee to indemnification and advancement of Expenses provided hereunder shall include but shall not be limited to those rights hereinafter set forth, except that no indemnification or advancement of Expenses shall be paid to the Indemnitee:

(a) to the extent expressly prohibited by applicable law or the M&A;

(b) for and to the extent that payment is actually made to the Indemnitee under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, provision of the M&A, or agreement of the Company or any other company or other enterprise (and the Indemnitee shall reimburse the Company for any amounts paid by the Company and subsequently so recovered by the Indemnitee);

(c) in connection with an action, suit, or proceeding, or part thereof voluntarily initiated by the Indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (i) the Indemnitee, or (ii) the Company in an action, suit, or proceeding initiated by the Indemnitee), except a judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, unless the action, suit, or proceeding, or part thereof, was authorized or ratified by the Board of Directors of the Company or the Board of Directors otherwise determines that indemnification or advancement of Expenses is appropriate; or

(d) with respect to any Proceeding brought by or in the right of the Company against the Indemnitee that is authorized by the Board of Directors of the Company, except as provided in Sections 5, 6, and 7 below.

4. Action or Proceedings Other than an Action by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding (other than an action by or in the right of the Company) by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

5. Indemnity in Proceedings by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding brought by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no such indemnification shall be made in respect of any claim, issue, or matter as to which the BVI Act expressly prohibits such indemnification by reason of any adjudication of liability of the Indemnitee to the Company, unless and only to the extent that the British Virgin Islands Commercial Court or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is entitled to indemnification for such expense, liability, and loss as such court shall deem proper.

6. Indemnification for Costs, Charges, and Expenses of Successful Party. Notwithstanding any limitations of Sections 3(c), 3(d), 4, and 5 above, to the extent that the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of any Proceeding, or in defense of any claim, issue, or matter therein, including, without limitation, the dismissal of any action without prejudice, or if it is ultimately determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is otherwise entitled to be indemnified against Expenses, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

7. Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred in connection with any Proceeding, or in connection with any judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such expense, liability, and loss actually and reasonably incurred to which the Indemnitee is entitled.

8. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the maximum extent permitted by the BVI Act, the common law of the British Virgin Islands, and the M&A, the Indemnitee shall be entitled to indemnification against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf if the Indemnitee appears as a witness or otherwise incurs legal expenses as a result of or related to the Indemnitee's service as a director or officer of the Company, in any threatened, pending, or completed action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee neither is, nor is threatened to be made, a party.

9. Determination of Entitlement to Indemnification. To receive indemnification under this Agreement, the Indemnitee shall submit a written request to the Chief Legal Officer of the Company. Such request shall include documentation or information that is necessary for such determination and is reasonably available to the Indemnitee. Upon receipt by the Chief Legal Officer of the Company of a written request by the Indemnitee for indemnification, the entitlement of the Indemnitee to indemnification, to the extent not required pursuant to the terms of Section 6 or Section 8 of this Agreement, shall be determined by the following person or persons who shall be empowered to make such determination (as selected by the Board of Directors, except with respect to Section 9(e) below): (a) the Board of Directors of the Company by a majority vote of Disinterested Directors, whether or not such majority constitutes a quorum; (b) a committee of Disinterested Directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (c) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee; (d) the shareholders of the Company; or (e) in the event that a Change in Control has occurred, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee. Such Independent Counsel shall be selected by the Board of Directors and approved by the Indemnitee, except that in the event that a Change in Control has occurred, Independent Counsel shall be selected by the Indemnitee. Upon failure of the Board of Directors so to select such Independent Counsel or upon failure of the Indemnitee so to approve (or so to select, in the event a Change in Control has occurred), such Independent Counsel shall be selected upon application to a court of competent jurisdiction. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Company not later than 60 calendar days after receipt by the Chief Legal Officer of the Company of a written request for indemnification. If the person making such determination shall determine that the Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably prorate such partial indemnification among the claims, issues, or matters at issue at the time of the determination.

10. Presumptions and Effect of Certain Proceedings. The Chief Legal Officer of Company shall, promptly upon receipt of the Indemnitee's written request for indemnification, advise in writing the Board of Directors or such other person or persons empowered to make the determination as provided in Section 9 that the Indemnitee has made such request for indemnification. Upon making such request for indemnification, the Indemnitee shall be presumed to be entitled to indemnification hereunder and the Company shall have the burden of proof in making any determination contrary to such presumption. If the person or persons so empowered to make such determination shall have failed to make the requested determination with respect to indemnification within 60 calendar days after receipt by the Chief Legal Officer of the Company of such request, a requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be absolutely entitled to such indemnification, absent actual fraud in the request for indemnification. The termination of any Proceeding described in Sections 4 or 5 by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself (a) create a presumption that the Indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had reasonable cause to believe his or her conduct was unlawful or (b) otherwise adversely affect the rights of the Indemnitee to indemnification except as may be provided herein.

11. Remedies of the Indemnitee in Cases of Determination Not to Indemnify or to Advance Expenses; Right to Bring Suit. In the event that a determination is made that the Indemnitee is not entitled to indemnification hereunder or if payment is not timely made following a determination of entitlement to indemnification pursuant to Sections 9 and 10, or if an advancement of Expenses is not timely made pursuant to Section 16, the Indemnitee may at any time thereafter bring suit against the Company seeking an adjudication of entitlement to such indemnification or advancement of Expenses, and any such suit shall be brought in the British Virgin Islands Commercial Court unless otherwise required by the law of the state in which the Indemnitee primarily resides and works. Alternatively, the Indemnitee at the Indemnitee's option may seek an award in an arbitration to be conducted by a single arbitrator in the British Virgin Islands pursuant to the rules of the American Arbitration Association, such award to be made within 60 calendar days following the filing of the demand for arbitration. The Company shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration. In any suit or arbitration brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit or arbitration brought by the Indemnitee to enforce a right to an advancement of Expenses), it shall be a defense that the Indemnitee has not met any applicable standard of conduct for indemnification set forth in the BVI Act, including the standard described in Section 4 or 5, as applicable. Further, in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such Expenses upon a final judicial decision of a court of competent jurisdiction from which there is no further right to appeal that the Indemnitee has not met the standard of conduct described above. Neither the failure of the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its shareholders) to have made a determination prior to the commencement of such suit or arbitration that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the standard of conduct described above, nor an actual determination by the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its shareholders) that the Indemnitee has not met the standard of conduct described above shall create a presumption that the Indemnitee has not met the standard of conduct described above, or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of Expenses hereunder, or brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 11 or otherwise shall be on the Company. If a determination is made or deemed to have been made pursuant to the terms of Section 9 or 10 that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination and is precluded from asserting that such determination has not been made or that the procedure by which such determination was made is not valid, binding, and enforceable. The Company further agrees to stipulate in any court or before any arbitrator pursuant to this Section 11 that the Company is bound by all the provisions of this Agreement and is precluded from making any assertions to the contrary. If the court or arbitrator shall determine that the Indemnitee is entitled to any indemnification or advancement of Expenses hereunder, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such adjudication or award in arbitration (including, but not limited to, any appellate proceedings) to the fullest extent permitted by the BVI Act, the common law of the British Virgin Islands, and the M&A, and in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such suit to the extent the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of such suit, to the fullest extent permitted by the BVI Act, the common law of the British Virgin Islands, and the M&A.

12. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other right that the Indemnitee may now or hereafter acquire under any applicable law, agreement, vote of shareholders or Disinterested Directors, provisions of a charter or bylaws (including the M&A), or otherwise.

13. Expenses to Enforce Agreement. In the event that the Indemnitee is subject to or intervenes in any action, suit, or proceeding in which the validity or enforceability of this Agreement is at issue or seeks an adjudication or award in arbitration to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement, the Indemnitee, if the Indemnitee prevails in whole or in part in such action, suit, or proceeding, shall be entitled to recover from the Company and shall be indemnified by the Company against any Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

14. Continuation of Indemnity. All agreements and obligations of the Company contained herein shall continue during the period the Indemnitee is a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee is serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, and shall continue thereafter with respect to any possible claims based on the fact that the Indemnitee was a director, officer, employee, agent, or trustee of the Company or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan. This Agreement shall be binding upon all successors and assigns of the Company (including any transferee of all or substantially all of its assets and any successor by merger or operation of law) and shall inure to the benefit of the Indemnitee's heirs, executors, and administrators.

15. Notification and Defense of Proceeding. Promptly after receipt by the Indemnitee of notice of any Proceeding, the Indemnitee shall, if a request for indemnification or an advancement of Expenses in respect thereof is to be made against the Company under this Agreement, notify the Company in writing of the commencement thereof; but the omission so to notify the Company shall not relieve it from any liability that it may have to the Indemnitee. Notwithstanding any other provision of this Agreement, with respect to any such Proceeding of which the Indemnitee notifies the Company:

(a) The Company shall be entitled to participate therein at its own expense;

(b) Except as otherwise provided in this Section 15(b), to the extent that it may wish, the Company, jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel satisfactory to the Indemnitee. After notice from the Company to the Indemnitee of its election so to assume the defense thereof, the Company shall not be liable to the Indemnitee under this Agreement for any expenses of counsel subsequently incurred by the Indemnitee in connection with the defense thereof except as otherwise provided below. The Indemnitee shall have the right to employ the Indemnitee's own counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of the Indemnitee unless (i) the employment of counsel by the Indemnitee has been authorized by the Company, (ii) the Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such Proceeding, or (iii) the Company shall not within 60 calendar days of receipt of notice from the Indemnitee in fact have employed counsel to assume the defense of the Proceeding, in each of which cases the fees and expenses of the Indemnitee's counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or as to which the Indemnitee shall have made the conclusion provided for in (ii) above; and

(c) Notwithstanding any other provision of this Agreement, the Company shall not be liable to indemnify the Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's written consent, or for any judicial or other award, if the Company was not given an opportunity, in accordance with this Section 15, to participate in the defense of such Proceeding. The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on or disclosure obligation with respect to the Indemnitee, or that would directly or indirectly constitute or impose any admission or acknowledgment of fault or culpability with respect to the Indemnitee, without the Indemnitee's written consent. Neither the Company nor the Indemnitee shall unreasonably withhold its consent to any proposed settlement.

16. Advancement of Expenses. All Expenses incurred by the Indemnitee in defending any Proceeding described in Section 4 or 5 shall be paid by the Company in advance of the final disposition of such Proceeding at the request of the Indemnitee. The Indemnitee's right to advancement shall not be subject to the satisfaction of any standard of conduct and advances shall be made without regard to the Indemnitee's ultimate entitlement to indemnification under the provisions of this Agreement or otherwise. To receive an advancement of Expenses under this Agreement, the Indemnitee shall submit a written request to the Chief Legal Officer of the Company. Such request shall reasonably evidence the Expenses incurred by the Indemnitee and shall include or be accompanied by an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is not entitled to be indemnified for such Expenses by the Company as provided by this Agreement or otherwise. The Indemnitee's undertaking to repay any such amounts is not required to be secured. Each such advancement of Expenses shall be made within 20 calendar days after the receipt by the Chief Legal Officer of the Company of such written request. The Indemnitee's entitlement to Expenses under this Agreement shall include those incurred in connection with any action, suit, or proceeding by the Indemnitee seeking an adjudication or award in arbitration pursuant to Section 11 of this Agreement (including the enforcement of this provision) to the extent the court or arbitrator shall determine that the Indemnitee is entitled to an advancement of Expenses hereunder.

17. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by the BVI Act, the common law of the British Virgin Islands, and the M&A (a) the validity, legality, and enforceability of such provision in any other circumstance and of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not by themselves invalid, illegal, or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent of the parties that the Company provide protection to the Indemnitee to the fullest extent set forth in this Agreement.

18. Headings; References; Pronouns. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. References herein to section numbers are to sections of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the singular or plural as appropriate.

19. Other Provisions.

(a) This Agreement and all disputes or controversies arising out of or related to this Agreement shall be governed by, and construed in accordance with, the internal laws of the British Virgin Islands, without regard to the laws of any other jurisdiction that might be applied because of conflicts of laws principles of the British Virgin Islands, unless otherwise required by the law of the state in which the Indemnitee primarily resides and works.

(b) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

(c) This Agreement shall not be deemed an employment contract between the Company and any Indemnitee who is an officer of the Company, and, if the Indemnitee is an officer of the Company, the Indemnitee specifically acknowledges that the Indemnitee may be discharged at any time for any reason, with or without cause, and with or without severance compensation, except as may be otherwise provided in a separate written contract between the Indemnitee and the Company.

(d) In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee (excluding insurance obtained on the Indemnitee's own behalf), and the Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

(e) This Agreement may not be amended, modified, or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, shall preclude any other or further exercise thereof or the exercise of any other right or power.

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IN WITNESS WHEREOF, the Company and the Indemnitee have caused this Agreement to be executed as of the date first written above.

NEWEGG COMMERCE, INC.

By: _____
Name:
Title:

Indemnitee

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (the "**Agreement**") is entered into as of the Effective Date (as defined below) by and between [LEGAL NAME] ("**Executive**"), and Newegg Commerce, Inc., a corporation organized under the laws of the British Virgin Islands (the "**Company**"). The Company and Executive may hereinafter each individually be referred to as a "**Party**" and collectively as the "**Parties,"** as the context may require.

WHEREAS, the Company wishes to employ, and Executive wishes to accept employment with the Company, as the [JOB TITLE] of the Company, pursuant to the terms and conditions set forth in this Agreement, effective as of [HIRE DATE] (the "**Effective Date**").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties as follows:

ARTICLE I
DEFINITIONS

For purposes of the Agreement, the following terms are defined as follows:

1.1. "**Board**" means the Board of Directors of the Company.

1.2. "**Cause**" means a good faith determination by the Board that Executive's employment be terminated, other than due to illness, injury, incapacity or Disability, for only one of the following: (i) willful failure to comply with, breach of or continued refusal to comply with, in each case, in any material respect, the material terms of this Agreement or any written agreement with the Company (including, without limitation, any employment, consulting, confidentiality, non-competition, non-solicitation, non-disparagement or similar agreement or covenant); provided, however, that such willful failure to comply, breach, or continued refusal to comply shall not be deemed Cause if Executive acted in a good faith belief that he was subject to a legal or fiduciary duty warranting such conduct; (ii) material violation of any lawful policies, standards or regulations of the Company which have been furnished to Executive, including policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; (iii) conviction of or plea of no contest to a felony under the laws of the United States or any state; or (iv) willful misconduct or gross negligence in connection with the performance of Executive's duties, in each case, after the receipt of written notice from the Board and Executive's failure to cure (if curable) within thirty (30) days of Executive's receipt of the written notice, providing that the Company must provide Executive with at least thirty (30) days to cure and if Executive cures, Cause shall not exist; provided, further, that provided, however, that any assertion by the Company of a termination of employment for "**Cause**" shall not be effective unless Executive, with his counsel, has been given the opportunity to present to the Board his position on the circumstances alleged to constitute Cause.

1.3. "**Change in Control**" shall mean the occurrence of any one of the following events:

(a) any Person is or becomes the beneficial owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person or any securities acquired directly from the Company) representing 50% or more of the combined voting power of the Company's then outstanding securities;

(b) there is consummated a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the holders of the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation; or

(c) there is consummated a sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which is owned by shareholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale.

1.4. "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

1.5. "**Code**" means the Internal Revenue Code of 1986, as amended.

1.6. "**Covered Termination**" means (i) Executive's dismissal or discharge by the Company, other than for Cause and other than by reason of Executive's death or Disability, or (ii) a voluntary termination for Good Reason. For the avoidance of doubt, neither (x) the termination of Executive's employment as a result of Executive's death or Disability nor (y) the expiration of this Agreement due to non-renewal pursuant to the terms of Section 2.2 of this Agreement will be deemed to be a Covered Termination.

1.7. "**Disability**" means a termination of Executive's employment due to Executive's absence from Executive's duties with the Company on a full-time basis for at least 180 consecutive days as a result of Executive's incapacity due to physical or mental illness which is determined to be total and permanent by a physician selected by the Company or its insurers.

1.8. "**Good Reason**" means any one of the following taken without Executive's prior written consent: (i) failure or refusal by the Company to comply in any material respect with the material terms of this Agreement; (ii) a material diminution in Executive's duties, title, authority, status or responsibilities or Executive ceasing to serve as the highest-level executive employed by the Company in the [JOB FUNCTION] function (including, in connection with a Change in Control or other corporate transaction, Executive being assigned to any position other than, or being assigned any title, office location, authority, duties or responsibilities that are not consistent with, the position of [JOB TITLE] of the corporation or other entity surviving or resulting from such corporate transaction, including, without limitation, Executive's ceasing to be an officer of a publicly traded company or reporting to anyone other than the chief executive officer of such entity); (iii) a reduction in Executive's Base Salary of 5% or more (unless such reduction is part of a reduction that applies to and affects all similarly situated executive officers of the Company substantially the same and proportionately); (iv) a material diminution in Executive's annual cash bonus opportunity, unless such reduction is part of a reduction that applies to and affects all similarly situated executive officers of the Company substantially the same and proportionately; (v) issuance of a notice of non-renewal of this Agreement by the Company or (vi) the Company requiring Executive to be located at any office or location more than 35 miles from the Company's current headquarters in City of Industry, California, provided that any request or directive from the Company to not work in such office pursuant to any stay-at-home or work from home or similar law, order, directive, request or recommendation from a governmental entity shall not give rise to Good Reason under this Agreement. Notwithstanding the foregoing, Executive's resignation shall not constitute a resignation for "**Good Reason**" as a result of any event described in the preceding sentence unless (x) Executive provides written notice thereof to the Company within thirty (30) days after Executive's knowledge of such event, (y) to the extent correctable, the Company fails to remedy such circumstance or event within ten (10) business days following the Company's receipt of such written notice, unless Executive agrees in writing to extend the period for Company to remedy the circumstance or event, and (z) the effective date of Executive's resignation for Good Reason is not later than ninety (90) days after the Executives initial knowledge of the existence of the circumstances constituting Good Reason.

1.9. "**Section 409A**" means Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date.

1.10. "**Separation from Service**" means Executive's termination of employment constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h).

ARTICLE II
EMPLOYMENT BY THE COMPANY

2.1. Position and Duties; Commencement Date. Executive is commencing his employment with the Company on the Effective Date, and from and after such date, and subject to terms and conditions set forth herein, the Company agrees to employ Executive, and Executive agrees to be employed by the Company, pursuant to the terms of this Agreement and continuing for the period of time set forth in Section 2.2. From and after the Effective Date, Executive shall serve in an executive capacity and shall perform such duties as are customarily associated with the position of [JOB TITLE], which shall be the highest-level executive employed by the Company and its subsidiaries in the [JOB FUNCTION] function, and such other duties as are assigned to Executive by the Company's [DIRECT MANAGER]. Executive shall report directly to the Company's [DIRECT MANAGER].

During the term of Executive's employment with the Company, Executive will devote Executive's best efforts and substantially all of Executive's business time and attention (except for vacation periods and absences due to reasonable periods of illness or other incapacities permitted by the Company's general employment policies or as otherwise set forth in this Agreement) to the business of the Company.

2.2. Term. The initial term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (i) the third (3rd) anniversary of the Effective Date and (ii) the termination of Executive's employment under this Agreement. On the third (3rd) anniversary of the Effective Date and each annual anniversary of such date thereafter (in either case, provided Executive's employment has not been terminated under this Agreement prior thereto), this Agreement shall automatically be extended for one additional year unless either Executive or the Company gives written notice of non-renewal to the other at least thirty (30) days prior to the automatic extension date. The period from the Effective Date until the earlier of (i) termination of Executive's employment under this Agreement and (ii) the expiration of the term of this Agreement due to non-renewal pursuant to this Section 2.2 is referred to as the "**Term**."

2.3. Employment at Will. The Company shall have the right to terminate Executive's employment with the Company at any time, with or without Cause, and, in the case of a termination by the Company, with or without prior notice. In addition to Executive's right to resign for Good Reason, Executive shall have the right to resign at any time and for any reason or no reason at all, upon thirty (30) days' advance written notice to the Company; provided, however, that if Executive has provided a resignation notice to the Company, the Company may determine, in its sole discretion, that such termination shall be effective on any date prior to the effective date of termination provided in such notice (and, if such earlier date is so required, then it shall not change the basis for Executive's termination of employment nor be construed or interpreted as a termination of Executive's employment by the Company) and any requirement to continue salary or benefits shall cease as of such earlier date. In the event of a termination by either Executive, with or without Good Reason, or by Company, with or without Cause, Executive shall not be obligated to remunerate Company for any payments received during the Term by Executive from Company pursuant to Article III hereof. Upon certain terminations of Executive's employment with the Company, Executive may become eligible to receive the severance benefits provided in Article IV of this Agreement.

2.4. Deemed Resignations. Except as otherwise determined by the Board or as otherwise agreed to in writing by Executive and the Company or any of its affiliates prior to the termination of Executive's employment with the Company or any of its affiliates, any termination of Executive's employment shall constitute, as applicable, an automatic resignation of Executive: (a) as an officer of the Company and each of its affiliates; (b) from the Board; and (c) from the board of directors or board of managers (or similar governing body) of any affiliate of the Company and from the board of directors or board of managers (or similar governing body) of any corporation, limited liability entity, unlimited liability entity or other entity in which the Company or any of its affiliates holds an equity interest and with respect to which board of directors or board of managers (or similar governing body) Executive serves as such designee or other representative of the Company or any of its affiliates. Executive agrees to take any further actions that the Company or any of its affiliates reasonably requests to effectuate or document the foregoing.

2.5. Employment Policies. The employment relationship between the Parties shall also be governed by the general employment policies and practices of the Company, including those relating to protection of confidential information and assignment of inventions, except that when the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

ARTICLE III
COMPENSATION

3.1. Base Salary. As of the Effective Date, and during the Term, Executive shall receive, for services to be rendered hereunder, an annualized base salary of $[BASE SALARY] ("**Base Salary**"), payable on the regular payroll dates of the Company (but no less often than monthly), subject to increase in the sole discretion of the Board or a committee of the Board.

3.2. Annual Bonus; [CURRENT YEAR] Annual Bonus; Signing Bonus. The Executive [shall/shall not] be entitled to receive an annual bonus (the "**Annual Bonus**") pursuant to the Company's then effective annual bonus plan (the "**Annual Bonus Plan**") for the calendar year [CURRENT YEAR]. Beginning in calendar year [NEXT YEAR], and for each calendar year ending during the Term, Executive shall be eligible to receive an Annual Bonus pursuant to the Company's Annual Bonus Plan. The Chief Executive Officer, in consultation with the Board or a committee of the Board, may in his sole discretion pay to the Executive an amount in excess of the amounts otherwise provided for in the Annual Bonus Plan. The actual amount of the Annual Bonus, if any, will be determined in the discretion of the Chief Executive Officer, in consultation with the Board or a committee of the Board and will be subject to Executive's continued employment with the Company through the date the Annual Bonus is paid (except as otherwise provided in Section 4.1). The Annual Bonus for any calendar year will be paid at the same time as bonuses for other Company executives are paid related annual bonuses generally.

3.3. Standard Company Benefits. During the Term, Executive shall be entitled to all rights and benefits for which Executive is eligible under the terms and conditions of the standard Company benefits and compensation practices that may be in effect from time to time and are provided by the Company to its executive employees generally, as well as any additional benefits provided to Executive consistent with past practice. Notwithstanding the foregoing, this Section 3.3 shall not create or be deemed to create any obligation on the part of the Company to adopt or maintain any benefits or compensation practices at any time.

3.4. Paid Time Off. During the Term, Executive shall be entitled to the greater of (i) 15 days per calendar year of paid time off ("**PTO**"), or (ii) such other amount as provided from time to time under the Company's PTO policies and as otherwise provided for the Company's executive officers, as it may be amended from time to time.

3.5. Equity Awards. Executive will be eligible to receive [# OF SHARES OF RSU] Restricted Stock Units, subject to Executive's acceptance and execution of the Newegg Commerce, Inc. 2021 Equity Incentive Plan (the "**Plan**") and the Restricted Stock Unit Award Agreement (the "**Award Agreement**"). Except as otherwise provided in the Award Agreement, the Restricted Stock Units shall vest as follows: 25% of the Restricted Stock Units shall vest on the first anniversary of the [Hire Date /Grant Date (as that term is defined in the Plan and/or Award Agreement)] and the remaining Restricted Stock Units shall vest in equal monthly installments during the three-year period thereafter, provided that you shall not have experienced a Termination of Employment (as that term is defined in the Plan and/or Award Agreement) from the Grant Date through each such vesting date. Nothing herein shall be construed to give any Executive any rights to any amount or type of grant or award except as provided in an award agreement and authorized by the Board or a committee thereof.

3.6. Business Expenses. The Company shall reimburse Executive for all reasonable business expenses incurred by Executive in performing services hereunder, including all expenses of travel and living expenses while away from home on business or at the request of and in the service of the Company; provided, in each case, that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Company. Any such reimbursement of expenses shall be made by the Company upon or as soon as practicable following receipt of supporting documentation reasonably satisfactory to the Company.

ARTICLE IV
SEVERANCE AND CHANGE IN CONTROL BENEFITS

4.1. Severance Benefits. Upon Executive's termination of employment, Executive shall receive any accrued but unpaid Base Salary and other accrued and unpaid compensation, including any accrued but unpaid vacation. If the termination is due to a Covered Termination, provided that Executive (A) delivers an effective general release of all claims against the Company and its affiliates in a form provided by the Company (a "**Release of Claims**") that becomes effective and irrevocable within thirty (30) days following the Covered Termination and (B) continues to comply with Articles V through VII of this Agreement, Executive shall be entitled to receive the severance benefits described in Section 4.1(a) or (b), as applicable.

(a) Covered Termination Not Related to a Change in Control. If Executive's employment terminates due to a Covered Termination which occurs at any time other than during the period beginning three (3) months prior to a Change in Control and ending twelve (12) months after a Change in Control (the "**CIC Protection Period**"), Executive shall receive the following:

(i) An amount equal to twelve months of Executive's Base Salary at the rate in effect (or required to be in effect before any diminution that is the basis of Executive's termination for Good Reason) at the time of Executive's termination of employment, payable in a lump sum payment, less applicable withholdings, as soon as administratively practicable following the date on which the Release of Claims becomes effective and, in any event, no later than the sixtieth (60^{th}) day following the date of the Covered Termination; provided, however, if such sixty (60) day period falls in two different calendar years, payment will be made in the later calendar year.

(ii) Notwithstanding anything set forth in an award agreement or incentive plan to the contrary, (A) a pro-rata portion of Executive's Annual Bonus for the fiscal year in which Executive's termination occurs (determined by multiplying the amount of the Annual Bonus that would be payable for the full fiscal year by a fraction, the numerator of which shall be equal to the number of days during the fiscal year of termination that Executive is employed by, and performing services for, the Company and the denominator of which is 365 days) and (B) the amount of any Annual Bonus earned, but not yet paid, for the fiscal year prior to Executive's termination, in each case, payable, less applicable withholdings, at the same time bonuses for such year are paid to other senior executives of the Company, but in no event later than March 15 of the year following the year of Executive's termination of employment.

(iii) Subject to Executive's timely election of continuation coverage under COBRA, the Company shall directly pay, or reimburse Executive for the premium for Executive and Executive's covered dependents to maintain continued health coverage pursuant to the provisions of COBRA through the earlier of (A) the 18-month anniversary of the date of Executive's termination of employment and (B) the date Executive and Executive's covered dependents, if any, become eligible for healthcare coverage under another employer's plan(s). Notwithstanding the foregoing, if the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments.

(b) Covered Termination Related to a Change in Control. If Executive's employment terminates due to a Covered Termination that occurs during the CIC Protection Period, Executive shall receive the following:

(i) An amount equal to two times the sum of (i) Executive's Base Salary at the rate in effect (or required to be in effect before any diminution that is the basis of Executive's termination for Good Reason) at the time of Executive's termination of employment and (ii) Executive's Target Bonus in effect for the year in which Executive's termination of employment occurs, payable in a lump sum payment, less applicable withholdings, as soon as administratively practicable following the date on which the Release of Claims becomes effective and, in any event, no later than the thirtieth (30^{th}) day following the date of the Covered Termination; provided, however, if such thirty (30) day period falls in two different calendar years, payment will be made in the later calendar year.

(ii) Notwithstanding anything set forth in an award agreement or incentive plan to the contrary, (A) a pro-rata portion of Executive's Annual Bonus for the fiscal year in which Executive's termination occurs (determined by multiplying the amount of the Annual Bonus that would be payable for the full fiscal year by a fraction, the numerator of which shall be equal to the number of days during the fiscal year of termination that Executive is employed by, and performing services for, the Company and the denominator of which is 365 days) and (B) the amount of any Annual Bonus earned, but not yet paid, for the fiscal year prior to Executive's termination, in each case, payable, less applicable withholdings, at the same time bonuses for such year are paid to other senior executives of the Company, but in no event later than March 15 of the year following the year of Executive's termination of employment.

(iii) Subject to Executive's timely election of continuation coverage under COBRA, the Company shall directly pay, or reimburse Executive for the premium for Executive and Executive's covered dependents to maintain continued health coverage pursuant to the provisions of COBRA through the earlier of (A) the 18-month anniversary of the date of Executive's termination of employment and (B) the date Executive and Executive's covered dependents, if any, become eligible for healthcare coverage under another employer's plan(s). Notwithstanding the foregoing, if the Company is otherwise unable to continue to cover Executive under its group health plans without penalty under applicable law (including without limitation, Section 2716 of the Public Health Service Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments.

(iv) Accelerated vesting, as of the date of the Covered Termination, of all outstanding and unvested equity-based awards, with any performance-based awards deemed earned at the greater of the target level of performance or actual level of performance through the date of the Change in Control.

4.2. 280G Provisions. Notwithstanding anything in this Agreement to the contrary, if any payment, benefit or distribution Executive would receive pursuant to this Agreement or otherwise from the Company or any of its affiliates ("**Payment**") would (a) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (b) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall either be (i) delivered in full, or (ii) delivered as to such lesser extent which would result in no portion of such Payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Executive on an after-tax basis, of the largest payment, notwithstanding that all or some portion of the Payment may be taxable under Section 4999 of the Code. The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. The accounting firm shall provide its calculations to the Company and Executive within fifteen (15) calendar days after the date on which Executive's right to a Payment is triggered (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. Any reasonable determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive. Any reduction in payments and/or benefits pursuant to this Section 4.2 will occur in the following order: (1) reduction of cash payments; (2) cancellation of accelerated vesting of equity awards other than stock options; (3) cancellation of accelerated vesting of stock options; and (4) reduction of other benefits payable to Executive. Nothing in this Section 4.2 shall require the Company or any of its affiliates to be responsible for, or have any liability or obligation with respect to, Executive's excise tax liabilities under Section 4999 of the Code.

4.3. Section 409A. Notwithstanding any provision to the contrary in this Agreement:

(a) All provisions of this Agreement are intended to comply with Section 409A of the Code, and the applicable Treasury regulations and administrative guidance issued thereunder (collectively, "**Section 409A**") or an exemption therefrom and shall be construed and administered in accordance with such intent. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement are exempt from, or compliant with, Section 409A and in no event shall the Company or any of its affiliates be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Executive on account of non-compliance with Section 409A.

(b) If Executive is deemed at the time of Executive's Separation from Service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, to the extent delayed commencement of any portion of the benefits to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code which would subject Executive to a tax obligation under Section 409A, such portion of Executive's benefits shall not be provided to Executive prior to the earlier of (i) the expiration of the six- month period measured from the date of Executive's Separation from Service or (ii) the date of Executive's death. Upon the expiration of the applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Section 4.3(b) shall be paid in a lump sum to Executive, and any remaining payments due under the Agreement shall be paid as otherwise provided herein.

(c) Any reimbursements payable to Executive pursuant to the Agreement shall be paid to Executive no later than 30 days after Executive provides the Company with a written request for reimbursement, and to the extent that any such reimbursements are deemed to constitute "nonqualified deferred compensation" within the meaning of Section 409A (i) such amounts shall be paid or reimbursed to Executive promptly, but in no event later than December 31 of the year following the year in which the expense is incurred, (ii) the amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and (iii) Executive's right to such payments or reimbursement shall not be subject to liquidation or exchange for any other benefit; provided, that the foregoing clause shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period in which the arrangement is in effect.

(d) For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive installment payments under the Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment.

4.4. Mitigation. Executive shall not be required to mitigate damages or the amount of any payment provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Executive as a result of employment by another employer or by any retirement benefits received by Executive after the date of the Covered Termination, or otherwise.

ARTICLE V
PROPRIETARY INFORMATION AND CONFIDENTIALITY OBLIGATIONS

5.1. Proprietary Information. All Company Innovations shall be the sole and exclusive property of the Company without further compensation and are "works made for hire" as that term is defined under the United States copyright laws. Executive shall promptly notify the Company of any Company Innovations that Executive solely or jointly Creates. "**Company Innovations**" means all Innovations, and any associated intellectual property rights, which Executive may solely or jointly Create, during Executive's employment with the Company, which (i) relate, at the time Created, to the Company's business or actual or demonstrably anticipated research or development, or (ii) were developed on any amount of the Company's time or with the use of any of the Company's equipment, supplies, facilities or trade secret information, or (iii) resulted from any work Executive performed for the Company. Executive is notified that Company Innovations does not include any Innovation which qualifies fully under the provisions of California Labor Code Section 2870. "**Create**" means to create, conceive, reduce to practice, derive, develop or make. "**Innovations**" means processes, machines, manufactures, compositions of matter, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws), and other subject matter protectable under patent, copyright, moral rights, mask work, trademark, trade secret or other laws regarding proprietary rights, including new or useful art, combinations, discoveries, formulae, manufacturing techniques, technical developments, discoveries, artwork, software and designs. Executive hereby assigns (and will assign) to the Company all Company Innovations. Executive shall perform (at the Company's expense), during and after Executive's employment, all acts reasonably deemed necessary or desirable by the Company to assist the Company in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Company Innovations. Such acts may include execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of patent, copyright, mask work or other applications, (ii) in the enforcement of any applicable Proprietary Rights, and (iii) in other legal proceedings related to the Company's Innovations. "**Proprietary Rights**" means patents, copyrights, mask work, moral rights, trade secrets and other proprietary rights. No provision in this Agreement is intended to require Executive to assign or offer to assign any of Executive's rights in any invention for which Executive can establish that no trade secret information of the Company was used, and which was developed on Executive's own time, unless the invention relates to the Company's actual or demonstrably anticipated research or development, or the invention results from any work performed by Executive for the Company.

5.2. Confidentiality. In the course of Executive's employment with the Company and the performance of Executive's duties on behalf of the Company and its affiliates hereunder, Executive will be provided with, and will have access to, Confidential Information (as defined below). In consideration of Executive's receipt and access to such Confidential Information, and as a condition of Executive's employment, Executive shall comply with this Section 5.2

(a) Both during the Term and thereafter, except as expressly permitted by this Agreement, Executive shall not disclose any Confidential Information to any person or entity and shall not use any Confidential Information except for the benefit of the Company or its affiliates. Executive shall follow all Company policies and protocols regarding the security of all documents and other materials containing Confidential Information (regardless of the medium on which Confidential Information is stored). Except to the extent required for the performance of Executive's duties on behalf of the Company or any of its affiliates, Executive shall not remove from facilities of the Company or any of its affiliates any information, property, equipment, drawings, notes, reports, manuals, invention records, computer software, customer information, or other data or materials that relate in any way to the Confidential Information, whether paper or electronic and whether produced by Executive or obtained by the Company or any of its affiliates. The covenants of this Section 5.2(a) shall apply to all Confidential Information, whether now known or later to become known to Executive during the period that Executive is employed by the Company.

(b) Notwithstanding any provision of Section 5.2(a) to the contrary, Executive may make the following disclosures and uses of Confidential Information:

> **(i)** disclosures to other employees, officers or directors of the Company or any of its affiliates who, in the reasonable and good faith belief of Executive, have a need to know the information in connection with the businesses of the Company or any of its affiliates;
>
> **(ii)** disclosures to customers, service providers, vendors and suppliers when, in the reasonable and good faith belief of Executive, such disclosure is in connection with Executive's performance of Executive's duties hereunder;
>
> **(iii)** disclosures and uses that are approved in writing by the Company's Chief Executive Officer or the Board; or
>
> **(iv)** disclosures to a person or entity that has (x) been retained by the Company or any of its affiliates to provide services to the Company and/or its affiliates and (y) agreed in writing to abide by the terms of a confidentiality agreement or is otherwise under a duty to treat such information as confidential.

(c) Upon the expiration of the Term, and at any other time upon request of the Company, Executive shall promptly and permanently surrender and deliver to the Company all documents (including electronically stored information) and all copies thereof and all other materials of any nature containing or pertaining to all Confidential Information and any other Company property (including any Company-issued computer, mobile device or other equipment) in Executive's possession, custody or control and Executive shall not retain any such documents or other materials or property of the Company or any of its affiliates. Within ten (10) days of any such request, Executive shall certify to the Company in writing that all such documents, materials and property have been returned to the Company or otherwise destroyed.

(d) "**Confidential Information**" means all confidential, competitively valuable, non-public or proprietary information that is conceived, made, developed or acquired by or disclosed to Executive (whether conveyed orally or in writing), individually or in conjunction with others, during the period that Executive is employed or engaged by the Company or any of its affiliates (whether during business hours or otherwise and whether on the Company's premises or otherwise) including: (i) technical information of the Company, its affiliates, its investors, customers, vendors, suppliers or other third parties, including computer programs, software, databases, data, ideas, know-how, formulae, compositions, processes, discoveries, machines, inventions (whether patentable or not), designs, developmental or experimental work, techniques, improvements, work in process, research or test results, original works of authorship, training programs and procedures, diagrams, charts, business and product development plans, and similar items; (ii) information relating to the Company or any of its affiliates' businesses or properties, products or services (including all such information relating to corporate opportunities, operations, future plans, methods of doing business, business plans, strategies for developing business and market share, research, financial and sales data, pricing terms, evaluations, opinions, interpretations, acquisition prospects, the identity of customers or acquisition targets or their requirements, the identity of key contacts within customers' organizations or within the organization of acquisition prospects, or marketing and merchandising techniques, prospective names and marks) or pursuant to which the Company or any of its affiliates owes a confidentiality obligation; and (iii) other valuable, confidential information and trade secrets of the Company, its affiliates, its customers or other third parties. Moreover, all documents, videotapes, written presentations, brochures, drawings, memoranda, notes, records, files, correspondence, manuals, models, specifications, computer programs, e-mail, voice mail, electronic databases, maps, drawings, architectural renditions, models and all other writings or materials of any type including or embodying any of such information, ideas, concepts, improvements, discoveries, inventions and other similar forms of expression are and shall be the sole and exclusive property of the Company or its other applicable affiliates and be subject to the same restrictions on disclosure applicable to all Confidential Information pursuant to this Agreement. For purposes of this Agreement, Confidential Information shall not include any information that (A) is or becomes generally available to the public other than as a result of a disclosure or wrongful act of Executive or any of Executive's agents; (B) was available to Executive on a non-confidential basis before its disclosure by the Company or any of its affiliates; (C) becomes available to Executive on a non-confidential basis from a source other than the Company or any of its affiliates; provided, however, that such source is not bound by a confidentiality agreement with, or other obligation with respect to confidentiality to, the Company or any of its affiliates; or (D) is required to be disclosed by applicable law.

(e) Notwithstanding the foregoing, nothing in this Agreement shall prohibit or restrict Executive from lawfully: (i) initiating communications directly with, cooperating with, providing information to, causing information to be provided to, or otherwise assisting in an investigation by, any governmental authority regarding a possible violation of any law; (ii) responding to any inquiry or legal process directed to Executive from any such governmental authority; (iii) testifying, participating or otherwise assisting in any action or proceeding by any such governmental authority relating to a possible violation of law; or (iv) making any other disclosures required by law or legal process that are protected under the whistleblower provisions of any applicable law. Additionally, pursuant to the federal Defend Trade Secrets Act of 2016, an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (A) is made (1) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (2) solely for the purpose of reporting or investigating a suspected violation of law; (B) is made to the individual's attorney in relation to a lawsuit for retaliation against the individual for reporting a suspected violation of law; or (C) is made in a complaint or other document filed in a lawsuit or proceeding, if such filing is made under seal. Nothing in this Agreement requires Executive to obtain prior authorization before engaging in any conduct described in this paragraph, or to notify the Company that Executive has engaged in any such conduct.

5.3. Nondisparagement. Subject to Section 5.2(e) above, Executive agrees that from and after the Effective Date, Executive will not, directly or indirectly, make, publish, or communicate any disparaging or defamatory comments regarding the Company or any of its directors or executive officers. The Company agrees that it will counsel its executive officers and directors to not make, publish, or communicate any disparaging or defamatory comments regarding Executive. The foregoing shall not be violated by truthful statements in response to legal process, required governmental testimony or filings or administrative or arbitral proceedings (including, without limitation, depositions in connection with such proceedings), and the foregoing limitation on the Company's senior executives and directors shall not be violated by statements that they in good faith believe are necessary or appropriate to make in connection with performing their duties and obligations to the Company or any of its affiliates.

5.4. Remedies. Executive's and the Company's duties under this Article V shall survive termination of Executive's employment with the Company and the termination of this Agreement. Because of the difficulty of measuring economic losses to the Company and its affiliates as a result of a breach or threatened breach of the covenants set forth in this Article V, Section 6.2 and Article VII, and because of the immediate and irreparable damage that would be caused to the Company and its affiliates for which they would have no other adequate remedy, Executive acknowledges that a remedy at law for any breach or threatened breach by Executive of Article V, as well as Executive's obligations pursuant to Section 6.2 and Article VII below, would be inadequate, and Executive therefore agrees that the Company shall be entitled to seek injunctive relief in case of any such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall not be the Company's or any of its affiliates' exclusive remedy for a breach but instead shall be in addition to all other rights and remedies available to the Company and each of its affiliates at law and equity.

5.5. Modification. The covenants in this Article V, Section 6.2 and Article VII, and each provision and portion hereof, are severable and separate, and the unenforceability of any specific covenant (or portion thereof) shall not affect the provisions of any other covenant (or portion thereof). If it is determined by an arbitrator or a court of competent jurisdiction in any state that any restriction in this Article V, Section 6.2 and Article VII is excessive in duration or scope or is unreasonable or unenforceable under the laws of that state, it is the intention of the Parties that such restriction may be modified or amended by the arbitrator or the court to render it enforceable to the maximum extent permitted by the law of that state.

ARTICLE VI
OUTSIDE ACTIVITIES

6.1. Other Activities.

(a) Except as otherwise provided in Section 6.1(b), Executive shall not, during the term of this Agreement undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor, unless Executive obtains the prior written consent of the Board.

(b) Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's duties hereunder. In addition, subject to advance approval by the Board, Executive shall be allowed to serve as a member of the board of directors of one or more for-profit entities at any time during the term of this Agreement, so long as such service does not materially interfere with the performance of Executive's duties hereunder; provided, however, that the Board, in its discretion, may require that Executive resign from such director position if it determines that such resignation would be in the best interests of the Company.

6.2. Competition/Investments. During the term of Executive's employment by the Company, Executive shall not (except on behalf of the Company) directly or indirectly, whether as an officer, director, stockholder, partner, proprietor, associate, representative, consultant, or in any capacity whatsoever engage in, become financially interested in, be employed by or have any business connection with any other person, corporation, firm, partnership or other entity whatsoever which are known by Executive to compete directly with the Company or any of its affiliates, throughout the world, in any line of business engaged in (or known by Executive to be planned to be engaged in) by the Company; provided, however, that anything above to the contrary notwithstanding, Executive may own, as a passive investor, securities of any competitor corporation, so long as Executive's direct holdings in any one such corporation do not, in the aggregate, constitute more than 1% of the voting stock of such corporation.

6.3. Defense of Claims; Cooperation. During the Term and thereafter, upon reasonable request from the Company, Executive shall use commercially reasonable efforts to cooperate with the Company and its affiliates in the defense of any claims or actions that may be made by or against the Company or any of its affiliates that relate to Executive's actual or prior areas of responsibility or knowledge, at the Company sole cost and expense. Executive shall further use commercially reasonable efforts to provide reasonable and timely cooperation in connection with any actual or threatened claim, action, inquiry, review, investigation, process, or other matter (whether conducted by or before any court, arbitrator, regulatory, or governmental entity, or by or on behalf of the Company or any of its affiliates), that relates to Executive's actual or prior areas of responsibility or knowledge, at the Company sole cost and expense. Executive shall be reimbursed for any expenses associated with his compliance with this Section 6.3.

ARTICLE VII
NONINTERFERENCE

Executive shall not, during the term of Executive's employment by the Company and, solely with respect to clause (ii) below, for twelve (12) months thereafter, either on Executive's own account or jointly with or as a manager, agent, officer, employee, consultant, partner, joint venturer, owner or stockholder or otherwise on behalf of any other person, firm or corporation, directly or indirectly solicit, induce attempt to solicit any of (i) its customers or clients to terminate their relationship with the Company or to cease purchasing services or products from the Company or (ii) its officers or employees or offer employment to any person who is an officer or employee of the Company; *provided, however*, that a general advertisement to which an employee of the Company responds shall in no event be deemed to result in a breach of this Article VII. If it is determined by a court of competent jurisdiction in any state that any restriction in this Article VII is excessive in duration or scope or is unreasonable or unenforceable under the laws of that state, it is the intention of the Parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by the law of that state.

ARTICLE VIII
GENERAL PROVISIONS

8.1. Notices. Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by facsimile or electronic mail) or the tenth day after mailing by first class mail, to the Company at its primary office location and to Executive at Executive's address as listed on the Company's books and records.

8.2. Tax Withholding. Executive acknowledges that all amounts and benefits payable under this Agreement are subject to deduction and withholding to the extent required by applicable law.

8.3. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

8.4. Waiver. Any waiver of this Agreement must be executed by the Party to be bound by such waiver. If either Party should waive any breach of any provisions of this Agreement, they shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement or any similar or dissimilar provision or condition at the same or any subsequent time. The failure of either Party hereto to take any action by reason of any breach will not deprive such Party of the right to take action at any time.

8.5. Complete Agreement; Amendments. This Agreement constitutes the entire agreement between Executive and the Company and is the complete, final, and exclusive embodiment of their agreement with regard to this subject matter, and will supersede all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the Parties with respect to the subject matter hereof. This Agreement will also supersede all prior offer letters and employment agreements between Executive and Newegg Commerce, Magnell Assoicate, Inc., or Newegg Delaware, as the case may be, which were dated prior to the Effective Date of this Agreement. This Agreement is entered into without reliance on any promise or representation other than those expressly contained herein or therein, and cannot be modified or amended except in a writing signed by a duly-authorized officer of the Company (other than Executive) and Executive.

8.6. Counterparts. This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one Party, but all of which taken together will constitute one and the same Agreement.

8.7. Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

8.8. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign Executive's rights or delegate Executive's duties or obligations hereunder without the prior written consent of the Company.

8.9. Effect of Termination. The provisions of Sections 2.3 and 2.4, and Articles IV, V, VII and VIII and those provisions necessary to interpret and enforce them, shall survive any termination of this Agreement and any termination of the employment relationship between Executive and the Company.

8.10. Third-Party Beneficiaries. Each affiliate of the Company that is not a signatory to this Agreement shall be a third-party beneficiary of Executive's obligations under Sections 2.4 and 8.13 and Articles V, VI and VII and shall be entitled to enforce such obligations as if a party hereto.

8.11. Executive Acknowledgement. Executive acknowledges and agrees that (a) Executive was represented by, or had adequate opportunity to be represented by, counsel in connection with the negotiation of this Agreement, and (b) Executive has read and understands the Agreement, is fully aware of its legal effect, and has entered into it freely based on Executive's own judgment.

8.12. Choice of Law. All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California without regard to the conflicts of law provisions thereof. With respect to any claim or dispute related to or arising under this Agreement, the Parties hereby consent to the arbitration provisions of Section 8.13 and recognize and agree that should any resort to a court be necessary and permitted under this Agreement, then they consent to the exclusive jurisdiction, forum and venue of the state and federal courts (as applicable) located in the State of California.

8.13. Arbitration.

(a) Subject to Section 8.13(b), any dispute, controversy or claim between Executive and the Company or any of its affiliates arising out of or relating to this Agreement or Executive's employment or engagement with the Company or any of its affiliates ("**Disputes**") will be finally settled by confidential arbitration in the State of California in accordance with the then-existing American Arbitration Association ("**AAA**") Employment Arbitration Rules. The arbitration award shall be final and binding on both Parties. Any arbitration conducted under this Section 8.13 shall be private, shall be heard by a single arbitrator mutually agreeable between the Parties (the "**Arbitrator**") selected in accordance with the then-applicable rules of the AAA and shall be conducted in accordance with the Federal Arbitration Act. The Arbitrator shall expeditiously hear and decide all matters concerning the Dispute. Except as expressly provided to the contrary in this Agreement, the Arbitrator shall have the power to (i) gather such materials, information, testimony and evidence as the Arbitrator deems relevant to the Dispute before him or her (and each party will provide such materials, information, testimony and evidence requested by the Arbitrator), and (ii) grant injunctive relief and enforce specific performance. All Disputes shall be arbitrated on an individual basis, and each Party hereby foregoes and waives any right to arbitrate any Dispute as a class action or collective action or on a consolidated basis or in a representative capacity on behalf of other persons or entities who are claimed to be similarly situated, or to participate as a class member in such a proceeding. The decision of the Arbitrator shall be reasoned, rendered in writing, be final and binding upon the disputing parties and the Parties agree that judgment upon the award may be entered by any court of competent jurisdiction. The Company will cover the costs of arbitration, including, but not limited to, any fee charged by the arbitrator; provided, however, that Executive shall cover his own legal expenses.

(b) Notwithstanding Section 8.13(a), either Party may make a timely application for, and obtain, judicial emergency or temporary injunctive relief to enforce any of the provisions of Articles V through VII; provided, however, that the remainder of any such Dispute (beyond the application for emergency or temporary injunctive relief) shall be subject to arbitration under this Section 8.13.

(c) By entering into this Agreement and entering into the arbitration provisions of this Section 8.14, THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVING THEIR RIGHTS TO A JURY TRIAL.

(d) Nothing in this Section 8.13 shall prohibit a Party from (i) instituting litigation to enforce any arbitration award, or (ii) joining the other Party in a litigation initiated by a person or entity that is not a party to this Agreement. Further, nothing in this Section 8.13 precludes Executive from filing a charge or complaint with a federal, state or other governmental administrative agency.

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

Accepted and Agreed:

[NAME OF EXECUTIVE]

Newegg Commerce, Inc.

By:
[NAME OF CEO]
Title: Chief Executive Officer

FIRST AMENDMENT TO REVOLVING CREDIT AND SECURITY AGREEMENT

THIS FIRST AMENDMENT TO REVOLVING CREDIT AND SECURITY AGREEMENT (this "Amendment"), dated as of April 13, 2023, is entered into by and among Newegg Commerce, Inc., a business company incorporated with limited liability under the laws of the British Virgin Islands, Newegg Inc., a Delaware corporation, Newegg North America Inc., a Delaware corporation, Newegg.Com Americas Inc., a Delaware corporation, Newegg Canada Inc., an Ontario corporation, Magnell Associate, Inc., a California corporation, Rosewill Inc., a Delaware corporation, Newegg Business Inc., a Delaware corporation, Ozzo Inc., a Delaware corporation, Newegg Staffing Inc., a Delaware corporation, INOPC, Inc., an Indiana corporation, CAOPC, Inc., a California corporation, NJOPC, Inc., a New Jersey corporation, Newegg Logistics Services Inc., a Delaware corporation, Nutrend Automotive Inc., a Delaware corporation, Newegg Texas, Inc., a Texas corporation, and Newegg Facility Solutions Inc., a Delaware corporation jointly and severally, as "Borrowers," the financial institutions identified on the signature pages hereto (collectively, "Lenders"), and East West Bank, as Agent, with reference to the following facts:

RECITALS

A. Borrowers, Lenders and Agent are parties to a Revolving Credit and Security Agreement dated as of August 20, 2021 (the "Credit Agreement"), pursuant to which the Lenders provide certain credit facilities to Borrowers.

B. The parties wish to amend the Credit Agreement as set forth on Exhibit A attached hereto.

C. Amendments to the Credit Agreement are shown on Exhibit A as follows: in the case of additions to text, in double-underscored format (indicated textually in the same manner as the following example: double-underscored format and double-underscored format); and, in the case of deletions from text, in strike-through format (indicated textually in the same manner as the following example: ~~strike-through format~~ and ~~strike-through format~~).

NOW, THEREFORE, the parties hereby agree as follows:

1. **Defined Terms.** Any and all initially capitalized terms used in this Amendment without definition shall have the respective meanings assigned thereto in the Credit Agreement.

2. **Amendment of Credit Agreement**. The parties hereby agree to amend the Credit Agreement as set forth on Exhibit A hereto.

3. **Existing LIBOR Rate Loans**. Notwithstanding anything to the contrary contained in the Credit Agreement as amended by this Amendment, all LIBOR Rate Loans that are outstanding as of the effective date of this Amendment (collectively, the "Existing LIBOR Rate Loans") shall remain LIBOR Rate Loans (without giving effect to the changes made by this Amendment) until the next applicable re-pricing date for such Existing LIBOR Rate Loans. At the next applicable re-pricing date for each Existing LIBOR Rate Loan, such Existing LIBOR Rate Loan shall convert to a Term SOFR Rate Loan in the amount of such Existing LIBOR Rate Loan with an Interest Period of one (1) month or three (3) months as the Borrower may elect in a notice provided by Borrowers to Agent at least two (2) U.S. Government Securities Business Days prior to such re-pricing date, unless Borrowers in such notice indicate their election to repay such Existing LIBOR Rate Loan on the re-pricing date in accordance with the terms of the Credit Agreement; provided, however, if any Default or Event of Default exists on the applicable re-pricing date for any Existing LIBOR Rate Loan, then such Existing LIBOR Rate Loan automatically shall convert to an Alternate Base Rate Loan on such re-pricing date.

4. **Condition Precedent.** This Amendment shall be effective upon Agent's receipt of this Amendment, duly executed by Borrowers, the Lenders, and Agent, and acknowledged by Guarantors.

5. **Reaffirmation and Ratification.** Borrowers hereby reaffirm, ratify and confirm their respective Obligations under the Credit Agreement and acknowledge that all of the terms and conditions of the Credit Agreement, as amended hereby, remain in full force and effect.

6. **Representations and Warranties**. Borrowers hereby confirm that all of the representations and warranties contained in Article V of the Credit Agreement or in any Other Document continue to be true and correct in all material respects after giving effect to this Amendment, except (i) for representations and warranties that are qualified by the inclusion of a materiality standard, which representations and warranties shall be true and correct in all respects, and (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and (iii) certain updates to the Schedules attached to the Credit Agreement.

7. **Events of Default.** Borrowers hereby represent and warrant that, to the best of their knowledge, no Default nor any Event of Default has occurred and is continuing under the Credit Agreement.

8. **Integration.** This Amendment constitutes the entire agreement of the parties in connection with the subject matter hereof and cannot be changed or terminated orally. All prior agreements, understandings, representations, warranties and negotiations regarding the subject matter hereof, if any, are merged into this Amendment.

9. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment.

10. **Governing Law.** This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws (as opposed to the conflicts of law principles) of the State of New York.

[Rest of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their respective duly authorized officers as of the date first above written.

BORROWERS:

NEWEGG COMMERCE, INC.,
a British Virgin Islands business company
incorporated with limited liability

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG NORTH AMERICA INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG.COM AMERICAS INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

BORROWERS CONTINUED:

NEWEGG CANADA INC.,
an Ontario corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

MAGNELL ASSOCIATE, INC.,
a California corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

ROSEWILL INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG BUSINESS INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

OZZO INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

BORROWERS CONTINUED:

NEWEGG STAFFING INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

INOPC, INC.,
an Indiana corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

CAOPC, INC.,
a California corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NJOPC, INC.,
a New Jersey corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

BORROWERS CONTINUED:

NEWEGG LOGISTICS SERVICES INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NUTREND AUTOMOTIVE INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG TEXAS, INC.,
a Texas corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

NEWEGG FACILITY SOLUTIONS INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

EAST WEST BANK,
as Agent

By: /s/ Kandy Hung
Kandy Hung
Director of Syndications

EAST WEST BANK,
as a Lender

By: /s/ Linda Lee
Linda Lee
Senior Vice President

CATHAY BANK,
as a Lender

By: /s/ Jane Ho
Name: Jane Ho
Title: SVP & Manager

PREFERRED BANK,
as a Lender

By: /s/ Christina Ching
Name: Christina Ching
Title: SVP

ACKNOWLEDGMENT OF GUARANTORS

The undersigned (collectively, "Guarantors") hereby acknowledge and agree to the attached First Amendment to Revolving Credit and Security Agreement, including Exhibit A thereto (the "Amendment"), acknowledge and reaffirm their obligations owing to Agent and the Lenders under the Guaranty and Suretyship Agreement dated as of August 21, 2021 executed by Guarantor in favor or Agent and the Lenders (the "Guaranty"), and agree that the Guaranty is and shall remain in full force and effect with respect to the Obligations under the Credit Agreement referred to in the Amendment (the "Credit Agreement"), notwithstanding the Amendment. Although Guarantors have been informed of the matters set forth herein and have acknowledged and agreed to the same, Guarantors understand that neither Agent nor any Lender has any obligation to inform Guarantors of such matters in the future nor any obligation to seek Guarantors' acknowledgement or agreement to future amendments, consents or waivers with respect to the Credit Agreement, and nothing herein shall create such a duty. All capitalized terms used in this Acknowledgment of Guarantor without definition shall have the respective meanings set forth for such terms in the Credit Agreement.

Dated: As of April 13, 2023

NEWEGG TECH, INC.,
a Delaware corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

CHIEFVALUE.COM, INC.,
a New Jersey corporation

By: /s/ Robert Chang
Name: Robert Chang
Title: CFO

EXHIBIT A
TO
FIRST AMENDMENT TO REVOLVING CREDIT AND SECURITY AGREEMENT

REVOLVING CREDIT AND SECURITY AGREEMENT

by and among

EAST WEST BANK,
as Agent, Sole Arranger and Book Runner,

THE LENDERS PARTY HERETO
as the Lenders,

and

NEWEGG COMMERCE, INC.,
NEWEGG INC.,
NEWEGG NORTH AMERICA INC.,
NEWEGG.COM AMERICAS INC.,
NEWEGG CANADA INC.,
MAGNELL ASSOCIATE, INC.,
ROSEWILL INC.,
NEWEGG BUSINESS INC.,
OZZO INC.,
NEWEGG STAFFING INC.,
INOPC, INC.,
CAOPC, INC.,
NJOPC, INC.,
NEWEGG LOGISTICS SERVICES INC.,
NUTREND AUTOMOTIVE INC.,
NEWEGG TEXAS, INC.
and
NEWEGG FACILITY SOLUTIONS INC.,
as Borrowers

August 20, 2021

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LIST OF EXHIBITS AND SCHEDULES

Exhibits

Schedules

REVOLVING CREDIT AND SECURITY AGREEMENT

Revolving Credit and Security Agreement dated as of August 20, 2021 among NEWEGG COMMERCE, INC., a business company incorporated with limited liability under the laws of the British Virgin Islands ("Newegg Commerce"), NEWEGG INC., a Delaware corporation ("Newegg"), NEWEGG NORTH AMERICA INC., a Delaware corporation ("Newegg NorAm"), NEWEGG.COM AMERICAS INC., a Delaware corporation ("Newegg Americas"), NEWEGG CANADA INC., an Ontario corporation ("Newegg Canada"), MAGNELL ASSOCIATE, INC., a California corporation ("Magnell"), ROSEWILL INC., a Delaware corporation ("Rosewill"), NEWEGG BUSINESS INC., a Delaware corporation ("Newegg Biz"), OZZO INC., a Delaware corporation ("Ozzo"), NEWEGG STAFFING INC., a Delaware corporation ("Newegg Staffing"), INOPC, INC., an Indiana corporation ("INOPC"), CAOPC, INC., a California corporation ("CAOPC"), NJOPC, INC., a New Jersey corporation ("NJOPC"), NEWEGG LOGISTICS SERVICES INC., a Delaware corporation ("Newegg Logistics"), NUTREND AUTOMOTIVE INC., a Delaware corporation ("Nutrend"), NEWEGG TEXAS, INC., a Texas corporation ("Newegg Texas"), and NEWEGG FACILITY SOLUTIONS INC., a Delaware corporation ("Newegg Facility") (Newegg Commerce, Newegg, Newegg NorAm, Newegg Americas, Newegg Canada, Magnell, Rosewill, Newegg Biz, Ozzo, Newegg Staffing, INOPC, CAOPC, NJOPC, Newegg Logistics, Nutrend, Newegg Texas, Newegg Facility and each Person joined hereto as a borrower from time to time, jointly and severally, collectively, "Borrowers," and each, a "Borrower"), the financial institutions which are now or which hereafter become a party hereto (collectively, the "Lenders" and each individually a "Lender"), EAST WEST BANK, a California banking corporation ("East West"), as administrative agent and collateral agent for the Lenders (East West, in such agency capacities, "Agent"), and as Sole Arranger, Book Runner and Syndication Agent.

IN CONSIDERATION of the mutual covenants and undertakings herein contained, Borrowers, the Lenders, and Agent hereby agree as follows:

I. DEFINITIONS.

1.1 Accounting Terms. As used in this Agreement, the Other Documents or any certificate, report or other document made or delivered pursuant to this Agreement, accounting terms not defined in Section 1.2 or elsewhere in this Agreement and accounting terms partly defined in Section 1.2 to the extent not defined shall have the respective meanings given to them under GAAP; provided, however, that whenever such accounting terms are used for the purposes of determining compliance with financial covenants in this Agreement, such accounting terms shall be defined in accordance with GAAP as applied in preparation of the audited financial statements of Borrowers for the fiscal year ended December 31, 2020. If there occurs after the Closing Date any change in GAAP that affects in any respect the calculation of any covenant contained in this Agreement or the definition of any term defined under GAAP used in such calculations, Agent, the Lenders and Borrowers shall negotiate in good faith to amend the provisions of this Agreement that relate to the calculation of such covenants with the intent of having the respective positions of Agent, the Lenders and Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the Closing Date, provided, that, until any such amendments have been agreed upon, the covenants in this Agreement shall be calculated as if no such change in GAAP had occurred and Borrowers shall provide additional financial statements or supplements thereto, attachments to Compliance Certificates and/or calculations regarding financial covenants as Agent may reasonably require in order to provide the appropriate financial information required hereunder with respect to Borrowers both reflecting any applicable changes in GAAP and as necessary to demonstrate compliance with the financial covenants before giving effect to the applicable changes in GAAP.

1.2 General Terms. For the purposes of this Agreement the following terms shall have the following respective meanings:

"Accountants" shall have the meaning set forth in Section 9.7 hereof.

"Adjusted EBITDA" shall mean for any period with respect to Borrowers on a Consolidated Basis, the sum of (a) net income (or loss) for such period (excluding extraordinary gains and losses), plus (b) all interest expense for such period, plus (c) all charges against income for such period for federal, state, provincial, territorial and local taxes, plus (d) depreciation expenses for such period, plus (e) amortization expenses for such period, plus (f) employee stock expenses, plus (g) non-recurring costs (including financing costs, one-time restructuring and legal fees, and other similar costs, fees or expenses satisfactory to Agent in its sole discretion) in an aggregate amount for such period not to exceed $3,000,000, plus (h) non-cash items approved by Agent in its sole discretion.

"Advance Rates" shall have the meaning set forth in Section 2.1(a)(y)(ii) hereof.

"Advances" shall mean and include the Revolving Advances, the Letters of Credit, and the Swing Loans.

"Affected Lender" shall have the meaning set forth in Section 3.12 hereof.

"Affiliate" of any Person shall mean (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director, manager, member, managing member, general partner or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above; provided, however, notwithstanding the foregoing, no Chang Entity shall be deemed to be an Affiliate of any of the Loan Parties. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote 15% or more of the Equity Interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for any such Person, or (y) to direct or cause the direction of the management and policies of such Person whether by ownership of Equity Interests, contract or otherwise.

"Agent" shall have the meaning set forth in the preamble to this Agreement and shall include its successors and assigns.

"Aggregate Unrestricted Cash" at a particular date, shall mean, the aggregate amount of Borrowers' unrestricted cash deposited in one or more deposit accounts with one or more of the Lenders and if such Lender is not East West, then, as applicable: (a) if such unrestricted cash is in a deposit account maintained with a Lender in the United States, the deposit account shall be covered by a deposit account control agreement among the applicable Borrower that is the account party of the deposit account, Agent, and such Lender; or (b) if such unrestricted cash is in a deposit account maintained with a Lender in Canada, the deposit account shall be covered by a blocked account agreement and Agent shall have a perfected first-priority security interest in the deposit account and such unrestricted cash under the PPSA.

"Agreement" shall mean this Revolving Credit and Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the highest of (a) the Base Rate in effect on such day, (b) the sum of the Overnight Bank Funding Rate in effect on such day plus one half of one percent (0.5%), and (c) the sum of the Daily LIBOR Rate in effect on such day plus one percent (1.0%), so long as a Daily LIBOR Rate is offered, ascertainable and not unlawful; provided, however, if the Alternate Base Rate determined as provided above would be less than three and one-quarter percent (3.25%) per annum, then such rate shall be deemed to be three and one-quarter percent (3.25%) for the purposes of this Agreement. Any change in the Alternate Base Rate (or any component thereof) shall take effect at the opening of business on the day such change occurs.

"Alternate Base Rate Loan" shall mean any Advance that bears interest based on the Alternate Base Rate.

"Alternate Source" shall have the meaning set forth in the definition of Overnight Bank Funding Rate.

"Anti-Terrorism Laws" shall mean any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, all as amended, supplemented or replaced from time to time, and for certainty, in the case of any Canadian Loan Parties, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), the Special Economic Measures Act (Canada), the United Nations Act (Canada), the Freezing Assets of Corrupt Foreign Officials Act (Canada), the Criminal Code (Canada), and the Export and Import Permits Act (Canada), and any regulations made thereunder.

"Applicable Law" shall mean all Laws applicable to the Person, conduct, transaction, covenant, Other Document or contract in question, all provisions of all applicable state, provincial, territorial, federal and foreign constitutions, statutes, rules, regulations, treaties, directives and orders of any Governmental Body, and all orders, judgments and decrees of all courts and arbitrators.

"Applicable Margin" shall mean as of the Closing Date and through and including the date immediately prior to the first Adjustment Date (as defined below), the applicable percentage specified below:

Applicable Margin for ~~LIBOR~~Term SOFR Rate Loans	Applicable Margin for Domestic Rate Loans
2.25%	0.50%

Effective as of the last day of each fiscal quarter ending after the Closing Date (each such day, an "Adjustment Date"), the Applicable Margin for each type of Advance shall be adjusted, if necessary, to the applicable percent per annum set forth in the pricing table below corresponding to the average daily Excess Availability for the fiscal quarter (or portion thereof, in the case of the initial such measurement) ending as of the applicable Adjustment Date:

Pricing Level	Average Daily Excess Availability for fiscal quarter ending as of Adjustment Date	Applicable Margin for ~~LIBOR~~Term SOFR Rate Loans	Applicable Margin for Domestic Rate Loans
1	≥ 50% of Loan Cap	200 basis points	25 basis points
2	< 50% of Loan Cap	225 basis points	50 basis points

If Borrowers fails to deliver to the Agents the Borrowing Base Certificate for the last month of any fiscal quarter by the deadline required therefor pursuant to Section 9.2, each Applicable Margin shall be conclusively presumed to equal the highest Applicable Margin specified in the pricing table set forth above until the date of delivery of such Borrowing Base Certificate, at which time the rate will be adjusted based upon the calculation of Excess Availability as provided above. Notwithstanding anything to the contrary contained herein, immediately and automatically upon the occurrence of any Event of Default, each Applicable Margin shall increase to and equal the highest Applicable Margin specified in the pricing table set forth above and shall continue at such highest Applicable Margin until the date (if any) on which such Event of Default shall be waived in accordance with the provisions of this Agreement, at which time the rate will be adjusted based upon the calculation of Excess Availability as provided above. Any increase in interest rates and/or other fees payable by Borrowers under this Agreement and the Other Documents pursuant to the provisions of the foregoing sentence shall be in addition to and independent of any increase in such interest rates and/or other fees resulting from the occurrence of any Event of Default and/or the effectiveness of the Default Rate provisions of Section 3.1 hereof or the default fee rate provisions of Section 3.2 hereof.

"Application Date" shall have the meaning set forth in Section 2.8(b) hereof.

"Approvals" shall have the meaning set forth in Section 5.7(b) hereof.

"Approved Electronic Communication" shall mean each notice, demand, communication, information, document and other material transmitted, posted or otherwise made or communicated by e-mail, E-Fax, the StuckyNet System©, or any other equivalent electronic service agreed to by Agent, whether owned, operated or hosted by Agent, any Lender, any of their Affiliates or any other Person, that any party is obligated to, or otherwise chooses to, provide to Agent pursuant to this Agreement or any Other Document, including any financial statement, financial and other report, notice, request, certificate and other information material; provided that Approved Electronic Communications shall not include any notice, demand, communication, information, document or other material that Agent specifically instructs a Person to deliver in physical form.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable (x) if such Benchmark is a term rate or is based on a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or a component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor of such Benchmark that is then-removed from the definition of "Interest Period" pursuant to paragraph (d) of Section 3.11.

"~~Bail-In Action~~Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Base Rate" shall mean the rate of interest published each Business Day in *The Wall Street Journal*, "Money Rates" Section as the "Prime Rate" (currently defined as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks), as in effect from time to time. The Base Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Base Rate.

"Benchmark" means, initially, the Term SOFR Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.11.

"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by Agent for the applicable Benchmark Replacement Date:

(1) the sum of (A) Daily Simple SOFR and (B) the SOFR Adjustment; or

(2) the sum of: (a) the alternate benchmark rate that has been selected by Agent and Borrower, giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (y) any evolving or then-prevailing market convention, for determining a benchmark rate as a replacement to the then-current benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (B) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined pursuant to clause (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents; provided further that any Benchmark Replacement shall be administratively feasible as determined by Agent in its sole discretion.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event, the first date on which all Available Tenors of such Benchmark (or the published component used in the calculation thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Other Document in accordance with Section 3.11 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Other Document in accordance with Section 3.11.

"Beneficial Owner" shall mean each of the following: (a) each individual, if any, who, directly or indirectly, owns 25% or more of any Borrower's equity interests: and (b) a single individual with significant responsibility to control, manage, or direct any Borrower.

"Benefited Lender" shall have the meaning set forth in Section 2.6(e) hereof.

"Borrower" or "Borrowers" shall have the meaning set forth in the preamble to this Agreement and shall extend to all permitted successors and assigns of such Persons.

"Borrowers on a Consolidated Basis" shall mean the consolidation in accordance with GAAP of the accounts or other items of Borrowers and their respective Subsidiaries.

"Borrowers' Account" shall have the meaning set forth in Section 2.10 hereof.

"Borrowing Agent" shall mean Newegg.

"Borrowing Base" shall have the meaning set forth in Section 2.1(a) hereof.

"Borrowing Base Certificate" shall mean a certificate in substantially the form of Exhibit 1.2 hereto duly executed by the President, Chief Financial Officer, Controller (if any), Vice President of Finance or Director of Accounting of Borrowing Agent and delivered to Agent, appropriately completed, by which such officer shall certify to Agent the Borrowing Base and the calculation thereof as of the date of such certificate.

"Business Day" shall mean any day other than Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Los Angeles, California and, if the applicable Business Day relates to any LIBOR Rate Loans, such day must also be a day on which dealings are carried on in the London interbank market.

"Canadian Bankruptcy Laws" means the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) and the debt and/or securities reorganization provisions of the Canada Business Corporations Act, the Business Corporations Act (Ontario) or other any provincial legislation.

"Canadian Loan Parties" shall mean Newegg Canada and any other Affiliates or Subsidiaries of any Covered Entity who may hereafter be formed pursuant the laws of Canada or any province or territory thereof.

"Canadian Multi-Employer Pension Plan" shall have the meaning assigned to the term "multi-employer pension plan" in the *Pension Benefits Act* (Ontario).

"Canadian Plan" shall mean any pension or other employee benefit plan subject to Canadian law (for certainty including any federal, provincial, or territorial law, but excluding any provincial medical, drug or other program to which any of the Canadian Loan Parties is obliged to directly or indirectly contribute but which is administered by a Governmental Body) and which is: (a) a plan maintained or administered by any one or more of the Canadian Loan Parties; (b) a plan to which any of the Canadian Loan Parties contributes or is required to contribute; or (c) any other plan with respect to which any of the Canadian Loan Parties has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Body.

"Canadian Securities Laws" shall mean the securities legislation and regulations of, and the instruments, policies, rules, orders, codes, notices and interpretation notes of the securities regulatory authority of securities regulatory authorities of, each relevant province or territory, and the rules, policies, rulings and regulations of the Toronto Stock Exchange and TSX Venture Exchange.

"CAOPC" shall have the meaning set forth in the preamble to this Agreement.

"Capital Expenditures" shall mean expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements (or of any replacements or substitutions thereof or additions thereto) which have a useful life of more than one year and which, in accordance with GAAP, would be classified as capital expenditures. Capital Expenditures shall include the total principal portion of Capitalized Lease Obligations.

"Capitalized Lease Obligation" shall mean any Indebtedness of any Borrower or any Subsidiary of any Borrower represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP other than an operating lease that is required to be capitalized for financial reporting purposes in accordance with GAAP pursuant to Accounting Standards Codification Topic 842 issued by the Financial Accounting Standards Board.

"Cash Dominion Event" shall mean that Excess Availability at any time is less than 10% of the Loan Cap at such time. The occurrence of a Cash Dominion Event shall be deemed continuing until Excess Availability has exceeded 10% of the Loan Cap for ninety (90) consecutive days; provided, that a Cash Dominion Event may not be cured on more than two (2) occasions during the Term of this Agreement.

"Cash Management Liabilities" shall have the meaning provided in the definition of "Cash Management Products and Services."

"Cash Management Products and Services" shall mean agreements or other arrangements under which any Lender or any Affiliate of any Agent or Lender provides any of the following products or services to any Borrower or any Subsidiary of any Borrower: (a) credit cards; (b) credit card processing services; (c) debit cards and stored value cards; (d) commercial cards; (e) ACH transactions; and (f) cash management and treasury management services and products, including without limitation controlled disbursement accounts or services, lockboxes, automated clearinghouse transactions, overdrafts, interstate depository network services. The indebtedness, obligations and liabilities of any Borrower or any Subsidiary of any Borrower to the provider of any Cash Management Products and Services (including all obligations and liabilities owing to such provider in respect of any returned items deposited with such provider) (the "Cash Management Liabilities") shall be "Obligations" hereunder, guaranteed obligations under the Guaranty and secured obligations under any Guarantor Security Agreement, as applicable, and otherwise treated as Obligations for purposes of each of the Other Documents. The Liens securing the Cash Management Products and Services shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5.

"CEA" shall mean the Commodity Exchange Act (7 U.S.C. §1 et seq.), as amended from time to time, and any successor statute.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq.

"Certificate of Beneficial Ownership" shall mean a certificate in form and substance acceptable to the Agents (as amended or modified by the Agents from time to time in their sole discretion), certifying, among other things, the Beneficial Owner of each Borrower.

"CFTC" shall mean the Commodity Futures Trading Commission.

"Chang Entity" shall mean any entity controlled, directly or indirectly, by Fred Chang that is not a Parent or Subsidiary of any Loan Party.

"Change in Law" shall mean the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Applicable Law; (b) any change in any Applicable Law or in the administration, implementation, interpretation or application thereof by any Governmental Body; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Body; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of Applicable Law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Change of Control" shall mean any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act of 1934 shall become, or obtain rights (whether by means or warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 25% of the Equity Interests of Newegg, other than any shareholder of Newegg who holds more than the above limit as of the Closing Date.

"Charges" shall mean all taxes, charges, fees, imposts, levies, duties or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other authority, domestic or foreign (including the Pension Benefit Guaranty Corporation or any environmental agency or superfund), upon the Collateral, any Borrower or any of its Affiliates.

"ChiefValue" means ChiefValue.com, Inc., a New Jersey corporation.

"CIP Regulations" shall have the meaning set forth in Section 14.12 hereof.

"Closing Date" shall mean August 20, 2021 or such other date as may be agreed to in writing by the parties hereto.

"Code" shall mean the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

"Collateral" shall mean and include all right, title and interest of each Borrower in all of the following personal property and assets of such Borrower, in each case whether now existing or hereafter arising or created and whether now owned or hereafter acquired and wherever located:

(a) all Receivables and all supporting obligations relating thereto;

(b) all equipment and fixtures;

(c) all general intangibles (including all payment intangibles) and all supporting obligations related thereto, excluding any Intellectual Property but including any and all proceeds of Intellectual Property;

(d) all Inventory;

(e) all Subsidiary Stock, securities, investment property, and financial assets;

(f) all contract rights, rights of payment which have been earned under a contract rights, chattel paper (including electronic chattel paper and tangible chattel paper), commercial tort claims (whether now existing or hereafter arising); documents (including all warehouse receipts and bills of lading), deposit accounts, goods, instruments (including promissory notes), letters of credit (whether or not the respective letter of credit is evidenced by a writing) and letter-of-credit rights, cash, certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), security agreements, eminent domain proceeds, condemnation proceeds, tort claim proceeds and all supporting obligations;

(g) all ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computers, tapes, disks and documents, including all of such property relating to the property described in clauses (a) through (h) of this definition; and

(h) all proceeds and products of the property described in clauses (a) through (g) of this definition, in whatever form. It is the intention of the parties that if Agent shall fail to have a perfected Lien in any particular property or assets of any Borrower for any reason whatsoever, but the provisions of this Agreement and/or of the Other Documents, together with all financing statements and other public filings relating to Liens filed or recorded by Agent against such Borrower, would be sufficient to create a perfected Lien in any property or assets that such Borrower may receive upon the sale, lease, license, exchange, transfer or disposition of such particular property or assets, then all such "proceeds" of such particular property or assets shall be included in the Collateral as original collateral that is the subject of a direct and original grant of a security interest as provided for herein and in the Other Documents (and not merely as proceeds (as defined in Article 9 of the Uniform Commercial Code) in which a security interest is created or arises solely pursuant to Section 9-315 of the Uniform Commercial Code).

Notwithstanding the foregoing, Collateral shall not include any of the following Property:

(i) Inventory consigned to any Borrower by any Person other than another Borrower or a Guarantor;

(ii) assets held by any Borrower for the benefit of others, such as prepayments for goods or services not yet rendered to customers;

(iii) any asset of a Borrower that is subject to a purchase-money security interest relating to the financing of such asset;

(iv) only in the case of any Canadian Loan Parties, "consumer goods" (as that term is defined in the PPSA);

(v) any Excluded Property; and

(vi) only in the case of any Canadian Loan Parties, the last day of the term of any lease or agreement therefor but upon the enforcement of the security interest granted hereby in the Collateral, the applicable Borrower shall stand possessed of such last day in trust to assign the same to any person acquiring such term.

"Commitment Transfer Supplement" shall mean a document in the form of Exhibit 16.3 hereto, properly completed and otherwise in form and substance satisfactory to Agent by which the Purchasing Lender purchases and assumes a portion of the obligation of a Lender to make Advances under this Agreement.

"Compliance Authority" shall mean each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) the U.S. Internal Revenue Service, (f) the U.S. Justice Department, and (g) the U.S. Securities and Exchange Commission.

"Compliance Certificate" shall mean a compliance certificate substantially in the form of Exhibit 1.2(a) hereto to be signed by the Chief Financial Officer or Controller of Borrowing Agent.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the Other Documents).

"Consents" shall mean all filings and all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and other third parties, domestic or foreign, necessary to carry on any Borrower's business or necessary (including to avoid a conflict or breach under any agreement, instrument, other document, license, permit or other authorization) for the execution, delivery or performance of this Agreement, the Other Documents, including any Consents required under all applicable federal, state, provincial, territorial or other Applicable Law.

"Consigned Inventory" shall mean Inventory of any Borrower that is in the possession of another Person on a consignment, sale or return, or other basis that does not constitute a final sale and acceptance of such Inventory.

"Control Account" shall have the meaning set forth in Section 4.8(h) hereof.

"Controlled Group" shall mean, at any time, each Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Borrower, are treated as a single employer under Section 414 of the Code.

"Covered Entity" shall mean each Borrower, each Borrower's Affiliates and Subsidiaries, all Guarantors, pledgors of Collateral, all owners of the foregoing, and all brokers or other agents of any Borrower acting in any capacity in connection with the Obligations.

"Customer" shall mean and include the account debtor with respect to any Receivable and/or the prospective purchaser of goods, services or both with respect to any contract or contract right, and/or any party who enters into or proposes to enter into any contract or other arrangement with any Borrower, pursuant to which such Borrower is to deliver any personal property or perform any services.

"Customs" shall have the meaning set forth in Section 2.13(b) hereof.

~~"Daily LIBOR Rate" shall mean, for any day, the rate per annum determined by Agent by dividing (x) the Published Rate by (y) a number equal to 1.00 minus the Reserve Percentage.~~

"Daily Simple SOFR" means, the Daily Secured Overnight Financing Rate for any day (i) if such day is a U.S. Government Securities Business Day, published on such day or (ii) if such day is not a U.S. Government Securities Business Day, published on the U.S. Government Securities Business Day immediately preceding such day, in each case, as published by the Federal Reserve Bank of New York (or successor administrator) and displayed by Bloomberg LP (or any successor thereto, or replacement thereof, as approved by Agent) and as determined by Agent.

"Debt Payments" shall mean for any period, in each case, all cash actually expended by any Borrower to make: (a) interest payments on any Advances hereunder, plus (b) payments for all fees, commissions and charges set forth herein, plus (c) payments on Capitalized Lease Obligations, plus (d) payments with respect to any other Indebtedness for borrowed money.

"Default" shall mean an event, circumstance or condition which, with the giving of notice or passage of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning set forth in Section 3.1 hereof.

"Defaulting Lender" shall mean any Lender that: (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Revolving Commitment Percentage of Advances, (ii) if applicable, fund any portion of its Participation Commitment in Letters of Credit or Swing Loans or (iii) pay over to Agent, Issuer, Swing Loan Lender or any Lender any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding or payment (specifically identified and including a particular Default or Event of Default, if any) has not been satisfied; (b) has notified Borrowers or Agent in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including a particular Default or Event of Default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within two (2) Business Days after request by Agent, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Advances and, if applicable, participations in then outstanding Letters of Credit and Swing Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Agent's receipt of such certification in form and substance satisfactory to the Agent; (d) has become the subject of an Insolvency Event; (e) has become the subject of a Bail-In Action; or (f) has failed at any time to comply with the provisions of Section 2.6(e) with respect to purchasing participations from the other Lenders, whereby such Lender's share of any payment received, whether by setoff or otherwise, is in excess of its pro rata share of such payments due and payable to all of the Lenders.

"Defined Benefit provision" shall have the same meaning assigned to that term as defined in subsection 147.1(1) of the *Income Tax Act* (Canada)).

"Designated Lender" shall have the meaning set forth in Section 16.2(d) hereof.

"Determination Date" means, with respect to a Term SOFR Rate Loan, the day such Term SOFR Rate Loan is made, the last day of the Interest Period of a Term SOFR Rate Loan, or the effective date of an election of the Term SOFR Rate Loan made under Section 2.2(b) hereof, as applicable; provided that if any Determination Date is not a U.S. Government Securities Business Day, the rate applicable on such Determination Date shall be the rate for the next succeeding U.S. Government Securities Business Day unless the result of such extension would be to carry such Determination Date into another calendar month in which event such Determination Date shall be the immediately preceding U.S. Government Securities Business Day.

"Document" shall have the meaning given to the term "document" in the Uniform Commercial Code or "document of title" under the PPSA.

"Dollar" and the sign "$" shall mean lawful money of the United States of America.

"Domestic Rate Loan" shall mean any Advance that bears interest based upon the Alternate Base Rate.

"Domestic Subsidiary" shall mean any Subsidiary that is not a Foreign Subsidiary.

"Drawing Date" shall have the meaning set forth in Section 2.14(b) hereof.

"East West" shall have the meaning set forth in the preamble to this Agreement and shall extend to all of its successors and assigns.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date indicated in a document or agreement to be the date on which such document or agreement becomes effective, or, if there is no such indication, the date of execution of such document or agreement.

"Eligible Cash" shall be equal to the Borrowers' lowest daily Aggregate Unrestricted Cash amount during the immediately preceding week, which calculation shall be determined by Agent and based on Borrowers' weekly cash balance report delivered pursuant to Section 9.2.

"Eligible Contract Participant" shall mean an "eligible contract participant" as defined in the CEA and regulations thereunder.

"Eligibility Date" shall mean, with respect to each Borrower and Guarantor and each Swap, the date on which this Agreement or any Other Document becomes effective with respect to such Swap (for the avoidance of doubt, the Eligibility Date shall be the Effective Date of such Swap if this Agreement or any Other Document is then in effect with respect to such Borrower or Guarantor, and otherwise it shall be the Effective Date of this Agreement and/or such Other Document(s) to which such Borrower or Guarantor is a party).

"Eligible Insured Foreign Receivable or Receivables" shall mean Receivables that meet the requirements of Eligible Receivables, except clause (f) of such definition, provided that such Receivable is credit insured (the insurance carrier, amount and terms of such insurance shall be reasonably acceptable to Agent and shall name Agent as beneficiary or lenders loss payee, as applicable).

"Eligible Inventory" shall mean and include Inventory of a Borrower, valued at the lower of cost or market value, determined on a first-in-first-out basis, which is not, in Agent's Permitted Discretion, obsolete, defective, slow moving (i.e., held for sale for over 90 days) or unmerchantable and which Agent, in its Permitted Discretion, shall not deem ineligible Inventory, based on such considerations as Agent may from time to time deem appropriate including whether the Inventory is subject to a perfected, first priority security interest in favor of Agent and no other Lien (other than a Permitted Encumbrance). In addition, Inventory shall not be Eligible Inventory if it: (a) does not conform to all material standards imposed by any Governmental Body which has regulatory authority over such goods or the use or sale thereof; (b) is Foreign In-Transit Inventory or in-transit within the United States or Canada; (c) is located outside the continental United States (other than at a location in Canada but excluding any location in the Province of Quebec) or at a location that is not otherwise in compliance with this Agreement; (d) constitutes Consigned Inventory; (e) is the subject of an Intellectual Property Claim; (f) is subject to a purchase-money security interest; (g) consists of packaging materials or displays; (h) is a specialized or custom–made product for which no broad market exists; (i) is subject to a License Agreement that limits, conditions or restricts the applicable Borrower's or Agent's right to sell or otherwise dispose of such Inventory, unless Agent is a party to a Licensor/Agent Agreement with the Licensor under such License Agreement (or Agent shall agree otherwise in its sole discretion after establishing reserves against the Borrowing Base with respect thereto as Agent shall deem appropriate in its sole discretion); (j) is situated at a location not owned by a Borrower unless the owner or occupier of such location has executed in favor of Agent a Lien Waiver Agreement (or Agent shall agree otherwise in its sole discretion after establishing reserves against the Borrowing Base with respect thereto as Agent shall deem appropriate in its sole discretion); or (k) if the sale of such Inventory would knowingly result in an ineligible Receivable.

"Eligible Receivables" shall mean and include, each Receivable of a Borrower (including: (a) any so-called "vendor incentive" Receivable of such Borrower that constitutes an Eligible Receivable, subject to (i) any dollar limitation on total Revolving Advances against such receivables or any reduction of the Receivables Advance Rate for such receivables, in either case that Agent in its Permitted Discretion may elect to impose; or (b) any "B2B" Receivable of such Borrower that constitutes an Eligible Receivable) arising in the Ordinary Course of Business and which Agent, in its Permitted Discretion, shall deem to be an Eligible Receivable, based on such considerations as Agent may from time to time deem appropriate. A Receivable shall not be deemed eligible unless such Receivable is subject to Agent's first priority perfected security interest and no other Lien (other than Permitted Encumbrances), and is evidenced by an invoice or other documentary evidence satisfactory to Agent in its Permitted Discretion. In addition, no Receivable shall be an Eligible Receivable, except, where applicable, to the extent such Receivable is covered by credit insurance acceptable to Agent in its Permitted Discretion, if:

(a) it arises out of a sale made by any Borrower to an Affiliate of any Borrower or to a Person controlled by an Affiliate of any Borrower;

(b) if a "vendor incentive" Receivable, it is due or unpaid more than ninety (90) days after the original invoice date or if a "B2B" Receivable it is due or unpaid more than sixty (60) days after the original due date;

(c) fifty percent (50%) or more of the Receivables from such Customer are not deemed Eligible Receivables hereunder;

(d) any covenant, representation or warranty contained in this Agreement with respect to such Receivable has been breached;

(e) an Insolvency Event shall have occurred with respect to such Customer;

(f) the sale is to a Customer outside the continental United States of America (or in the case of any sale by any Canadian Loan Party, to a Customer outside Canada or outside the United States of America), unless the sale is on letter of credit, guaranty or acceptance terms, in each case acceptable to Agent in its sole discretion or such Receivable constitutes an Eligible Insured Foreign Receivable;

(g) the sale to the Customer is on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(h) Agent believes, in its Permitted Discretion, that collection of such Receivable is insecure or that such Receivable may not be paid by reason of the Customer's financial inability to pay;

(i) the Customer is the United States of America or any state thereof, or Canada or any province or territory thereof, or any department, agency or instrumentality of any of them, unless the applicable Borrower assigns its right to payment of such Receivable to Agent pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. Sub-Section 3727 et seq. and 41 U.S.C. Sub-Section 15 et seq.) or the Financial Administration Act (Canada) or has otherwise complied with other applicable statutes or ordinances;

(j) the goods giving rise to such Receivable have not been delivered to and accepted by the Customer or the services giving rise to such Receivable have not been performed by the applicable Borrower and accepted by the Customer or the Receivable otherwise does not represent a final sale;

(k) the Receivables of the Customer exceed twenty-five percent (25%) of all Eligible Receivables of such Borrower, to the extent such Receivable exceeds such limit;

(l) the Receivable is subject to any offset, deduction, defense, dispute, credits or counterclaim, except for potential warranty claims (but such Receivable shall only be ineligible to the extent of such offset, deduction, defense or counterclaim), the Customer is also a creditor or supplier of a Borrower or the Receivable is contingent in any respect or for any reason;

(m) the applicable Borrower has made any agreement with any Customer for any deduction therefrom, except for discounts or allowances made in the Ordinary Course of Business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto, to the extent of such deduction;

(n) any return, rejection or repossession of the merchandise has occurred or the rendition of services has been disputed;

(o) such Receivable is not payable to a Borrower; or

(p) such Receivable is not otherwise satisfactory to Agent as determined in good faith by Agent in the exercise of its discretion in a reasonable manner.

"Environmental Complaint" shall have the meaning set forth in Section 9.3(b) hereof.

"Environmental Laws" shall mean all federal, state, provincial, territorial and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes as well as common laws, relating to the protection of the environment, human health and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state, provincial, territorial, international and local governmental agencies and authorities with respect thereto.

"Equity Interests" shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, membership interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, shares, preferred stock, convertible notes or securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (for the purposes of this definition only, the "issuer") or under the applicable laws of such issuer's jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be: (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a "partner," general or limited, or "member" (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time and the rules and regulations promulgated thereunder.

"Erroneous Payment" shall have the meaning given to such term in Section 14.15(a) hereof.

"Erroneous Payment Notice" shall have the meaning given to such term in Section 14.15(b) hereof.

"Event of Default" shall have the meaning set forth in Article X hereof.

"Excess Availability" at a particular date shall mean an amount equal to (a) the Loan Cap minus (b) the sum of (i) the aggregate outstanding amount of Revolving Advances and Swing Loans and (ii) the Maximum Undrawn Amount of all outstanding Letters of Credit.

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

"Excluded Hedge Liability or Liabilities" shall mean, with respect to each Borrower and Guarantor, each of its Swap Obligations if, and only to the extent that, all or any portion of this Agreement or any Other Document that relates to such Swap Obligation is or becomes illegal under the CEA, or any rule, regulation or order of the CFTC, solely by virtue of such Borrower's and/or Guarantor's failure to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap. Notwithstanding anything to the contrary contained in the foregoing or in any other provision of this Agreement or any Other Document, the foregoing is subject to the following provisos: (a) if a Swap Obligation arises under a master agreement governing more than one Swap, this definition shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guaranty or security interest is or becomes illegal under the CEA, or any rule, regulations or order of the CFTC, solely as a result of the failure by such Borrower or Guarantor for any reason to qualify as an Eligible Contract Participant on the Eligibility Date for such Swap; (b) if a guarantee of a Swap Obligation would cause such obligation to be an Excluded Hedge Liability but the grant of a security interest would not cause such obligation to be an Excluded Hedge Liability, such Swap Obligation shall constitute an Excluded Hedge Liability for purposes of the guaranty but not for purposes of the grant of the security interest; and (c) if there is more than one Borrower or Guarantor executing this Agreement or the Other Documents and a Swap Obligation would be an Excluded Hedge Liability with respect to one or more of such Persons, but not all of them, the definition of Excluded Hedge Liability or Liabilities with respect to each such Person shall only be deemed applicable to (i) the particular Swap Obligations that constitute Excluded Hedge Liabilities with respect to such Person, and (ii) the particular Person with respect to which such Swap Obligations constitute Excluded Hedge Liabilities.

"Excluded Property" shall mean any non-material lease, license, contract or agreement to which any Borrower is a party, and any of its rights or interests thereunder, if and to the extent that a security interest therein is prohibited by or in violation of (x) any Applicable Law, or (y) a term, provision or condition of any such lease, license, contract or agreement (unless in each case, such Applicable Law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in (x) or (y) above, provided, further that Excluded Property shall not include any proceeds of any such lease, license, contract or agreement or any goodwill of Borrowers' business associated therewith or attributable thereto.

"Excluded Taxes" shall mean, with respect to any Agent, any Lender, Participant, Swing Loan Lender Issuer or any other recipient of any payment to be made by or on account of any Obligations, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office or applicable lending office is located or, in the case of any Lender, Participant, Swing Loan Lender or Issuer, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Borrower is located, (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.10(e), except to the extent that such Foreign Lender or Participant (or its assignor or seller of a participation, if any) was entitled, at the time of designation of a new lending office (or assignment or sale of a participation), to receive additional amounts from Borrowers with respect to such withholding tax pursuant to Section 3.10(a), (d) any Taxes imposed on any "withholding payment" payable to such recipient as a result of the failure of such recipient to satisfy the requirements set forth in the FATCA after December 31, 2017, (e) any Canadian withholding Taxes imposed on a payment by or on account of any obligation of a Borrower hereunder by reason of (i) the Foreign Lender not dealing at arm's length (for purposes of the Income Tax Act (Canada) with the Borrower at the time of making such payment, or (ii) the payment being in respect of a debt or other obligation to pay an amount to a person with whom the payer is not dealing at arm's length (for purposes of the Income Tax Act (Canada) at the time of such payment, (f) any Taxes imposed on a Foreign Lender by reason of such Foreign Lender (i) being a "specified shareholder" (as defined in subsection 18(5) of the Income Tax Act (Canada)) of a Borrower, or (ii) not dealing at arm's length (for purposes of the Income Tax Act (Canada)) with a "specified shareholder" (as defined in subsection 18(5) of the Income Tax Act (Canada)) of the Borrower, and (g) any withholding on account of Taxes on net income that the Borrower determines is required under Regulation 105 under the Income Tax Act (Canada) or the Quebec equivalent from fees paid by the Borrower to a non-resident of Canada with respect to services rendered in Canada in connection with the Loan.

"Facility Fee" shall have the meaning set forth in Section 3.3(b) hereof.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations thereunder or official interpretations thereof.

"Federal Funds Effective Rate" shall mean for any day the rate per annum (based on a year of 360 days and actual days elapsed and rounded upward to the nearest 1/100 of 1%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Fee Letter" shall mean the fee letter dated the Closing Date between Borrowers and East West.

"Fixed Charge Coverage Ratio" shall mean, with respect to any fiscal period, the ratio of (a) Adjusted EBITDA for such period, plus the average daily Unrestricted Cash in excess of $50,000,000 for such period, minus Unfunded Capital Expenditures made during such period, minus distributions and dividends made in cash during such period, minus cash taxes paid during such period, to (b) all Debt Payments made during such period.

"Flood Laws" shall mean all Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and other Applicable Laws related thereto.

"Floor" shall mean, with respect to a Benchmark Replacement, 0.25% per annum.

"Foreign Currency Hedge" shall mean any foreign exchange transaction, including spot and forward foreign currency purchases and sales, listed or over-the-counter options on foreign currencies, non-deliverable forwards and options, foreign currency swap agreements, currency exchange rate price hedging arrangements, and any other similar transaction providing for the purchase of one currency in exchange for the sale of another currency entered into by any Borrower or Guarantor or by any Subsidiary of any Borrower or Guarantor.

"Foreign Currency Hedge Liabilities" shall have the meaning assigned in the definition of Lender-Provided Foreign Currency Hedge.

"Foreign In-Transit Inventory" shall mean Inventory of a Borrower that is in transit from either (i) a location outside the United States to any location within the United States of such Borrower or a Customer of such Borrower or (ii) a location outside Canada to any location within Canada of such Borrower or a Customer of such Borrower.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which Borrowers are resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean any Subsidiary of any Person that is not organized or incorporated in the United States, any State or territory thereof or the District of Columbia.

"Foreign Subsidiary Holding Company" is a Person whose sole activity is to own the Equity Interests of one or more Foreign Subsidiaries.

"GAAP" shall mean generally accepted accounting principles in the United States of America in effect from time to time.

"Governmental Acts" shall mean any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Governmental Body.

"Governmental Body" shall mean any nation or government, any state, province, territory or other political subdivision thereof or any entity, authority, agency, division or department exercising the executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to a government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

"Guarantor" shall mean ChiefValue, Newegg Tech, or any Person who may hereafter guarantee payment or performance of the whole or any part of the Obligations, and "Guarantors" means collectively all such Persons.

"Guarantor Security Agreement" shall mean any security agreement executed by any Guarantor in favor of Agent for its benefit and for the ratable benefit of the Lenders securing the Obligations or the Guaranty of such Guarantor, in form and substance satisfactory to Agent.

"Guaranty" shall mean any guaranty of the Obligations executed by a Guarantor in favor of Agent for its benefit and for the ratable benefit of Lenders, in form and substance satisfactory to Agent.

"Hazardous Discharge" shall have the meaning set forth in Section 9.3(b) hereof.

"Hazardous Materials" shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in or subject to regulation under Environmental Laws.

"Hazardous Wastes" shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state, provincial or territorial law, and any other applicable Federal and state, provincial or territorial laws now in force or hereafter enacted relating to hazardous waste disposal.

"Hedge Liabilities" shall mean, collectively, the Foreign Currency Hedge Liabilities and the Interest Rate Hedge Liabilities.

"Increasing Lender" shall have the meaning set forth in Section 2.24(a) hereof.

"Indebtedness" shall mean, as to any Person at any time, any and all indebtedness, obligations or liabilities (whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, or joint or several) of such Person for or in respect of: (a) borrowed money; (b) amounts received under or liabilities in respect of any note purchase or acceptance credit facility, and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all Capitalized Lease Obligations; (d) reimbursement obligations (contingent or otherwise) under any letter of credit agreement, banker's acceptance agreement or similar arrangement; (e) obligations under any Interest Rate Hedge, Foreign Currency Hedge, or other interest rate management device, foreign currency exchange agreement, currency swap agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement; (f) any other advances of credit made to or on behalf of such Person or other transaction (including forward sale or purchase agreements, capitalized leases and conditional sales agreements) having the commercial effect of a borrowing of money entered into by such Person to finance its operations or capital requirements including to finance the purchase price of property or services and all obligations of such Person to pay the deferred purchase price of property or services (but not including trade payables and accrued expenses incurred in the Ordinary Course of Business which are not represented by a promissory note or other evidence of indebtedness); (g) all Equity Interests of such Person subject to repurchase or redemption rights or obligations (excluding repurchases or redemptions at the sole option of such Person); (h) all indebtedness, obligations or liabilities secured by a Lien on any asset of such Person, whether or not such indebtedness, obligations or liabilities are otherwise an obligation of such Person; (i) all obligations of such Person for "earnouts," purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (j) off-balance sheet liabilities and/or pension plan liabilities of such Person; (k) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business; and (l) any guaranty of any indebtedness, obligations or liabilities of a type described in the foregoing clauses (a) through (k).

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Ineligible Security" shall mean any security which may not be underwritten or dealt in by member banks of the Federal Reserve System under Section 16 of the Banking Act of 1933 (12 U.S.C. Section 24, Seventh), as amended.

"INOPC" shall have the meaning set forth in the preamble to this Agreement.

"Insolvency Event" shall mean, with respect to any Person, including without limitation any Lender, such Person or such Person's direct or indirect parent company (a) becomes the subject of a bankruptcy or insolvency proceeding (including any proceeding under Title 11 of the United States Code or any Canadian Bankruptcy Law), or regulatory restrictions, (b) has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it or has called a meeting of its creditors, (c) admits in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (d) with respect to a Lender, such Lender is unable to perform hereunder due to the application of Applicable Law, or (e) in the good faith determination of Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment of a type described in clauses (a) or (b), provided that an Insolvency Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person or such Person's direct or indirect parent company by a Governmental Body or instrumentality thereof if, and only if, such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Body or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Intellectual Property" shall mean property constituting a patent, copyright, trademark (or any application in respect of the foregoing), service mark, copyright (including software), copyright application, trade name, mask work, domain name, website, trade secret, design right, industrial design, assumed name or license or other right to use any of the foregoing under Applicable Law.

"Intellectual Property Claim" shall mean the assertion, by any means, by any Person of a claim that any Borrower's ownership, use, marketing, sale or distribution of any Inventory, equipment, Intellectual Property or other property or asset is violative of any ownership of or right to use any Intellectual Property of such Person.

"Interest Period" shall mean the period provided for any ~~LIBOR~~Term SOFR Rate Loan pursuant to Section 2.2(b) hereof.

"Interest Rate Hedge" shall mean an interest rate exchange, collar, cap, swap, floor, adjustable strike cap, adjustable strike corridor, cross-currency swap or similar agreements entered into by any Borrower or its Subsidiaries in order to provide protection to, or minimize the impact upon, such Borrower, any Guarantor and/or their respective Subsidiaries of increasing floating rates of interest applicable to Indebtedness.

"Interest Rate Hedge Liabilities" shall have the meaning assigned in the definition of Lender-Provided Interest Rate Hedge.

"Inventory" shall mean and include as to each Borrower all of such Borrower's inventory (as defined in Article 9 of the Uniform Commercial Code), or in the case of Newegg Canada all of such Borrower's inventory as defined in the PPSA, and all of such Borrower's goods, merchandise and other personal property, wherever located, to be furnished under any consignment arrangement, contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Borrower's business or used in selling or furnishing such goods, merchandise and other personal property, and all Documents.

"Inventory Advance Rate" shall have the meaning set forth in Section 2.1(a)(y)(ii) hereof.

"Inventory NOLV Advance Rate" shall have the meaning set forth in Section 2.1(a)(y)(ii) hereof.

"Issuer" shall mean (i) East West in its capacity as the issuer of Letters of Credit under this Agreement and (ii) any other Lender which Agent in its discretion shall designate as the issuer of and cause to issue any particular Letter of Credit under this Agreement in place of East West as issuer.

"Law(s)" shall mean any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond judgment authorization or approval, lien or award of or any settlement arrangement with any Governmental Body, foreign or domestic.

"Lender" and the "Lenders" shall have the respective meanings ascribed to such terms in the preamble to this Agreement and shall include each Person which becomes a transferee, successor or assign of any Lender. For the purpose of any provision of this Agreement or any Other Document which provides for the granting of a security interest or other Lien to Agent for the benefit of the Lenders as security for the Obligations, the "Lenders" shall include any Affiliate of a Lender to which such Obligation (specifically including any Hedge Liabilities and any Cash Management Liabilities) is owed.

"Lender-Provided Foreign Currency Hedge" shall mean a Foreign Currency Hedge which is provided by any Lender (or any Affiliate of a Lender) and for which such Lender confirms to Agent in writing prior to the execution thereof that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes. The liabilities owing to the provider of any Lender-Provided Foreign Currency Hedge (the "Foreign Currency Hedge Liabilities") by any Borrower, Guarantor, or Subsidiary that is party to such Lender-Provided Foreign Currency Hedge shall, for purposes of this Agreement and all Other Documents be "Obligations" of such Person and of each other Borrower and Guarantor, be guaranteed obligations under any Guaranty and secured obligations under any Guarantor Security Agreement, as applicable, and otherwise treated as Obligations for purposes of the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Foreign Currency Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

"Lender-Provided Interest Rate Hedge" shall mean an Interest Rate Hedge which is provided by any Lender (or any Affiliate of any Lender) and with respect to which such Lender confirms to Agent in writing prior to the execution thereof that it: (a) is documented in a standard International Swap Dealers Association, Inc. Master Agreement or another reasonable and customary manner; (b) provides for the method of calculating the reimbursable amount of the provider's credit exposure in a reasonable and customary manner; and (c) is entered into for hedging (rather than speculative) purposes. The liabilities owing to the provider of any Lender-Provided Interest Rate Hedge (the "Interest Rate Hedge Liabilities") by any Borrower, Guarantor, or Subsidiary that is party to such Lender-Provided Interest Rate Hedge shall, for purposes of this Agreement and all Other Documents be "Obligations" of such Person and of each other Borrower and Guarantor, be guaranteed obligations under any Guaranty and secured obligations under any Guarantor Security Agreement, as applicable, and otherwise treated as Obligations for purposes of the Other Documents, except to the extent constituting Excluded Hedge Liabilities of such Person. The Liens securing the Hedge Liabilities shall be pari passu with the Liens securing all other Obligations under this Agreement and the Other Documents, subject to the express provisions of Section 11.5 hereof.

"Letter of Credit Application" shall have the meaning set forth in Section 2.12(a) hereof.

"Letter of Credit Borrowing" shall have the meaning set forth in Section 2.14(d) hereof.

"Letter of Credit Fees" shall have the meaning set forth in Section 3.2 hereof

"Letter of Credit Sublimit" shall mean $30,000,000.

"Letters of Credit" shall have the meaning set forth in Section 2.11 hereof.

~~"LIBOR Alternate Source" shall have the meaning set forth in the definition of LIBOR Rate.~~

~~"LIBOR Rate" shall mean for any LIBOR Rate Loan for the then current Interest Period relating thereto, the interest rate per annum determined by Agent by dividing (the resulting quotient rounded upwards, if necessary, to the nearest 1/100th of 1% per annum) (a) the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by Agent as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (a "LIBOR Alternate Source"), at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period as the London interbank offered rate for U.S. Dollars for an amount comparable to such LIBOR Rate Loan and having a borrowing date and a maturity comparable to such Interest Period (or (x) if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error), (y) if the LIBOR Rate is unascertainable as set forth in Section 3.11, a comparable replacement rate determined in accordance with Section 3.11), by (b) a number equal to 1.00 minus the Reserve Percentage; provided, however, if the LIBOR Rate determined as provided above would be less than zero percent (0%) per annum, such rate shall be deemed to be zero percent (0%) per annum for the purposes of this Agreement.~~

~~The LIBOR Rate shall be adjusted with respect to any LIBOR Rate Loan that is outstanding on the effective date of any change in the Reserve Percentage as of such effective date. Agent shall give reasonably prompt notice to the Borrowing Agent of the LIBOR Rate as determined or adjusted in accordance herewith, which determination shall be conclusive absent manifest error.~~

~~"LIBOR Rate Loan" shall mean any Advance that bears interest based on the LIBOR Rate.~~

"License Agreement" shall mean any agreement between any Borrower and a Licensor pursuant to which such Borrower is authorized to use any Intellectual Property in connection with the manufacturing, marketing, sale or other distribution of any Inventory of such Borrower or otherwise in connection with such Borrower's business operations.

"Licensor" shall mean any Person from whom any Borrower obtains the right to use (whether on an exclusive or non-exclusive basis) any Intellectual Property in connection with such Borrower's manufacture, marketing, sale or other distribution of any Inventory or otherwise in connection with such Borrower's business operations.

"Licensor/Agent Agreement" shall mean an agreement between Agent and a Licensor, in form and substance satisfactory to Agent, by which Agent is given the unqualified right, vis-á-vis such Licensor, to enforce Agent's Liens with respect to and to dispose of any Borrower's Inventory with the benefit of any Intellectual Property applicable thereto, irrespective of such Borrower's default under any License Agreement with such Licensor.

"Lien" shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, security interest, lien (whether statutory or otherwise), Charge, claim or encumbrance, or preference, priority or other security agreement or preferential arrangement held or asserted in respect of any asset of any kind or nature whatsoever including any conditional sale or other title retention agreement, any lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code, the PPSA or comparable law of any jurisdiction.

"Lien Waiver Agreement" shall mean an agreement which is executed in favor of Agent by a Person who owns or occupies premises at which any Collateral may be located from time to time in form and substance satisfactory to Agent.

"Loan Cap" shall mean the lesser of (a) the Maximum Revolving Advance Amount and (b) the Borrowing Base.

"Loan Parties" shall mean Borrowers and Guarantors, collectively, and "Loan Party" shall mean each such Person, individually.

"Magnell" shall have the meaning set forth in the preamble to this Agreement.

"Material Adverse Effect" shall mean a material adverse effect on (a) the condition (financial or otherwise), results of operations, assets, business, properties or prospects of Borrowers and Guarantors, taken as a whole, (b) the ability of Borrowers, taken as a whole, to duly and punctually pay or perform the Obligations in accordance with the terms thereof, (c) the value of the Collateral, or Agent's Liens on the Collateral or the priority of any such Lien or (d) the practical realization of the benefits of each Agent's and each Lender's rights and remedies under this Agreement and the Other Documents.

"Material Contract" shall mean any contract, agreement, instrument, permit, lease or license, written or oral, of any Borrower (each a "Contract") (except (a) any Contract relating to such Borrower's purchase of Inventory in the Ordinary Course of Business, (b) freight and transportation Contracts, and (c) Contracts providing for expenditures by, or payments to, such Borrower of $5,000,000 per annum or less) with which the failure of such Borrower to comply could reasonably be expected to result in a Material Adverse Effect.

"Maximum Revolving Advance Amount" shall mean $100,000,000 or following any increase pursuant to Section 2.25 hereof, such amount (not to exceed $150,000,000) to which the aggregate Revolving Commitment Amounts of the Lenders are increased.

"Maximum Swing Loan Advance Amount" shall mean $20,000,000.

"Maximum Undrawn Amount" shall mean, with respect to any outstanding Letter of Credit as of any date, the amount of such Letter of Credit that is or may become available to be drawn, including all automatic increases provided for in such Letter of Credit, whether or not any such automatic increase has become effective.

"Modified Commitment Transfer Supplement" shall have the meaning set forth in Section 16.3(d) hereof.

"Multiemployer Plan" shall mean a "multiemployer plan" as defined in Sections 3(37) or 4001(a)(3) of ERISA to which contributions are required or, within the preceding five plan years, were required by any Borrower or any member of the Controlled Group.

"Multiple Employer Plan" shall mean a Plan which has two or more contributing sponsors (including any Borrower or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Negotiable Document" shall mean a Document that is "negotiable" within the meaning of Article 7 of the Uniform Commercial Code.

"Net Equity Proceeds" means the proceeds realized by any Borrowers from the offering of its Equity Interests after the Closing Date, after deducting all commissions, fees and other transaction costs or expenses.

"Newegg" shall have the meaning set forth in the preamble to this Agreement.

"Newegg Americas" shall have the meaning set forth in the preamble to this Agreement.

"Newegg Biz" shall have the meaning set forth in the preamble to this Agreement.

"Newegg Canada" shall have the meaning set forth in the preamble of this Agreement.

"Newegg Commerce" shall have the meaning set forth in the preamble of this Agreement.

"Newegg Enterprises" means Newegg Enterprises LLC, a Delaware limited liability company.

"Newegg Logistics" shall have the meaning set forth in the preamble to this Agreement.

"Newegg Marketplace" shall have the meaning set forth in the preamble to this Agreement.

"Newegg NorAm" shall have the meaning set forth in the preamble to this Agreement.

"Newegg Tech" means Newegg Tech, Inc. a Delaware corporation, formerly known as Newegg Mall, Inc., a Delaware corporation.

"Newegg Texas" means Newegg Texas, Inc., a Texas corporation.

"NJOPC" shall have the meaning set forth in the preamble to this Agreement.

"Non-Defaulting Lender" shall mean, at any time, any Lender holding a Revolving Commitment that is not a Defaulting Lender at such time.

"Non-Qualifying Party" shall mean any Borrower or any Guarantor that on the Eligibility Date fails for any reason to qualify as an Eligible Contract Participant.

"Note" shall mean, collectively, the Revolving Credit Notes and the Swing Loan Note.

"Nutrend" means Nutrend Automotive, Inc. a Delaware corporation.

"Obligations" shall mean and include any and all loans (including without limitation, all Advances and Swing Loans), advances, debts, liabilities, obligations (including without limitation all reimbursement obligations and cash collateralization obligations with respect to Letters of Credit issued hereunder), covenants and duties owing by any Borrower or Guarantor or any Subsidiary of any Borrower or any Guarantor to Issuer, Swing Loan Lender, any Lender or any Agent (or to any other direct or indirect subsidiary or affiliate of Issuer, Swing Loan Lender, any Lender or any Agent) of any kind or nature, present or future (including any interest or other amounts accruing thereon, any fees accruing under or in connection therewith, any costs and expenses of any Person payable by any Borrower and any indemnification obligations payable by any Borrower arising or payable after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to any Borrower, whether or not a claim for post-filing or post-petition interest, fees or other amounts is allowable or allowed in such proceeding), whether or not evidenced by any note, guaranty or other instrument, whether arising under any agreement, instrument or document. (including this Agreement, the Other Documents, Lender-Provided Interest Rate Hedges, Lender-Provided Foreign Currency Hedges and any Cash Management Products and Services) whether or not for the payment of money, whether arising by reason of an extension of credit, opening or issuance of a letter of credit, loan, equipment lease, establishment of any commercial card or similar facility or guarantee, under any interest or currency swap, future, option or other similar agreement, or in any other manner, whether arising out of overdrafts or deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of any Agent's or any Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository transfer check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, including, but not limited to, (i) any and all of any Borrower's or any Guarantor's Indebtedness and/or liabilities (and any and all indebtedness, obligations and/or liabilities of any Subsidiary of any Borrower or any Guarantor) under this Agreement, the Other Documents or under any other agreement between Issuer, any Agent or any Lender and any Borrower and any amendments, extensions, renewals or increases and all costs and expenses of Issuer, any Agent and any Lender incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Borrower to Issuer, any Agent or any Lender to perform acts or refrain from taking any action, (ii) all Hedge Liabilities and (iii) all Cash Management Liabilities. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities.

"Ordinary Course of Business" shall mean, with respect to any Borrower, the ordinary course of such Borrower's business as conducted on the Closing Date.

"Organizational Documents" shall mean, with respect to any Person, any charter, articles, notice of articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, articles, memorandum of association, articles of association, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person's formation, organization or entity governance matters (including any shareholders' or equity holders' agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

"Other Documents" shall mean the Notes, the Fee Letter, the Guaranty, the Guarantor Security Agreement, the Pledge Agreement, any Lender-Provided Interest Rate Hedge, any Lender-Provided Foreign Currency Hedge, the Certificate of Beneficial Ownership, and any and all other agreements, instruments and documents, including intercreditor agreements, guaranties, pledges, powers of attorney, consents, interest or currency swap agreements or other similar agreements and all other writings heretofore, now or hereafter executed by any Borrower or any Guarantor and/or delivered to any Agent or any Lender in respect of the transactions contemplated by this Agreement, in each case together with all extensions, renewals, amendments, supplements, modifications, substitutions and replacements thereto and thereof.

"Other Taxes" shall mean all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any Other Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any Other Document.

"Out-of-Formula Loans" shall have the meaning set forth in Section 16.2(e) hereof.

"Overadvance Threshold Amount" shall have the meaning set forth in Section 16.2(e) hereof.

"Overnight Bank Funding Rate" shall mean, for any, day the rate per annum (based on a year of 360 days and actual days elapsed) comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York, as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by such Federal Reserve Bank (or by such other recognized electronic source (such as Bloomberg) selected by Agent for the purpose of displaying such rate) (an "Alternate Source"); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by Agent at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to Borrowers.

"Ozzo" shall have the meaning set forth in the preamble to this Agreement.

"Parent" of any Person shall mean a corporation or other entity owning, directly or indirectly, 50% or more of the Equity Interests issued by such Person having ordinary voting power to elect a majority of the directors of such Person, or other Persons performing similar functions for any such Person.

"Participant" shall mean each Person who shall be granted the right by any Lender to participate in any of the Advances and who shall have entered into a participation agreement in form and substance satisfactory to such Lender.

"Participation Advance" shall have the meaning set forth in Section 2.14(d) hereof.

"Participation Commitment" shall mean the obligation hereunder of each Lender holding a Revolving Commitment to buy a participation equal to its Revolving Commitment Percentage (subject to any reallocation pursuant to Section 2.22(b)(iii) hereof) in the Swing Loans made by Swing Loan Lender hereunder as provided for in Section 2.4(c) hereof and in the Letters of Credit issued hereunder as provided for in Section 2.14(a) hereof.

"Payment Office" shall mean initially 9300 Flair Drive, 6th Floor, El Monte, CA 91731; thereafter, such other office of Agent, if any, which it may designate by notice to Borrowing Agent and to each Lender to be the Payment Office.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor.

"Pension Benefit Plan" shall mean at any time any "employee pension benefit plan" as defined in Section 3(2) of ERISA (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Sections 412, 430 or 436 of the Code and either (i) is maintained or to which contributions are required by a Borrower or any member of the Controlled Group or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by a Borrower or any entity which was at such time a member of the Controlled Group.

"Permitted Acquisitions" shall mean acquisitions of the assets or Equity Interests of another Person (the "target") so long as:

(a) Borrowers give Agent written notice of any such acquisition at least thirty (30) Business Days prior to the closing of such acquisition and no later than five (5) Business Days after the applicable Borrower's execution of the purchase agreement for such acquisition;

(b) Borrowers shall reasonably anticipate closing such acquisition within one hundred fifty (150) days after notice to Agent of such acquisition;

(c) with respect to the acquisition of Equity Interests, such target shall:

(i) have positive earnings before interest, taxes, depreciation, amortization, and non-cash stock option compensation for the period of twelve (12) consecutive months immediately preceding such acquisition;

(ii) be added as either a Borrower to this Agreement, and be jointly and severally liable for all Obligations, or a Guarantor of the Obligations; and

(iii) subject to subsection (e) below, grant to Agent a first priority lien in all assets of such target;

provided, however, that this subsection (c) shall not apply to an acquisition by a Borrower of a target if:

(A) such acquisition is made entirely with Net Equity Proceeds, with Equity Interests of Borrowers or Guarantors, or with a combination of Net Equity Proceeds and Equity Interests of Borrowers or Guarantors (i.e., without the proceeds of any Indebtedness);

(B) the sum of: (1) the negative earnings before interest, taxes, depreciation, amortization, non-cash items, and, as permitted by Agent in its sole discretion, non-recurring expenses and/or one-time adjustments of the target for the period of twelve (12) consecutive months immediately preceding such acquisition; and (2) the projected negative earnings before interest, taxes, depreciation, amortization, non-cash items, and, as permitted by Agent in its sole discretion, non-recurring expenses and/or one-time adjustments of the target for the period of twelve (12) consecutive months immediately following such acquisition, does not exceed twenty percent (20%) of, as applicable (based upon which of the following two Adjusted EBITDA measurement periods is more recent), Adjusted EBITDA for the immediately preceding fiscal year, as reflected in Borrowers' most recent audited annual financial statements, or trailing four (4) quarters Adjusted EBITDA as set forth in Borrowers' most recent reviewed financial statements; provided that the parties may agree to exceed the twenty percent (20%) of Adjusted EBITDA limitation set forth in this clause (B) by negotiating in good faith and with Required Lender approval of any proposed higher percentage limitation not to be unreasonably withheld; and

(C) the Net Equity Proceeds, Equity Interests of Borrowers or Guarantors, or combination of Net Equity Proceeds and Equity Interests of Borrowers or Guarantors used to finance such acquisition shall be in an amount sufficient to cover the greater of the preceding twelve-month negative earnings of the target described in clause (B)(1) above or the negative projected twelve-month negative earnings of the target described in clause (B)(2) above;

(d) as applicable, (i) (A) the target is in the same or a similar business to that of Borrowers, or (B) where the acquisition is made entirely with Net Equity Proceeds, with Equity Interests of Borrowers or Guarantors, or with a combination of Net Equity Proceeds and Equity Interests of Borrowers or Guarantors (i.e., without the proceeds of any Indebtedness), the target is in a business that is complementary to or otherwise creates synergies with the business of Borrowers, or (ii) the acquired assets are used or useful in the Borrowers' Ordinary Course of Business;

(e) Agent shall have received a first-priority security interest in all acquired assets or a pledge of all acquired Equity Interests, subject to documentation satisfactory to Agent; provided, however, that the foregoing security interest or pledge requirement shall not apply to an acquisition of assets or Equity Interests in a target which is made entirely with Net Equity Proceeds, with Equity Interests of Borrowers or Guarantors, or with a combination of Net Equity Proceeds and Equity Interests of Borrowers or Guarantors (i.e., without the proceeds of any Indebtedness) and where the terms of such investment prohibit the applicable Borrower or Guarantor making such acquisition from granting to Agent a first-priority security interest in all acquired assets or a pledge of all acquired Equity Interests and such investment constitutes a minority investment in the target (of less than 50% of the assets or Equity Interests in the target);

(f) the board of directors (or other comparable governing body) of the target shall have duly approved the transaction;

(g) Borrowers shall have delivered to Agent (i) a pro forma balance sheet and pro forma financial statements for the three (3) year period following the acquisition and a certificate of the chief financial officer of Borrowing Agent demonstrating that, at the time of and after giving effect to such acquisition on a pro forma basis, Borrowers would have Excess Availability of not less than twenty percent (20%) of the Loan Cap and (ii)(A) financial statements of the acquired entity for the two most recent fiscal years then ended; and (B) pro forma balance sheet for the acquired entity as of the complete calendar month most recently ended for the period equal to the calendar year-to-date, in form and substance reasonably acceptable to Agent;

(h) if such acquisition includes general partnership interests or any other Equity Interest that does not have a corporate (or similar) limitation on liability of the owners thereof, then such acquisition shall be effected by having such Equity Interests acquired by a corporate holding company directly or indirectly wholly-owned by a Borrower and newly formed for the sole purpose of effecting such acquisition;

(i) no assets acquired in any such transaction(s) shall be included in the Borrowing Base (either for the purpose of obtaining credit extensions under this Agreement or for the purpose of calculating Undrawn Availability under this definition) until Agent has received a field examination and/or appraisal of such assets, in form and substance acceptable to Agent;

(j) no Default or Event of Default shall have occurred or will occur after giving pro forma effect to such acquisition;

(k) Borrowers shall make an equity contribution of at least twenty percent (20%) of the purchase price in support of such acquisition; and

(l) if at any time after the closing of any acquisition made entirely with Net Equity Proceeds, Equity Interests of Borrowers or Guarantors, or combination of Net Equity Proceeds and Equity Interests of Borrowers or Guarantors (i.e., without the proceeds of any Indebtedness) and during the term of this Agreement, the target elects to obtain debt financing, Borrowers shall grant the Lenders the right of first refusal to provide such financing to the target.

"Permitted Assignees" shall mean: (a) Agent, any Lender or any of their direct or indirect Affiliates; (b) a federal or state chartered bank, a United States branch of a foreign bank, an insurance company, or any finance company generally engaged in the business of making commercial loans; (c) any fund that is administered or managed by Agent or any Lender, an Affiliate of Agent or any Lender or a related entity; and (d) any Person to whom Agent or any Lender assigns its rights and obligations under this Agreement as part of an assignment and transfer of Agent's or such Lender's rights in and to a material portion of Agent's or such Lender's portfolio of asset-based credit facilities.

"Permitted Discretion" means a determination made in good faith and in the exercise (from the perspective of a secured asset-based lender) of commercially reasonable business judgment.

"Permitted Encumbrances" shall mean: (a) Liens in favor of Agent for the benefit of Agent and the Lenders, including without limitation, Liens securing Hedge Liabilities and Cash Management Products and Services; (b) Liens for taxes, assessments or other governmental charges not delinquent or being Properly Contested; (c) deposits or pledges to secure obligations under worker's compensation, social security or similar laws, or under unemployment insurance; (d) deposits or pledges to secure bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (e) Liens arising by virtue of the rendition, entry or issuance against any Borrower or any Subsidiary, or any property of any Borrower or any Subsidiary, of any judgment, writ, order, or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default under Section 10.6 hereof; (f) carriers', repairmens', mechanics', workers', materialmen's or other like Liens arising in the Ordinary Course of Business with respect to obligations which are not due or which are being Properly Contested; (g) Liens placed upon fixed assets hereafter acquired to secure a portion of the purchase price thereof, provided that (I) any such lien shall not encumber any other property of any Borrower and (II) the aggregate amount of Indebtedness secured by such Liens incurred as a result of such purchases during any fiscal year shall not exceed the amount permitted in Section 7.6 hereof; (h) other Liens incidental to the conduct of any Borrower's business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from Agent's or any Lenders' rights in and to the Collateral or the value of any Borrower's property or assets or which do not materially impair the use thereof in the operation of any Borrower's business; (i) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other charges or encumbrances, in each case, which do not interfere in any material respect with the Ordinary Course of Business of Borrowers and their Subsidiaries; and (j) Liens disclosed on Schedule 1.2; provided that such Liens shall secure only those obligations which they secure on the Closing Date (and extensions, renewals and refinancing of such obligations permitted by Section 7.8 hereof) and shall not subsequently apply to any other property or assets of any Borrower other than the property and assets to which they apply as of the Closing Date.

"Permitted Indebtedness" shall mean: (a) the Obligations; (b) Indebtedness incurred for Capital Expenditures permitted in Section 7.6 hereof; (c) any guarantees of Indebtedness permitted under Section 7.3 hereof; (d) any Indebtedness listed on Schedule 5.8(b)(ii) hereof; (e) Indebtedness consisting of Permitted Loans made by one or more Borrower(s) to any other Borrower(s); (f) Interest Rate Hedges and Foreign Currency Hedges that are entered into by Borrowers to hedge their risks with respect to outstanding Indebtedness of Borrowers and not for speculative or investment purposes; (g) intercompany Indebtedness owing from one or more Borrowers to any other one or more Borrowers in accordance with clause (c) of the definition of Permitted Loans; and (h) Indebtedness incurred for purposes of raising capital for Permitted Acquisitions of a target to be acquired by issuing convertible securities.

"Permitted Investments" shall mean investments in: (a) obligations issued or guaranteed by the United States of America or any agency thereof; (b) commercial paper with maturities of not more than 180 days and a published rating of not less than A-1 or P-1 (or the equivalent rating); (c) certificates of time deposit and bankers' acceptances having maturities of not more than 180 days and repurchase agreements backed by United States government securities of a commercial bank if (i) such bank has a combined capital and surplus of at least $500,000,000, or (ii) its debt obligations, or those of a holding company of which it is a Subsidiary, are rated not less than A (or the equivalent rating) by a nationally recognized investment rating agency; (d) U.S. money market funds that invest solely in obligations issued or guaranteed by the United States of America or an agency thereof; (e) Equity Interests of Affiliates that are Borrowers or Guarantors; and (f) Permitted Loans.

"Permitted Loans" shall mean: (a) the extension of trade credit by a Borrower to its Customer(s), in the Ordinary Course of Business in connection with a sale of Inventory or rendition of services, in each case on open account terms; (b) loans and advances by a Borrower to its employees in the Ordinary Course of Business to meet expenses; (c) loans to officers/directors not to exceed as to all such loans by Borrowers, collectively, the aggregate amount of $2,000,000 at any time outstanding; (d) loans to (or amounts due from) Affiliates that are not Borrowers or Guarantors in an aggregate amount outstanding at any time not to exceed $15,000,000, provided that (i) at the time of any such loan to an Affiliate and after giving effect thereto, Borrowers shall have Excess Availability of not less than twenty percent (20%) of the Loan Cap and (ii) the loan in the original principal amount of $15,000,000 from Newegg to Digital Grid (Hong Kong) Technology, Co., Limited existing on the Closing Date shall be excluded from the above $15,000,000 limit on loans to Affiliates, so long as Newegg pledges to Agent the original promissory note evidencing such loan; and (e) intercompany loans between and among Borrowers and Guarantors, so long as, at the request of Agent, each such intercompany loan is evidenced by a promissory note (including, if applicable, any master intercompany note executed by Borrowers) on terms and conditions (including terms subordinating payment of the indebtedness evidenced by such note to the prior payment in full of all Obligations) acceptable to Agent in its sole discretion that has been delivered to Agent either endorsed in blank or together with an undated instrument of transfer executed in blank by the applicable Borrower(s) that are the payee(s) on such note.

"Person" shall mean any individual, sole proprietorship, partnership, corporation, business trust, exempted company, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Body (whether federal, state, provincial, territorial, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"Plan" shall mean any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Benefit Plan and a Multiemployer Plan, as defined herein) maintained by any Borrower or any member of the Controlled Group or to which any Borrower or any member of the Controlled Group is required to contribute.

"Pledge Agreement" shall mean that certain Pledge and Security Agreement executed by Borrowers in favor of Agent dated as of the Closing Date and any other pledge agreements executed subsequent to the Closing Date by any other Person to secure the Obligations.

"PPSA" means the *Personal Property Security Act* (Ontario) and the personal property security legislation in each province or territory in Canada including, without limitation. the Civil Code in the Province of Quebec, together with all rules, regulations and interpretations thereunder, as such legislation may be amended or replaced from time to time.

"Properly Contested" shall mean, in the case of any Indebtedness, Lien or Taxes, as applicable, of any Person that are not paid as and when due or payable by reason of such Person's bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Indebtedness, Lien or Taxes, as applicable, are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Indebtedness or Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (d) no Lien is imposed upon any of such Person's assets with respect to such Indebtedness or taxes unless such Lien (x) does not attach to any Receivables or Inventory, (y) is at all times junior and subordinate in priority to the Liens in favor of Agent (except only with respect to property Taxes that have priority as a matter of applicable state law) and, (z) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; and (e) if such Indebtedness or Lien, as applicable, results from, or is determined by the entry, rendition or issuance against a Person or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is stayed pending a timely appeal or other judicial review.

"Protective Advances" shall have the meaning set forth in Section 16.2(f) hereof.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Published Rate" shall mean the rate of interest published each Business Day in the Wall Street Journal "Money Rates" listing under the caption "London Interbank Offered Rates" for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the LIBOR Rate for a one month period as published in another publication selected by Agent).

"Purchasing CLO" shall have the meaning set forth in Section 16.3(d) hereof.

"Purchasing Lender" shall have the meaning set forth in Section 16.3(c) hereof.

"Qualified ECP Loan Party" shall mean each Borrower or Guarantor that on the Eligibility Date is (a) a corporation, partnership, proprietorship, organization, trust, or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding $10,000,000 or (b) an Eligible Contract Participant that can cause another person to qualify as an Eligible Contract Participant on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into or otherwise providing a "letter of credit or keepwell, support, or other agreement" for purposes of Section 1a(18)(A)(v)(II) of the CEA.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended from time to time.

"Real Property" shall mean all of the owned and leased premises identified on Schedule 4.4 hereto or in and to any other premises or real property that are hereafter owned or leased by any Borrower.

"Receivables" shall mean and include, as to each Borrower, all of such Borrower's accounts (as defined in Article 9 of the Uniform Commercial Code), or in the case of Newegg Canada all of such Borrower's accounts as defined in the applicable PPSA, and all of such Borrower's contract rights, instruments (including those evidencing indebtedness owed to such Borrower by its Affiliates), documents, chattel paper (including electronic chattel paper), general intangibles relating to accounts, contract rights, instruments, documents and chattel paper, and drafts and acceptances, credit card receivables and all other forms of obligations owing to such Borrower arising out of or in connection with the sale or lease of Inventory or the rendition of services, all supporting obligations, guarantees and other security therefor, whether secured or unsecured, now existing or hereafter created, and whether or not specifically sold or assigned to Agent hereunder.

"Receivables Advance Rate" shall have the meaning set forth in Section 2.1(a)(y)(i) hereof.

"Register" shall have the meaning set forth in Section 16.3(e) hereof.

"Registered Pension Plan" means a pension plan subject to the *Pension Benefits Act* (Ontario) or other applicable provincial or federal pension benefits standards legislation, as amended from time to time (or any successor statute).

"Reimbursement Obligation" shall have the meaning set forth in Section 2.14(b) hereof.

"Release" shall have the meaning set forth in Section 5.7(c)(i) hereof.

"Reportable Compliance Event" shall mean that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law.

"Reportable ERISA Event" shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder.

"Required Lenders" shall mean at least two (2) non-Affiliate Lenders (not including Swing Loan Lender (in its capacity as such Swing Loan Lender) or any Defaulting Lender) holding, together, at least sixty-six and two-thirds percent (66-2/3%) of either (a) the aggregate of the Revolving Commitment Amounts of all Lenders (excluding any Defaulting Lender), or (b) after the termination of all commitments of Lenders hereunder, the sum of (x) the outstanding Revolving Advances, Swing Loans plus the Maximum Undrawn Amount of all outstanding Letters of Credit; provided, however, if there are fewer than three (3) Lenders, Required Lenders shall mean all Lenders (excluding any Defaulting Lender).

~~"Reserve Percentage" shall mean as of any day the maximum effective percentage in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the reserve requirements (including supplemental, marginal and emergency reserve requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency Liabilities."~~

"Revolving Advances" shall mean Advances made other than Letters of Credit and the Swing Loans.

"Revolving Commitment" shall mean, as to any Lender, the obligation of such Lender (if applicable), to make Revolving Advances and participate in Swing Loans and Letters of Credit, in an aggregate principal and/or face amount not to exceed the Revolving Commitment Amount (if any) of such Lender.

"Revolving Commitment Amount" shall mean the Revolving Commitment amount set forth below each Lender's name on the signature page hereto (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or (d) hereof, the Revolving Commitment amount of such Lender as set forth in the applicable Commitment Transfer Supplement).

"Revolving Commitment Percentage" shall mean the Revolving Commitment Percentage set forth below such Lender's name on the signature page hereof (or, in the case of any Lender that became party to this Agreement after the Closing Date pursuant to Section 16.3(c) or (d) hereof, the Revolving Commitment Percentage of such Lender as set forth in the applicable Commitment Transfer Supplement).

"Revolving Credit Notes" shall mean, collectively, the promissory notes referred to in Section 2.1(a) hereof.

"Revolving Interest Rate" shall mean (a) with respect to Revolving Advances that are Domestic Rate Loans and Swing Loans, an interest rate per annum equal to the sum of the Applicable Margin plus the Alternate Base Rate and (b) with respect to ~~LIBOR~~Term SOFR Rate Loans, an interest rate per annum equal to the sum of (i) the Applicable Margin ~~plus~~, (ii) the ~~LIBOR~~Term SOFR Rate, and (iii) the SOFR Adjustment.

"Rosewill" shall have the meaning set forth in the preamble to this Agreement.

"Sanctioned Country" shall mean a country subject to a sanctions program maintained by any Compliance Authority.

"Sanctioned Person" shall mean any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Secured Parties" shall mean, collectively, Agent, Issuer, Swing Loan Lender and Lenders, together with any Affiliates of any Agent or any Lender to whom any Hedge Liabilities or Cash Management Liabilities are owed and with each other holder of any of the Obligations, and the respective successors and assigns of each of them.

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

"Settlement" shall have the meaning set forth in Section 2.6(d) hereof.

"Settlement Date" shall have the meaning set forth in Section 2.6(d) hereof.

"Significant Borrower" shall mean any Borrower that has either (a) total assets with a book value of at least five percent (5%) of the total book value of the assets of Borrowers on a Consolidated Basis or (b) net income for the immediately preceding fiscal year of Borrowers of at least five percent (5%) of the total net income of Borrowers on a Consolidated Basis for such fiscal year.

"SOFR Adjustment" shall mean, as applicable, (a) in the case of a Term SOFR Rate Loan with an Interest Period of one (1) month, nine (9.00) basis points per annum or (b) in the case of a Term SOFR Rate Loan with an Interest Period of three (3) months, twenty (20.00) basis points per annum.

"Subsidiary" shall mean of any Person a corporation or other entity of whose Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, or other Persons performing similar functions for such entity, are owned, directly or indirectly, by such Person.

"Subsidiary Stock" shall mean (a) with respect to the Equity Interests issued to a Borrower by any Subsidiary (other than a Foreign Subsidiary or a Foreign Subsidiary Holding Company), 100% of such issued and outstanding Equity Interests, and (b) with respect to any Equity Interests issued to a Borrower by any Foreign Subsidiary or any Foreign Subsidiary Holding Company (i) 100% of such issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956(c)(2)) and (ii) 65% (or such greater percentage that, due to a change in an Applicable Law after the date hereof, (x) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary or Foreign Subsidiary Holding Company as determined for United States federal income tax purposes to be treated as a deemed dividend to such Borrower and (y) could not reasonably be expected to cause any material adverse tax consequences) of such issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)).

"Swap" shall mean any "swap" as defined in Section 1a(47) of the CEA and regulations thereunder, other than (a) a swap entered into, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"Swap Obligation" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap which is also a Lender-Provided Interest Rate Hedge, or a Lender-Provided Foreign Currency Hedge.

"Swing Loan Lender" shall mean East West in its capacity as lender of the Swing Loans.

"Swing Loan Note" shall mean the promissory note described in Section 2.4(a) hereof.

"Swing Loans" shall mean the Advances made pursuant to Section 2.4 hereof.

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Body, including any interest, additions to tax or penalties applicable thereto.

"Term" shall have the meaning set forth in Section 13.1 hereof.

"Termination Event" shall mean: (a) a Reportable ERISA Event with respect to any Plan; (b) the withdrawal of any Borrower or any member of the Controlled Group from a Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the providing of notice of intent to terminate a Plan in a distress termination described in Section 4041(c) of ERISA; (d) the commencement of proceedings by the PBGC to terminate a Plan; (e) any event or condition (a) which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (b) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; (f) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of any Borrower or any member of the Controlled Group from a Multiemployer Plan; (g) notice that a Multiemployer Plan is subject to Section 4245 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not diligent, upon any Borrower or any member of the Controlled Group.

"Term SOFR Rate" means, for a Term SOFR Rate Loan, the one (1) month or three (3) month, as applicable, Term Secured Overnight Financing Rate, as administrated by CME Group Benchmark Administration Limited (or successor administrator) and displayed by Bloomberg LP (or any successor thereto, or replacement thereof, as reasonably selected by Agent) and as determined by Agent on each Determination Date.

"Term SOFR Rate Loan" means an Advance that bears interest based on Term SOFR Rate.

"TNOPC" means TNOPC Inc., a Tennessee corporation.

"Toxic Substance" shall mean and include any material present on the Real Property (including the Leasehold Interests) which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state, provincial or territorial law, or any other applicable Federal or state, provincial or territorial laws now in force or hereafter enacted relating to toxic substances. "Toxic Substance" includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

"Transaction Conditions" means, with respect to Borrowers' proposed use of Net Equity Proceeds to make transactions that do not count toward the dollar baskets set forth hereunder for Investments permitted under clause (b) or (c) of Section 7.4, Permitted Share Repurchases, Capital Expenditures, and Permitted Loans, (a) at the time of any such proposed transaction and after giving effect thereto, no Event of Default shall have occurred and be continuing, and (b) Borrowers shall have delivered to Agent updated financial projections for Borrowers for the following four (4) fiscal quarters demonstrating that Borrowers will be in compliance as of the last day of each such quarter with the financial covenants set forth in Section 6.5 hereof.

"Transferee" shall have the meaning set forth in Section 16.3(d) hereof.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"Unfunded Capital Expenditures" shall mean as to Borrowers on a Consolidated Basis, Capital Expenditures funded (a) from internally generated cash flow or (b) with the proceeds of a Revolving Advance or Swing Loan.

"Uniform Commercial Code" shall have the meaning set forth in Section 1.3 hereof.

"Unrestricted Cash" means cash and cash equivalents of Borrowers (a) on deposit in one or more deposit accounts maintained with one of the Lenders in the United States or Canada and (i) in the case of cash in a deposit account in the United States maintained with a Lender other than East West, subject to a deposit account control agreement satisfactory to Agent in its Permitted Discretion, or (ii) in the case of cash on deposit in a deposit account in Canada, subject to Agent's perfected, first-priority security interest and (b) not contained in a deposit or securities account blocked in favor of a Person other than Agent and otherwise free of restrictions on the right of the applicable Borrower to transfer, withdraw or otherwise access such cash or cash equivalents.

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.3 Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of New York from time to time (the "Uniform Commercial Code") shall have the meaning given therein unless otherwise defined herein. Without limiting the foregoing, the terms "accounts," "chattel paper" (and "electronic chattel paper" and "tangible chattel paper"), "commercial tort claims," "deposit accounts," "documents," "equipment," "financial asset," "fixtures," "general intangibles," "goods," "instruments," "inventory," "investment property," "letter-of-credit rights," "payment intangibles," "proceeds," "promissory note," "securities," "software" and "supporting obligations" as and when used in the description of Collateral shall have the respective meanings given to such terms in Articles 8 or 9 of the Uniform Commercial Code. To the extent the definition of any category or type of collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the date of such amendment, modification or revision.

1.4 Certain Matters of Construction. The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. All references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which any Agent or Lender is a party, including references to any of the Other Documents, shall include any and all modifications, supplements or amendments thereto, any and all restatements or replacements thereof, and any and all extensions or renewals thereof. All references herein to the time of day shall mean the time in Los Angeles, California. Unless otherwise provided, all financial calculations shall be performed with Inventory valued on a first-in, first-out basis. Whenever the words "including" or "include" shall be used, such words shall be understood to mean "including, without limitation" or "include, without limitation." A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is cured or waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any of the Other Documents as having been created in favor of Agent, any agreement entered into by any Agent pursuant to this Agreement or any of the Other Documents, any payment made by or to or funds received by Agent pursuant to or as contemplated by this Agreement or any of the Other Documents, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the best of Borrowers' knowledge" or words of similar import relating to the knowledge or the awareness of any Borrower are used in this Agreement or Other Documents, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Borrower or (ii) the knowledge that a senior officer would have obtained if he/she had engaged in a good faith and diligent performance of his/her duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Borrower and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

~~1.5 LIBOR Notification. Section 3.11 hereof provides a mechanism for determining an alternate rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. Agent does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBOR Rate" or with respect to any alternative or successor rate thereto, or replacement rate therefor.~~

1.5 Term SOFR. Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

II. ADVANCES, PAYMENTS.

2.1 Revolving Advances.

(a) Amount of Revolving Advances. Subject to the terms and conditions set forth in this Agreement, specifically including Sections 2.1(b) and 2.1(c), each Lender, severally and not jointly, will make Revolving Advances to Borrowers in an aggregate amount outstanding at any time equal to such Lender's Revolving Commitment Percentage of the lesser of (x) the Maximum Revolving Advance Amount, less the outstanding amount of Swing Loans, less the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit or (y) an amount equal to the sum of:

(i) 100% of Eligible Cash, plus

(ii) 85% (the "Receivables Advance Rate") of Eligible Receivables, plus

(iii) the lesser of (A) 60% of the value of the Eligible Inventory, determined at the lower of cost or market value (the "Inventory Advance Rate") or (B) 90% of the appraised net orderly liquidation value of Eligible Inventory (as evidenced by an Inventory appraisal satisfactory to Agent in its Permitted Discretion) (the "Inventory NOLV Advance Rates" and collectively with the Inventory Advance Rate and the Receivables Advance Rate, the "Advance Rates"), minus

(iv) the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit, minus

(v) such reasonable reserves as Agent may deem proper and necessary from time to time in its Permitted Discretion to account for events, conditions, contingencies or risks with respect to the Collateral that are not already accounted for in the definition of Eligible Receivables and Eligible Inventory.

The amount derived from the sum of (x) Sections 2.1(a)(y)(i), (ii) and (iii) minus (y) Sections 2.1 (a)(y)(iv) and (v) at any time and from time to time shall be referred to as the "Borrowing Base." The Revolving Advances shall be evidenced by secured promissory notes (collectively, the "Revolving Credit Notes") issued by Borrowers to the Lenders, each substantially in the form attached hereto as Exhibit 2.1(a). Notwithstanding anything to the contrary contained in the foregoing or otherwise in this Agreement, the outstanding aggregate principal amount of Swing Loans and the aggregate principal amount of Revolving Advances outstanding at any time shall not exceed an amount equal to the lesser of (i) the Maximum Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding Letters of Credit or (ii) the Borrowing Base.

(b) Discretionary Rights. The Advance Rates may be increased or decreased by Agent at any time and from time to time in the exercise of its Permitted Discretion and in consultation with Borrowing Agent. Agent may reduce the Advance Rates pursuant to this Section 2.1(b) based upon dilution and other factors affecting the condition, performance or quality of the Eligible Accounts and Eligible Inventory of Borrowers. Each Borrower consents to any such increases or decreases and acknowledges that decreasing the Advance Rates or increasing or imposing reserves may limit or restrict Advances requested by Borrowing Agent. The rights of Agent under this subsection are subject to the provisions of Section 16.2 (b).

2.2 Procedures for Requesting Revolving Advances; Procedures for Selection of Applicable Interest Rates for All Advances.

(a) Borrowing Agent on behalf of any Borrower may notify Agent prior to 10:00 a.m. on a Business Day of a Borrower's request to incur, on that day, a Revolving Advance hereunder. Should any amount required to be paid as interest hereunder, or as fees or other charges under this Agreement or any other agreement with Agent or Lenders, or with respect to any other Obligation under this Agreement, become due, same shall be deemed a request for a Revolving Advance maintained as a Domestic Rate Loan as of the date such payment is due, in the amount required to pay in full such interest, fee, charge or Obligation, and such request shall be irrevocable.

(b) Notwithstanding the provisions of subsection (a) above, in the event any Borrower desires to obtain a ~~LIBOR~~Term SOFR Rate Loan for any Advance (other than a Swing Loan), Borrowing Agent shall give Agent written notice by no later than 10:00 a.m. on the day which is three (3) Business Days prior to the date such ~~LIBOR~~Term SOFR Rate Loan is to be borrowed, specifying (i) the date of the proposed borrowing (which shall be a Business Day), (ii) the type of borrowing and the amount of such Advance to be borrowed, which amount shall be in a minimum amount of $1,000,000 and in integral multiples of $1,000,000 thereafter, and (iii) the duration of the first Interest Period therefor. Interest Periods for ~~LIBOR~~Term SOFR Rate Loans shall be for one~~, two~~ or three months; provided that, if an Interest Period would end on a day that is not a Business Day, it shall end on the next succeeding Business Day unless such day falls in the next succeeding calendar month in which case the Interest Period shall end on the next preceding Business Day. No ~~LIBOR~~Term SOFR Rate Loan shall be made available to any Borrower during the continuance of a Default or an Event of Default.

(c) Each Interest Period of a ~~LIBOR~~Term SOFR Rate Loan shall commence on the date such ~~LIBOR~~Term SOFR Rate Loan is made and shall end on such date as Borrowing Agent may elect as set forth in subsection (b)(iii) above, provided that ~~the exact length of each Interest Period shall be determined in accordance with the practice of the interbank market for offshore Dollar deposits and~~ no Interest Period shall end after the last day of the Term.

(d) Borrowing Agent shall elect the initial Interest Period applicable to a ~~LIBOR~~Term SOFR Rate Loan by its notice of borrowing given to Agent pursuant to Section 2.2(b) or by its notice of conversion given to Agent pursuant to Section 2.2(e), as the case may be. Borrowing Agent shall elect the duration of each succeeding Interest Period by giving irrevocable written notice to Agent of such duration not later than 10:00 a.m. on the day which is three (3) U.S. Government Securities Business Days prior to the last day of the then current Interest Period applicable to such ~~LIBOR~~Term SOFR Rate Loan. If Agent does not receive timely notice of the Interest Period elected by Borrowing Agent, Borrowing Agent shall be deemed to have elected to convert such ~~LIBOR~~Term SOFR Rate Loan to a Domestic Rate Loan subject to Section 2.2(e) below.

(e) Provided that no Default or Event of Default shall have occurred and be continuing, Borrowing Agent may, on the last Business Day of the then current Interest Period applicable to any outstanding ~~LIBOR~~Term SOFR Rate Loan, or on any Business Day with respect to Domestic Rate Loans, convert any such loan into a loan of another type in the same aggregate principal amount provided that any conversion of a ~~LIBOR~~Term SOFR Rate Loan shall be made only on the last Business Day of the then current Interest Period applicable to such ~~LIBOR~~Term SOFR Rate Loan. If Borrowing Agent desires to convert a loan, Borrowing Agent shall give Agent written notice by no later than 10:00 a.m. (i) on the day which is three (3) Business Days prior to the date on which such conversion is to occur with respect to a conversion from a Domestic Rate Loan to a ~~LIBOR~~Term SOFR Rate Loan, or (ii) on the day which is one (1) Business Day prior to the date on which such conversion is to occur (which date shall be the last Business Day of the Interest Period for the applicable ~~LIBOR~~Term SOFR Rate Loan) with respect to a conversion from a ~~LIBOR~~Term SOFR Rate Loan to a Domestic Rate Loan, specifying, in each case, the date of such conversion, the loans to be converted and if the conversion is to a ~~LIBOR~~Term SOFR Rate Loan, the duration of the first Interest Period therefor.

(f) At its option and upon written notice given prior to 10:00 a.m. at least three (3) Business Days prior to the date of such prepayment, any Borrower may, subject to Section 2.2(g) hereof, prepay the ~~LIBOR~~Term SOFR Rate Loans in whole at any time or in part from time to time with accrued interest on the principal being prepaid to the date of such repayment. Such Borrower shall specify the date of prepayment of Advances which are ~~LIBOR~~Term SOFR Rate Loans and the amount of such prepayment. In the event that any prepayment of a ~~LIBOR~~Term SOFR Rate Loan is required or permitted on a date other than the last Business Day of the then current Interest Period with respect thereto, such Borrower shall indemnify Agent and Lenders therefor in accordance with Section 2.2(g) hereof.

(g) Each Borrower shall indemnify Agent and the Lenders and hold Agent and the Lenders harmless from and against any and all losses or expenses that Agent and the Lenders may sustain or incur as a consequence of any prepayment, conversion of or any default by any Borrower in the payment of the principal of or interest on any ~~LIBOR~~Term SOFR Rate Loan or failure by any Borrower to complete a borrowing of, a prepayment of or conversion of or to a ~~LIBOR~~Term SOFR Rate Loan after notice thereof has been given, including, but not limited to, any interest payable by Agent or the Lenders to lenders of funds obtained by it in order to make or maintain its ~~LIBOR~~Term SOFR Rate Loans hereunder. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by Agent or any Lender to Borrowing Agent shall be conclusive absent manifest error.

(h) Notwithstanding any other provision hereof, if any Applicable Law, treaty, regulation or directive, or any change therein or in the interpretation or application thereof, including without limitation any Change in Law, shall make it unlawful for the Lenders or any Lender (for purposes of this subsection (h), the term "Lender" shall include any Lender and the office or branch where any Lender or any Person controlling such Lender makes or maintains any ~~LIBOR~~Term SOFR Rate Loans) to make or maintain its ~~LIBOR~~Term SOFR Rate Loans, the obligation of the Lenders (or such affected Lender) to make ~~LIBOR~~Term SOFR Rate Loans hereunder shall forthwith be cancelled and Borrowers shall, if any affected ~~LIBOR~~Term SOFR Rate Loans are then outstanding, promptly upon request from Agent, either pay all such affected ~~LIBOR~~Term SOFR Rate Loans or convert such affected ~~LIBOR~~Term SOFR Rate Loans into loans of another type. If any such payment or conversion of any ~~LIBOR~~Term SOFR Rate Loan is made on a day that is not the last day of the Interest Period applicable to such ~~LIBOR~~Term SOFR Rate Loan, Borrowers shall pay Agent, upon Agent's request, such amount or amounts set forth in clause (g) above. A certificate as to any additional amounts payable pursuant to the foregoing sentence submitted by the Lenders to Borrowing Agent shall be conclusive absent manifest error.

2.3 [Reserved].

2.4 Swing Loans.

(a) Subject to the terms and conditions set forth in this Agreement, and in order to minimize the transfer of funds between the Lenders and Agent for administrative convenience, Agent, the Lenders and Swing Loan Lender agree that in order to facilitate the administration of this Agreement, Swing Loan Lender may, at its election and option made in its sole discretion cancelable at any time for any reason whatsoever, make swing loan advances ("Swing Loans") available to Borrowers as provided for in this Section 2.4 at any time or from time to time after the date hereof to, but not including, the expiration of the Term, in an aggregate principal amount up to but not in excess of the Maximum Swing Loan Advance Amount, provided that the outstanding aggregate principal amount of Swing Loans and the aggregate principal amount of Revolving Advances outstanding at any one time shall not exceed an amount equal to the lesser of (i) the Maximum Revolving Advance Amount less the Maximum Undrawn Amount of all outstanding Letters of Credit or (ii) the Borrowing Base. Borrowers may borrow (at the option and election of Swing Loan Lender), repay and reborrow (at the option and election of Swing Loan Lender) Swing Loans, and Swing Loan Lender may make Swing Loans as provided in this Section 2.4 during the period between Settlement Dates. All Swing Loans shall be evidenced by a secured promissory note (the "Swing Loan Note") substantially in the form attached hereto as Exhibit 2.4(a). Swing Loan Lender's agreement to make Swing Loans under this Agreement is cancelable at any time for any reason whatsoever and the making of Swing Loans by Swing Loan Lender from time to time shall not create any duty or obligation, or establish any course of conduct, pursuant to which Swing Loan Lender shall thereafter be obligated to make Swing Loans in the future

(b) Upon either (i) any request by Borrowing Agent for a Revolving Advance made pursuant to Section 2.2(a) hereof or (ii) the occurrence of any deemed request by Borrowers for a Revolving Advance pursuant to the provisions of the last sentence of Section 2.2(a) hereof, Swing Loan Lender may elect, in its sole discretion, to have such request or deemed request treated as a request for a Swing Loan, and may advance same day funds to Borrowers as a Swing Loan; provided that notwithstanding anything to the contrary provided for herein, Swing Loan Lender may not make Swing Loan Advances if Swing Loan Lender has been notified by Agent or by Required Lenders that one or more of the applicable conditions set forth in Section 8.2 of this Agreement have not been satisfied or the Revolving Commitments have been terminated for any reason.

(c) Upon the making of a Swing Loan (whether before or after the occurrence of a Default or an Event of Default and regardless of whether a Settlement has been requested with respect to such Swing Loan), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from Swing Loan Lender, without recourse or warranty, an undivided interest and participation in such Swing Loan in proportion to its Revolving Commitment Percentage. Swing Loan Lender or Agent may, at any time, require the Lenders to fund such participations by means of a Settlement as provided for in Section 2.6(d) below. From and after the date, if any, on which any Lender is required to fund, and funds, its participation in any Swing Loans purchased hereunder, Agent shall promptly distribute to such Lender its Revolving Commitment Percentage of all payments of principal and interest and all proceeds of Collateral received by Agent in respect of such Swing Loan; provided that no Lender shall be obligated in any event to make Revolving Advances in an amount in excess of its Revolving Commitment Amount minus its Participation Commitment (taking into account any reallocations under Section 2.22) of the Maximum Undrawn Amount of all outstanding Letters of Credit.

2.5 Disbursement of Advance Proceeds. All Advances shall be disbursed from whichever office or other place Agent may designate from time to time and, together with any and all other Obligations of Borrowers to Agent or the Lenders, shall be charged to Borrowers' Account on Agent's books. The proceeds of each Revolving Advance or Swing Loan requested by Borrowing Agent on behalf of any Borrower or deemed to have been requested by any Borrower under Sections 2.2(a), 2.6(b) or 2.14 hereof shall, (i) with respect to requested Revolving Advances, to the extent the Lenders make such Revolving Advances in accordance with Section 2.2(a), 2.6(b) or 2.14 hereof, and with respect to Swing Loans made upon any request by Borrowing Agent for a Revolving Advance to the extent Swing Loan Lender makes such Swing Loan in accordance with Section 2.4(b) hereof, be made available to the applicable Borrower on the day so requested by way of credit to such Borrower's operating account at East West, or such other bank as Borrowing Agent may designate following notification to Agent, in immediately available federal funds or other immediately available funds or, (ii) with respect to Revolving Advances deemed to have been requested by any Borrower or Swing Loans made upon any deemed request for a Revolving Advance by any Borrower, be disbursed to Agent to be applied to the outstanding Obligations giving rise to such deemed request. During the Term, Borrowers may use the Revolving Advances and Swing Loans by borrowing, prepaying and reborrowing, all in accordance with the terms and conditions hereof.

2.6 Making and Settlement of Advances.

(a) Each borrowing of Revolving Advances shall be advanced according to the applicable Revolving Commitment Percentages of the Lenders (subject to any contrary terms of Section 2.22). Each borrowing of Swing Loans shall be advanced by Swing Loan Lender alone.

(b) Promptly after receipt by Agent of a request or a deemed request for a Revolving Advance pursuant to Section 2.2(a) and, with respect to Revolving Advances, to the extent Swing Loan Lender elects not to provide a Swing Loan or the making of a Swing Loan would result in the aggregate amount of all outstanding Swing Loans exceeding the maximum amount permitted in Section 2.4(a), Agent shall notify the Lenders of its receipt of such request specifying the information provided by Borrowing Agent and the apportionment among the Lenders of the requested Revolving Advance as determined by Agent in accordance with the terms hereof. Each Lender shall remit the principal amount of each Revolving Advance to Agent such that Agent is able to, and Agent shall, to the extent the Lenders have made funds available to it for such purpose and subject to Section 8.2, fund such Revolving Advance to Borrowers in U.S. Dollars and immediately available funds at the Payment Office prior to the close of business, on the applicable borrowing date; provided that if any Lender fails to remit such funds to Agent in a timely manner, Agent may elect in its sole discretion to fund with its own funds the Revolving Advance of such Lender on such borrowing date, and such Lender shall be subject to the repayment obligation in Section 2.6(c) hereof.

(c) Unless Agent shall have been notified by telephone, confirmed in writing, by any Lender that such Lender will not make the amount which would constitute its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Agent, Agent may (but shall not be obligated to) assume that such Lender has made such amount available to Agent on such date in accordance with Section 2.6(b) and may, in reliance upon such assumption, make available to Borrowers a corresponding amount. In such event, if a Lender has not in fact made its applicable Revolving Commitment Percentage of the requested Revolving Advance available to Agent, then the applicable Lender and Borrowers severally agree to pay to Agent on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrowers through but excluding the date of payment to Agent, at (i) in the case of a payment to be made by such Lender, the greater of (A) (x) the daily average Federal Funds Effective Rate (computed on the basis of a year of 360 days) during such period as quoted by Agent, times (y) such amount or (B) a rate determined by Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by Borrowers, the Revolving Interest Rate for Revolving Advances that are Domestic Rate Loans. If such Lender pays its share of the applicable Revolving Advance to Agent, then the amount so paid shall constitute such Lender's Revolving Advance. Any payment by Borrowers shall be without prejudice to any claim Borrowers may have against a Lender that shall have failed to make such payment to Agent. A certificate of Agent submitted to any Lender or Borrower with respect to any amounts owing under this paragraph (c) shall be conclusive, in the absence of manifest error.

(d) Agent, on behalf of Swing Loan Lender, shall demand settlement (a "Settlement") of all or any Swing Loans with the Lenders on at least a weekly basis, or on any more frequent date that Agent elects or that Swing Loan Lender at its option exercisable for any reason whatsoever may request, by notifying the Lenders of such requested Settlement by facsimile, telephonic or electronic transmission no later than 3:00 p.m. on the date of such requested Settlement (the "Settlement Date"). Subject to any contrary provisions of Section 2.22, each Lender shall transfer the amount of such Lender's Revolving Commitment Percentage of the outstanding principal amount (plus interest accrued thereon to the extent requested by Agent) of the applicable Swing Loan with respect to which Settlement is requested by Agent, to such account of Agent as Agent may designate not later than 5:00 p.m. on such Settlement Date if requested by Agent by 3:00 p.m., otherwise not later than 5:00 p.m. on the next Business Day. Settlements may occur at any time notwithstanding that the conditions precedent to making Revolving Advances set forth in Section 8.2 have not been satisfied or the Revolving Commitments shall have otherwise been terminated at such time. All amounts so transferred to Agent shall be applied against the amount of outstanding Swing Loans and, when so applied shall constitute Revolving Advances of such Lenders accruing interest as Domestic Rate Loans. If any such amount is not transferred to Agent by any Lender on such Settlement Date, Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon as specified in Section 2.6(c).

(e) If any Lender or Participant (a "Benefited Lender") shall at any time receive any payment of all or part of its Advances, or interest thereon, or receive any Collateral in respect thereof (whether voluntarily or involuntarily or by set-off) in a greater proportion than any such payment to and Collateral received by any other Lender, if any, in respect of such other Lender's Advances, or interest thereon, and such greater proportionate payment or receipt of Collateral is not expressly permitted hereunder, such Benefited Lender shall purchase for cash from the other Lenders a participation in such portion of each such other Lender's Advances, or shall provide such other Lender with the benefits of any such Collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such Collateral or proceeds ratably with each of the other Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that each Lender so purchasing a portion of another Lender's Advances may exercise all rights of payment (including rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral, and the obligations owing to each such purchasing Lender in respect of such participation and such purchased portion of any other Lender's Advances shall be part of the Obligations secured by the Collateral.

2.7 Maximum Advances. The aggregate balance of Revolving Advances plus Swing Loans outstanding at any time shall not exceed the Loan Cap less the aggregate Maximum Undrawn Amount of all issued and outstanding Letters of Credit or (b) the Borrowing Base.

2.8 Manner and Repayment of Advances.

(a) The Revolving Advances and Swing Loans shall be due and payable in full on the last day of the Term subject to earlier prepayment as herein provided. Notwithstanding the foregoing, all Advances shall be subject to earlier repayment upon (x) acceleration upon the occurrence of an Event of Default under this Agreement or (y) termination of this Agreement. Each payment (including each prepayment) by any Borrower on account of the principal of and interest on the Advances shall be applied, first to the outstanding Swing Loans and next, pro rata according to the applicable Revolving Commitment Percentages of Lenders, to the outstanding Revolving Advances (subject to any contrary provisions of Section 2.22).

(b) Each Borrower recognizes that the amounts evidenced by checks, notes, drafts or any other items of payment relating to and/or proceeds of Agent may not be collectible by Agent on the date received by Agent. Agent shall conditionally credit Borrowers' Account for each item of payment on the next Business Day after the Business Day on which such item of payment is received by Agent (and the Business Day on which each such item of payment is so credited shall be referred to, with respect to such item, as the "Application Date"). Agent is not, however, required to credit Borrowers' Account for the amount of any item of payment which is unsatisfactory to Agent and Agent may charge Borrowers' Account for the amount of any item of payment which is returned, for any reason whatsoever, to Agent unpaid. Subject to the foregoing, Borrowers agree that for purposes of computing the interest charges under this Agreement, each item of payment received by Agent shall be deemed applied by Agent on account of Obligations on its respective Application Date. Borrowers further agree that there is a monthly float charge payable to Agent for Agent's sole benefit, in an amount equal to (y) the face amount of all items of payment received during the prior month (including items of payment received by Agent as a wire transfer or electronic depository check) multiplied by (z) the Revolving Interest Rate with respect to Domestic Rate Loans for one (1) Business Day. All proceeds received by Agent shall be applied to the Obligations in accordance with Section 4.8(h).

(c) All payments of principal, interest and other amounts payable hereunder, or under any of the Other Documents shall be made to Agent at the Payment Office not later than 1:00 p.m. on the due date therefor in Dollars in federal funds or other funds immediately available to Agent. Agent shall have the right to effectuate payment of any and all Obligations due and owing hereunder by charging Borrowers' Account or by making Advances as provided in Section 2.2 hereof.

(d) Except as expressly provided herein, all payments (including prepayments) to be made by any Borrower on account of principal, interest, fees and other amounts payable hereunder shall be made without deduction, setoff or counterclaim and shall be made to Agent on behalf of the Lenders to the Payment Office, in each case on or prior to 1:00 p.m., in Dollars and in immediately available funds.

2.9 Repayment of Excess Advances. If at any time the aggregate balance of outstanding Revolving Advances, Swing Loans, and/or Advances taken as a whole exceeds the maximum amount of such type of Advances and/or Advances taken as a whole (as applicable) permitted hereunder, such excess Advances shall be immediately due and payable without the necessity of any demand, at the Payment Office, whether or not a Default or an Event of Default has occurred.

2.10 Statement of Account. Agent shall maintain, in accordance with its customary procedures, a loan account ("Borrowers' Account") in the name of Borrowers in which shall be recorded the date and amount of each Advance made by Agent or the Lenders and the date and amount of each payment in respect thereof; provided, however, the failure by Agent to record the date and amount of any Advance shall not adversely affect Agent or any Lender. Each month, Agent shall send to Borrowing Agent a statement showing the accounting for the Advances made, payments made or credited in respect thereof, and other transactions between Agent, the Lenders and Borrowers during such month. The monthly statements shall be deemed correct and binding upon Borrowers in the absence of manifest error and shall constitute an account stated between the Lenders and Borrowers unless Agent receives a written statement of Borrowers' specific exceptions thereto within sixty (60) days after such statement is received by Borrowing Agent. The records of Agent with respect to Borrowers' Account shall be conclusive evidence absent manifest error of the amounts of Advances and other charges thereto and of payments applicable thereto.

2.11 Letters of Credit.

(a) Subject to the terms and conditions hereof, Issuer shall issue or cause the issuance of standby and/or trade letters of credit denominated in Dollars (collectively, "Letters of Credit") for the account of any Borrower except to the extent that the issuance thereof would then cause the sum of (i) the outstanding Revolving Advances plus (ii) the outstanding Swing Loans, plus (iii) the Maximum Undrawn Amount of all outstanding Letters of Credit, plus (iv) the Maximum Undrawn Amount of the Letter of Credit to be issued to exceed the Loan Cap. The Maximum Undrawn Amount of all outstanding Letters of Credit shall not exceed in the aggregate at any time the Letter of Credit Sublimit. The Maximum Undrawn Amount of all outstanding Letters of Credit issued for the benefit of a single vendor shall not exceed $10,000,000. All disbursements or payments related to Letters of Credit shall be deemed to be Domestic Rate Loans consisting of Revolving Advances and shall bear interest at the Revolving Interest Rate for Domestic Rate Loans. Letters of Credit that have not been drawn upon shall not bear interest (but fees shall accrue in respect of outstanding Letters of Credit as provided in Section 3.2 hereof).

(b) Notwithstanding any provision of this Agreement, Issuer shall not be under any obligation to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Body or arbitrator shall by its terms purport to enjoin or restrain Issuer from issuing any Letter of Credit, or any Law applicable to Issuer or any request or directive (whether or not having the force of law) from any Governmental Body with jurisdiction over Issuer shall prohibit, or request that Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which Issuer is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Issuer any unreimbursed loss, cost or expense which was not applicable on the date of this Agreement, and which Issuer in good faith deems material to it, or (ii) the issuance of the Letter of Credit would violate one or more policies of Issuer applicable to letters of credit generally.

2.12 Issuance of Letters of Credit.

(a) Borrowing Agent, on behalf of any Borrower, may request Issuer to issue or cause the issuance of a Letter of Credit by delivering to Issuer, with a copy to Agent at the Payment Office, prior to 10:00 a.m., at least five (5) Business Days prior to the proposed date of issuance, such Issuer's form of Letter of Credit Application (the "Letter of Credit Application") completed to the satisfaction of Agent and Issuer; and, such other certificates, documents and other papers and information as Agent or Issuer may reasonably request. Issuer shall not issue any requested Letter of Credit if such Issuer has received notice from Agent or any Lender that one or more of the applicable conditions set forth in Section 8.2 of this Agreement have not been satisfied or the commitments of the Lenders to make Revolving Advances hereunder have been terminated for any reason.

(b) Each Letter of Credit shall, among other things, (i) provide for the payment of sight drafts or other written demands for payment when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein and (ii) have an expiry date not later than twelve (12) months after such Letter of Credit's date of issuance and in no event later than the last day of the Term. Each standby Letter of Credit shall be subject either to the Uniform Customs and Practice for Documentary Credits as most recently published by the International Chamber of Commerce at the time a Letter of Credit is issued (the "UCP") or the International Standby Practices (ISP98 International Chamber of Commerce Publication Number 590) (the "ISP98 Rules"), or any subsequent revision thereof at the time a standby Letter of Credit is issued, as determined by Issuer, and each trade Letter of Credit shall be subject to the UCP.

(c) Agent shall use its reasonable efforts to notify the Lenders of the request by Borrowing Agent for a Letter of Credit hereunder.

2.13 Requirements For Issuance of Letters of Credit.

(a) Borrowing Agent shall authorize and direct any Issuer to name the applicable Borrower as the "Applicant" or "Account Party" of each Letter of Credit. If East West is not the Issuer of any Letter of Credit, Borrowing Agent shall authorize and direct the Issuer to deliver to Agent all instruments, documents, and other writings and property received by the Issuer pursuant to the Letter of Credit and to accept and rely upon Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit or the application therefor.

(b) In connection with all trade Letters of Credit issued or caused to be issued by Issuer under this Agreement, each Borrower hereby appoints Issuer, or its designee, as its attorney, with full power and authority if an Event of Default shall have occurred and is continuing: (i) to sign and/or endorse such Borrower's name upon any warehouse or other receipts, and acceptances; (ii) to sign such Borrower's name on bills of lading; (iii) to clear Inventory through the United States of America Customs Department ("Customs") in the name of such Borrower or Issuer or Issuer's designee, and to sign and deliver to Customs officials powers of attorney in the name of such Borrower for such purpose; and (iv) to complete in such Borrower's name or Issuer's, or in the name of Issuer's designee, any order, sale or transaction, obtain the necessary documents in connection therewith, and collect the proceeds thereof. Neither Agent, Issuer nor their attorneys will be liable for any acts or omissions nor for any error of judgment or mistakes of fact or law, except for Agent's, Issuer's or their respective attorney's willful misconduct. This power, being coupled with an interest, is irrevocable as long as any Letters of Credit remain outstanding.

2.14 Disbursements, Reimbursement.

(a) Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from Issuer a participation in each Letter of Credit and each drawing thereunder in an amount equal to such Lender's Revolving Commitment Percentage of the Maximum Undrawn Amount of such Letter of Credit (as in effect from time to time) and the amount of such drawing, respectively.

(b) In the event of any request for a drawing under a Letter of Credit by the beneficiary or transferee thereof, Issuer will promptly notify Agent and Borrowing Agent. Regardless of whether Borrowing Agent shall have received such notice, Borrowers shall reimburse (such obligation to reimburse Issuer shall sometimes be referred to as a "Reimbursement Obligation") Issuer prior to 12:00 Noon, on each date that an amount is paid by Issuer under any Letter of Credit (each such date, a "Drawing Date") in an amount equal to the amount so paid by Issuer. In the event Borrowers fail to reimburse Issuer for the full amount of any drawing under any Letter of Credit by 12:00 Noon, on the Drawing Date, Issuer will promptly notify Agent and each Lender thereof, and Borrowers shall be automatically deemed to have requested that a Revolving Advance maintained as a Domestic Rate Loan be made by Lenders to be disbursed on the Drawing Date under such Letter of Credit, and the Lenders shall be unconditionally obligated to fund such Revolving Advance (all whether or not the conditions specified in Section 8.2 are then satisfied or the commitments of Lenders to make Revolving Advances hereunder have been terminated for any reason) as provided for in Section 2.14(c) immediately below. Any notice given by Issuer pursuant to this Section 2.14(b) may be oral if promptly confirmed in writing; provided that the lack of such a confirmation shall not affect the conclusiveness or binding effect of such notice.

(c) Each Lender shall upon any notice pursuant to Section 2.14(b) make available to Issuer through Agent at the Payment Office an amount in immediately available funds equal to its Revolving Commitment Percentage (subject to any contrary provisions of Section 2.22) of the amount of the drawing, whereupon the Lenders shall (subject to Section 2.14(d)) each be deemed to have made a Revolving Advance maintained as a Domestic Rate Loan to Borrowers in that amount. If any Lender so notified fails to make available to Agent, for the benefit of Issuer, the amount of such Lender's Revolving Commitment Percentage of such amount by 2:00 p.m. on the Drawing Date, then interest shall accrue on such Lender's obligation to make such payment, from the Drawing Date to the date on which such Lender makes such payment (i) at a rate per annum equal to the Federal Funds Effective Rate during the first three (3) days following the Drawing Date and (ii) at a rate per annum equal to the rate applicable to Revolving Advances maintained as a Domestic Rate Loan on and after the fourth day following the Drawing Date. Agent and Issuer will promptly give notice of the occurrence of the Drawing Date, but failure of Agent or Issuer to give any such notice on the Drawing Date or in sufficient time to enable any Lender to effect such payment on such date shall not relieve such Lender from its obligations under this Section 2.14(c), provided that such Lender shall not be obligated to pay interest as provided in Section 2.14(c)(i) and (ii) until and commencing from the date of receipt of notice from Agent or Issuer of a drawing.

(d) With respect to any unreimbursed drawing that is not converted into a Revolving Advance maintained as a Domestic Rate Loan to Borrowers in whole or in part as contemplated by Section 2.14(b), because of Borrowers' failure to satisfy the conditions set forth in Section 8.2 hereof (other than any notice requirements) or for any other reason, Borrowers shall be deemed to have incurred from Agent a borrowing (each a "Letter of Credit Borrowing") in the amount of such drawing. Such Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate per annum applicable to a Revolving Advance maintained as a Domestic Rate Loan. Each Lender's payment to Agent pursuant to Section 2.14(c) shall be deemed to be a payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a "Participation Advance" from such Lender in satisfaction of its Participation Commitment in respect of the applicable Letter of Credit under this Section 2.14.

(e) Each Lender's Participation Commitment in respect of the Letters of Credit shall continue until the last to occur of any of the following events: (x) Issuer ceases to be obligated to issue or cause to be issued Letters of Credit hereunder; (y) no Letter of Credit issued or created hereunder remains outstanding and uncancelled; and (z) all Persons (other than Borrowers) have been fully reimbursed for all payments made under or relating to Letters of Credit.

2.15 Repayment of Participation Advances.

(a) Upon (and only upon) receipt by Agent for the account of Issuer of immediately available funds from Borrowers (i) in reimbursement of any payment made by Issuer or Agent under the Letter of Credit with respect to which the Lenders have made a Participation Advance to Agent, or (ii) in payment of interest on such a payment made by Issuer or Agent under such a Letter of Credit, Agent will pay to each Lender, in the same funds as those received by Agent, the amount of such Lender's Revolving Commitment Percentage of such funds, except Agent shall retain the amount of the Revolving Commitment Percentage of such funds of any Lender that did not make a Participation Advance in respect of such payment by Agent (and, to the extent that the other Lenders have funded any portion such Defaulting Lender's Participation Advance in accordance with the provisions of Section 2.22, Agent will pay over to such Non-Defaulting Lenders a pro rata portion of the funds so withheld from such Defaulting Lender).

(b) If Issuer or Agent is required at any time to return to any Borrower, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the payments made by Borrowers to Issuer or Agent pursuant to Section 2.15(a) in reimbursement of a payment made under the Letter of Credit or interest or fee thereon, each applicable Lender shall, on demand of Agent, forthwith return to Issuer or Agent the amount of its Revolving Commitment Percentage of any amounts so returned by Issuer or Agent plus interest at the Federal Funds Effective Rate.

2.16 Documentation. Each Borrower agrees to be bound by the terms of the Letter of Credit Application and by Issuer's interpretations of any Letter of Credit issued on behalf of such Borrower and by Issuer's written regulations and customary practices relating to letters of credit, though Issuer's interpretations may be different from such Borrower's own. In the event of a conflict between the Letter of Credit Application and this Agreement, this Agreement shall govern. It is understood and agreed that, except in the case of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), Issuer shall not be liable for any error, negligence and/or mistakes, whether of omission or commission, in following Borrowing Agent's or any Borrower's instructions or those contained in the Letters of Credit or any modifications, amendments or supplements thereto.

2.17 Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, Issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

2.18 Nature of Participation and Reimbursement Obligations. The obligation of each Lender holding a Revolving Commitment in accordance with this Agreement to make the Revolving Advances or Participation Advances as a result of a drawing under a Letter of Credit, and the obligations of Borrowers to reimburse Issuer upon a draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Section 2.18 under all circumstances, including the following circumstances:

(i) any set-off, counterclaim, recoupment, defense or other right which such Lender or any Borrower, as the case may be, may have against Issuer, Agent, any Borrower or any Lender, as the case may be, or any other Person for any reason whatsoever;

(ii) the failure of any Borrower or any other Person to comply, in connection with a Letter of Credit Borrowing, with the conditions set forth in this Agreement for the making of a Revolving Advance, it being acknowledged that such conditions are not required for the making of a Letter of Credit Borrowing and the obligation of Lenders to make Participation Advances under Section 2.14;

(iii) any lack of validity or enforceability of any Letter of Credit;

(iv) any claim of breach of warranty that might be made by any Borrower, Agent, Issuer or any Lender against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, recoupment, counterclaim, cross-claim, defense or other right which any Borrower, Agent, Issuer or any Lender may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or assignee of the proceeds thereof (or any Persons for whom any such transferee or assignee may be acting), Issuer, Agent or any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between any Borrower or any Subsidiaries of such Borrower and the beneficiary for which any Letter of Credit was procured);

(v) the lack of power or authority of any signer of (or any defect in or forgery of any signature or endorsement on) or the form of or lack of validity, sufficiency, accuracy, enforceability or genuineness of any draft, demand, instrument, certificate or other document presented under or in connection with any Letter of Credit, or any fraud or alleged fraud in connection with any Letter of Credit, or the transport of any property or provision of services relating to a Letter of Credit, in each case even if Issuer or any of Issuer's Affiliates has been notified thereof;

(vi) payment by Issuer under any Letter of Credit against presentation of a demand, draft or certificate or other document which is forged or does not fully comply with the terms of such Letter of Credit (provided that the foregoing shall not excuse Issuer from any obligation under the terms of any applicable Letter of Credit to require the presentation of documents that on their face appear to satisfy any applicable requirements for drawing under such Letter of Credit prior to honoring or paying any such draw);

(vii) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(viii) any failure by Issuer or any of Issuer's Affiliates to issue any Letter of Credit in the form requested by Borrowing Agent, unless Agent and Issuer have each received written notice from Borrowing Agent of such failure within three (3) Business Days after Issuer shall have furnished Agent and Borrowing Agent a copy of such Letter of Credit and such error is material and no drawing has been made thereon prior to receipt of such notice;

(ix) the occurrence of any Material Adverse Effect;

(x) any breach of this Agreement or any Other Document by any party thereto;

(xi) the occurrence or continuance of an insolvency proceeding with respect to any Borrower or any Guarantor;

(xii) the fact that a Default or an Event of Default shall have occurred and be continuing;

(xiii) the fact that the Term shall have expired or this Agreement or the obligations of Lenders to make Advances have been terminated; and

(xiv) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

2.19 Liability for Acts and Omissions.

(a) As between Borrowers and Issuer, Swing Loan Lender, Agent and Lenders, each Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuer shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if Issuer or any of its Affiliates shall have been notified thereof); (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of any Borrower against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among any Borrower and any beneficiary of any Letter of Credit or any such transferee; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, facsimile, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of Issuer, including any Governmental Acts, and none of the above shall affect or impair, or prevent the vesting of, any of Issuer's rights or powers hereunder. Nothing in the preceding sentence shall relieve Issuer from liability for Issuer's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) in connection with actions or omissions described in such clauses (i) through (viii) of such sentence. In no event shall Issuer or Issuer's Affiliates be liable to any Borrower for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including without limitation attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

(b) Without limiting the generality of the foregoing, Issuer and each of its Affiliates: (i) may rely on any oral or other communication believed in good faith by Issuer or such Affiliate to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (ii) may honor any presentation if the documents presented appear on their face substantially to comply with the terms and conditions of the relevant Letter of Credit; (iii) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by Issuer or its Affiliates; (iv) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; (v) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located; and (vi) may settle or adjust any claim or demand made on Issuer or its Affiliate in any way related to any order issued at the applicant's request to an air carrier, a letter of guarantee or of indemnity issued to a steamship agent or carrier or any document or instrument of like import (each an "Order") and honor any drawing in connection with any Letter of Credit that is the subject of such Order, notwithstanding that any drafts or other documents presented in connection with such Letter of Credit fail to conform in any way with such Letter of Credit.

(c) In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall not put Issuer under any resulting liability to any Borrower, Agent or any Lender.

2.20 Renewal of Letters of Credit. Issuer shall reserve the right to issue a notice of non-renewal of any issued and outstanding Letter of Credit within ninety (90) days prior to the expiration date of such Letter of Credit. If Issuer does not issue any such notice of non-renewal, the Letter of Credit will be automatically renewed for up to ninety (90) days following the expiration date of such Letter of Credit.

2.20 Mandatory Prepayments.

(a) Subject to Section 7.1 hereof, when any Borrower sells or otherwise disposes of any Collateral other than Inventory in the Ordinary Course of Business, Borrowers shall repay the Advances in an amount equal to the net proceeds of such sale (i.e., gross proceeds less the reasonable direct costs of such sales or other dispositions), such repayments to be made promptly but in no event more than one (1) Business Day following receipt of such net proceeds, and until the date of payment, such proceeds shall be held in trust for Agent. The foregoing shall not be deemed to be implied consent to any such sale otherwise prohibited by the terms and conditions hereof. Such repayments shall be applied first, to the remaining Advances (including cash collateralization of all Obligations relating to any outstanding Letters of Credit in accordance with the provisions of Section 3.2(b); provided, however, that if no Default or Event of Default has occurred and is continuing, such repayments shall be applied to cash collateralize any Obligations related to outstanding Letters of Credit last) in such order as Agent may determine, subject to Borrowers' ability to reborrow Revolving Advances in accordance with the terms hereof.

(b) All proceeds received by Borrowers or Agent (i) under any insurance policy on account of damage or destruction of any assets or property of any Borrowers, or (ii) as a result of any taking or condemnation of any assets or property shall be applied in accordance with Section 6.6 hereof.

2.21 Use of Proceeds.

(a) Borrowers shall apply the proceeds of Advances for general corporate purposes, including (i) for Permitted Acquisitions, and (ii) for working capital, equipment purchases and other capital expenditures, and other lawful corporate purposes.

(b) Without limiting the generality of Section 2.21(a) above, neither Borrowers, Guarantors nor any other Person which may in the future become party to this Agreement or the Other Documents as a Borrower or a Guarantor, intends to use nor shall they use any portion of the proceeds of the Advances, directly or indirectly, for any purpose in violation of Applicable Law.

2.22 Defaulting Lender.

(a) Notwithstanding anything to the contrary contained herein, in the event any Lender is a Defaulting Lender, all rights and obligations hereunder of such Defaulting Lender and of the other parties hereto shall be modified to the extent of the express provisions of this Section 2.22 so long as such Lender is a Defaulting Lender.

(b) (i) except as otherwise expressly provided for in this Section 2.22, Revolving Advances shall be made pro rata from the Lenders which are not Defaulting Lenders based on their respective Revolving Commitment Percentages, and no Revolving Commitment Percentage of any Lender or any pro rata share of any Revolving Advances required to be advanced by any Lender shall be increased as a result of any Lender being a Defaulting Lender. Amounts received in respect of principal of any type of Revolving Advances shall be applied to reduce such type of Revolving Advances of each Lender (other than any Defaulting Lender) in accordance with its Revolving Commitment Percentage; provided, that, Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for a Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, re-lend to a Borrower the amount of such payments received or retained by it for the account of such Defaulting Lender.

(ii) fees pursuant to Section 3.3(b) hereof shall cease to accrue in favor of such Defaulting Lender.

(iii) if any Swing Loans are outstanding or any Letter of Credit Obligations (or drawings under any Letter of Credit for which Issuer has not been reimbursed) are outstanding or exist at the time any such Lender holding a Revolving Commitment becomes a Defaulting Lender, then:

(A) Defaulting Lender's Participation Commitment in the outstanding Swing Loans and of the Maximum Undrawn Amount of all outstanding Letters of Credit shall be reallocated among Non-Defaulting Lenders in proportion to the respective Revolving Commitment Percentages of such Non-Defaulting Lenders to the extent (but only to the extent) that (x) such reallocation does not cause the aggregate sum of outstanding Revolving Advances made by any such Non-Defaulting Lender plus such Lender's reallocated Participation Commitment in the outstanding Swing Loans plus such Lender's reallocated Participation Commitment in the aggregate Maximum Undrawn Amount of all outstanding Letters of Credit to exceed the Revolving Commitment Amount of any such Non-Defaulting Lender, and (y) no Default or Event of Default has occurred and is continuing at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by Agent (x) first, prepay any outstanding Swing Loans that cannot be reallocated, and (y) second, cash collateralize for the benefit of Issuer, Borrowers' obligations corresponding to such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit (after giving effect to any partial reallocation pursuant to clause (A) above) in accordance with Section 3.2(b) for so long as such Obligations are outstanding;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit pursuant to clause (B) above, Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.2(a) with respect to such Defaulting Lender's Revolving Commitment Percentage of Maximum Undrawn Amount of all Letters of Credit during the period such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit are cash collateralized;

(D) if Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is reallocated pursuant to clause (A) above, then the fees payable to the Lenders pursuant to Section 3.2(a) shall be adjusted and reallocated to Non-Defaulting Lenders holding Revolving Commitments in accordance with such reallocation; and

(E) if all or any portion of such Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is neither reallocated nor cash collateralized pursuant to clauses (A) or (B) above, then, without prejudice to any rights or remedies of Issuer or any other Lender hereunder, all Letter of Credit Fees payable under Section 3.2(a) with respect to such Defaulting Lender's Revolving Commitment Percentage of the Maximum Undrawn Amount of all Letters of Credit shall be payable to the Issuer (and not to such Defaulting Lender) until (and then only to the extent that) such Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit is reallocated and/or cash collateralized; and

(iv) so long as any Lender is a Defaulting Lender, Swing Loan Lender shall not be required to fund any Swing Loans and Issuer shall not be required to issue, amend or increase any Letter of Credit, unless such Issuer is satisfied that the related exposure and Defaulting Lender's Participation Commitment in the Maximum Undrawn Amount of all Letters of Credit and all Swing Loans (after giving effect to any such issuance, amendment, increase or funding) will be fully allocated to Non-Defaulting Lenders holding Revolving Commitments and/or cash collateral for such Letters of Credit will be provided by Borrowers in accordance with clause (A) and (B) above, and participating interests in any newly made Swing Loan or any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.22(b)(iii)(A) above (and such Defaulting Lender shall not participate therein).

(c) A Defaulting Lender shall not be entitled to give instructions to Agent or to approve, disapprove, consent to or vote on any matters relating to this Agreement and the Other Documents, and all amendments, waivers and other modifications of this Agreement and the Other Documents may be made without regard to a Defaulting Lender and, for purposes of the definition of "Required Lenders," a Defaulting Lender shall not be deemed to be a Lender, to have any outstanding Advances or a Revolving Commitment Percentage.

(d) Other than as expressly set forth in this Section 2.22, the rights and obligations of a Defaulting Lender (including the obligation to indemnify Agent) and the other parties hereto shall remain unchanged. Nothing in this Section 2.22 shall be deemed to release any Defaulting Lender from its obligations under this Agreement and the Other Documents, shall alter such obligations, shall operate as a waiver of any default by such Defaulting Lender hereunder, or shall prejudice any rights which any Borrower, Agent or any Lender may have against any Defaulting Lender as a result of any default by such Defaulting Lender hereunder.

(e) In the event that Agent, Borrowers, Swing Loan Lender and Issuer agree in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then Agent will so notify the parties hereto and the Participation Commitments of the Lenders (including such cured Defaulting Lender), the Swing Loans and the Maximum Undrawn Amount of all outstanding Letters of Credit shall be reallocated to reflect the inclusion of such Lender's Revolving Commitment, and on such date such Lender shall purchase at par such of the Revolving Advances of the other Lenders as Agent shall determine may be necessary in order for such Lender to hold such Revolving Advances in accordance with its Revolving Commitment Percentage.

(f) If Swing Loan Lender or Issuer has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, Swing Loan Lender shall not be required to fund any Swing Loans and Issuer shall not be required to issue, amend or increase any Letter of Credit, unless Swing Loan Lender or Issuer, as the case may be, shall have entered into arrangements with Borrowers or such Lender, satisfactory to Swing Loan Lender or Issuer, as the case may be, to defease any risk to it in respect of such Lender hereunder.

2.23 Payment of Obligations. Agent may charge to Borrowers' Account as a Revolving Advance or, at the discretion of Swing Loan Lender, as a Swing Loan (i) all payments with respect to any of the Obligations required hereunder (including without limitation principal payments, payments of interest, payments of Letter of Credit Fees and all other fees provided for hereunder and payments under Sections 16.5 and 16.9) as and when each such payment shall become due and payable (whether as regularly scheduled, upon or after acceleration, upon maturity or otherwise), (ii) without limiting the generality of the foregoing clause (i), (a) all amounts expended by Agent or any Lender pursuant to Sections 4.2 or 4.3 hereof and (b) all expenses which Agent incurs in connection with the forwarding of Advance proceeds and the establishment and maintenance of the Control Account as provided for in Section 4.8(h), and (iii) any sums expended by Agent or any Lender due to any Borrower's failure to perform or comply with its obligations under this Agreement or any Other Document including any Borrower's obligations under Sections 3.3, 3.4, 4.4, 4.7, 6.4, 6.6, 6.7 and 6.8 hereof, and all amounts so charged shall be added to the Obligations and shall be secured by the Collateral. To the extent Revolving Advances are not actually funded by the other Lenders in respect of any such amounts so charged, all such amounts so charged shall be deemed to be Swing Loans made by and owing to Agent and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender under this Agreement.

2.24 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in this Agreement, in any Other Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Agreement or any Other Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority

2.25 Increase in Maximum Revolving Advance Amount.

(a) At any time prior to the second anniversary of the Closing Date, upon not less than thirty (30) days' prior written notice to Agent, Borrowers may request that the Maximum Revolving Advance Amount be increased by (1) one or more of the current Lenders increasing their Revolving Commitment Amount (any current Lender which elects to increase its Revolving Commitment Amount shall be referred to as an "Increasing Lender") or (2) one or more new lenders (each a "New Lender") joining this Agreement and providing a Revolving Commitment Amount hereunder, subject to the following terms and conditions:

(i) No current Lender shall be obligated to increase its Revolving Commitment Amount and any increase in the Revolving Commitment Amount by any current Lender shall be in the sole discretion of such current Lender;

(ii) Borrowers may not request the addition of a New Lender unless (and then only to the extent that) there is insufficient participation on behalf of the existing Lenders in the increased Revolving Commitments being requested by Borrowers;

(iii) There shall exist no Event of Default or Default on the effective date of such increase after giving effect to such increase;

(iv) After giving effect to such increase, the Maximum Revolving Advance Amount shall not exceed $150,000,000;

(v) Borrowers may not request an increase in the Maximum Revolving Advance Amount under this Section 2.24 more than two (2) times during the Term, and no single such increase in the Maximum Revolving Advance Amount shall be for an amount less than $25,000,000;

(vi) Borrowers shall deliver to Agent on or before the effective date of such increase the following documents in form and substance satisfactory to Agent: (1) certifications of their corporate secretaries with attached resolutions certifying that the increase in the Revolving Commitment Amounts has been approved by such Borrowers, (2) certificate dated as of the effective date of such increase certifying that no Default or Event of Default shall have occurred and be continuing and certifying that the representations and warranties made by each Borrower herein and in the Other Documents are true and complete in all respects with the same force and effect as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date), (3) if Borrowers will use the proceeds of such increase to acquire the Equity Interests of a target in a Permitted Acquisition, the materials required by clause (g) of the definition of Permitted Acquisition, (4) such other agreements, instruments and information (including supplements or modifications to this Agreement and/or the Other Documents executed by Borrowers as Agent reasonably deems necessary in order to document the increase to the Maximum Revolving Advance Amount and to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agent and Lenders hereunder and under the Other Documents in light of such increase, and (5) an opinion of counsel in form and substance satisfactory to Agent which shall cover such matters related to such increase as Agent may reasonably require and each Borrower hereby authorizes and directs its counsel to deliver such opinions to Agent and Lenders;

(vii) Borrowers shall execute and deliver (1) to each Increasing Lender a replacement Note reflecting the new amount of such Increasing Lender's Revolving Commitment Amount after giving effect to the increase (and the prior Note issued to such Increasing Lender shall be deemed to be cancelled) and (2) to each New Lender a Note reflecting the amount of such New Lender's Revolving Commitment Amount;

(viii) Any New Lender shall be subject to the approval of Agent and Issuer;

(ix) Each Increasing Lender shall confirm its agreement to increase its Revolving Commitment Amount pursuant to an acknowledgement in a form acceptable to Agent, signed by it and each Borrower and delivered to Agent at least five (5) days before the effective date of such increase; and

(x) Each New Lender shall execute a lender joinder in a form reasonably satisfactory to Agent pursuant to which such New Lender shall join and become a party to this Agreement and the Other Documents with a Revolving Commitment Amount as set forth in such lender joinder.

(b) On the effective date of such increase, (i) Borrowers shall repay all Revolving Advances then outstanding; provided that subject to the other terms and conditions of this Agreement, the Borrowing Agent may request new Revolving Advances on such date and (ii) the Revolving Commitment Percentages of Lenders holding a Revolving Commitment (including each Increasing Lender and/or New Lender) shall be recalculated such that each such Lender's Revolving Commitment Percentage is equal to (x) the Revolving Commitment Amount of such Lender divided by (y) the aggregate of the Revolving Commitment Amounts of all Lenders. Each Lender shall participate in any new Revolving Advances made on or after such date in accordance with its Revolving Commitment Percentage after giving effect to the increase in the Maximum Revolving Advance Amount and recalculation of the Revolving Commitment Percentages contemplated by this Section 2.24.

(c) On the effective date of such increase, each Increasing Lender shall be deemed to have purchased an additional/increased participation in, and each New Lender will be deemed to have purchased a new participation in, each then outstanding Letter of Credit and each drawing thereunder and each then outstanding Swing Loan in an amount equal to such Lender's Revolving Commitment Percentage (as calculated pursuant to Section 2.24(b) above) of the Maximum Undrawn Amount of each such Letter of Credit (as in effect from time to time) and the amount of each drawing and of each such Swing Loan, respectively. As necessary to effectuate the foregoing, each existing Lender holding a Revolving Commitment Percentage that is not an Increasing Lender shall be deemed to have sold to each applicable Increasing Lender and/or New Lender, as necessary, a portion of such existing Lender's participations in such outstanding Letters of Credit and drawings and such outstanding Swing Loans such that, after giving effect to all such purchases and sales, each Lender holding a Revolving Commitment (including each Increasing Lender and/or New Lender) shall hold a participation in all Letters of Credit (and drawings thereunder) and all Swing Loans in accordance with their respective Revolving Commitment Percentages (as calculated pursuant to Section 2.24(b) above).

(d) On the effective date of such increase, Borrowers shall pay all costs and expenses incurred by Agent and by each Increasing Lender and New Lender in connection with the negotiations regarding, and the preparation, negotiation, execution and delivery of all agreements and instruments executed and delivered by any of Agent, Borrowers and/or Increasing Lenders and New Lenders in connection with, such increase (including all fees for any supplemental or additional public filings of any Other Documents necessary to protect, preserve and continue the perfection and priority of the liens, security interests, rights and remedies of Agent and Lenders hereunder and under the Other Documents in light of such increase).

III. INTEREST AND FEES.

3.1 Interest. Interest on Advances shall be payable in arrears on the first day of each month with respect to Domestic Rate Loans and, with respect to ~~LIBOR~~Term SOFR Rate Loans, at the end of each Interest Period. Interest charges shall be computed on the actual principal amount of Advances outstanding during the month at a rate per annum equal to (i) with respect to Revolving Advances, the applicable Revolving Interest Rate and (ii) with respect to Swing Loans, at Borrower's election, either (a) ~~the Daily LIBOR Rate plus~~ a rate per annum equal to the sum of (i) Daily Simple SOFR, (ii) the Applicable Margin, and (iii) the SOFR Adjustment, or (b) the Revolving Interest Rate for Domestic Rate Loans. Except as expressly provided otherwise in this Agreement, any Obligations other than the Advances that are not paid when due shall accrue interest at the Revolving Interest Rate for Domestic Rate Loans, subject to the provision of the final sentence of this Section 3.1 regarding the Default Rate. Whenever, subsequent to the date of this Agreement, the Alternate Base Rate is increased or decreased, the Revolving Interest Rate for Domestic Rate Loans shall be similarly changed without notice or demand of any kind by an amount equal to the amount of such change in the Alternate Base Rate during the time such change or changes remain in effect. ~~The LIBOR Rate shall be adjusted with respect to LIBOR Rate Loans without notice or demand of any kind on the effective date of any change in the Reserve Percentage as of such effective date.~~ Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), (i) the Obligations other than ~~LIBOR~~Term SOFR Rate Loans shall bear interest at the Revolving Interest Rate for Domestic Rate Loans plus two percent (2%) per annum and (ii) ~~LIBOR~~Term SOFR Rate Loans shall bear interest at the Revolving Interest Rate for ~~LIBOR~~Term SOFR Rate Loans plus two percent (2%) per annum (as applicable, the "Default Rate").

3.2 Letter of Credit Fees.

(a) Borrowers shall pay (x) to Agent, for the ratable benefit of the Lenders, fees for each Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, equal to (1) in the case of each outstanding standby Letter of Credit, the average daily amount available to be drawn under such Letter of Credit multiplied by the Applicable Margin for Revolving Advances consisting of LIBOR Rate Loans and (2) in the case of each outstanding commercial Letter of Credit, the average daily amount available to be drawn under such Letter of Credit multiplied by the Applicable Margin for Revolving Advances consisting of LIBOR Rate Loans less one-half percent (0.50%), such fees to be calculated on the basis of a 360-day year for the actual number of days elapsed and to be payable: (A) in the case of each standby Letter of Credit, quarterly in advance, on the date such Letter of Credit is issued and continuing on the first day of each quarter thereafter for so long as such Letter of Credit is outstanding; and (B) in the case of each commercial Letter of Credit, monthly in arrears, on the first day of each month and on the last day of the Term, and (y) to Issuer, a fronting fee of one eighth of one percent (0.125%) per annum times the average daily face amount of each outstanding Letter of Credit for the period from and excluding the date of issuance of same to and including the date of expiration or termination, to be payable quarterly in arrears on the first day of each calendar quarter and on the last day of the Term (all of the foregoing fees, the "Letter of Credit Fees"). In addition, Borrowers shall pay to Agent, for the benefit of Issuer, any and all administrative, issuance, amendment, payment and negotiation charges with respect to Letters of Credit and all fees and expenses as agreed upon by Issuer and Borrowing Agent in connection with any Letter of Credit, including in connection with the opening, amendment or renewal of any such Letter of Credit and any acceptances created thereunder, all such charges, fees and expenses, if any, to be payable on demand. All such charges shall be deemed earned in full on the date when the same are due and payable hereunder and shall not be subject to rebate or pro-ration upon the termination of this Agreement for any reason. Any such charge in effect at the time of a particular transaction shall be the charge for that transaction, notwithstanding any subsequent change in Issuer's prevailing charges for that type of transaction. Upon and after the occurrence of an Event of Default, and during the continuation thereof, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of any such Event of Default without the requirement of any affirmative action by any party), the Letter of Credit Fees described in clause (x) of this Section 3.2(a) shall be increased by an additional two percent (2.0%) per annum.

(b) At any time following the occurrence of an Event of Default, at the option of Agent or at the direction of Required Lenders (or, in the case of any Event of Default under Section 10.7, immediately and automatically upon the occurrence of such Event of Default, without the requirement of any affirmative action by any party), or upon the expiration of the Term or any other termination of this Agreement (and also, if applicable, in connection with any mandatory prepayment under Section 2.20), Borrowers will cause cash to be deposited and maintained in an account with Agent, as cash collateral, in an amount equal to one hundred and five percent (105%) of the Maximum Undrawn Amount of all outstanding Letters of Credit, and each Borrower hereby irrevocably authorizes Agent, in its discretion, on such Borrower's behalf and in such Borrower's name, to open such an account and to make and maintain deposits therein, or in an account opened by such Borrower, in the amounts required to be made by such Borrower, out of the proceeds of Receivables or other Collateral or out of any other funds of such Borrower coming into any Lender's possession at any time. Agent may, in its discretion, invest such cash collateral (less applicable reserves) in such short-term money-market items as to which Agent and such Borrower mutually agree (or, in the absence of such agreement, as Agent may reasonably select) and the net return on such investments shall be credited to such account and constitute additional cash collateral, or Agent may (notwithstanding the foregoing) establish the account provided for under this Section 3.2(b) as a non-interest bearing account and in such case Agent shall have no obligation (and Borrowers hereby waive any claim) under Article 9 of the Uniform Commercial Code or under any other Applicable Law to pay interest on such cash collateral being held by Agent. No Borrower may withdraw amounts credited to any such account except upon the occurrence of all of the following: (x) payment and performance in full of all Obligations; (y) expiration of all Letters of Credit; and (z) termination of this Agreement. Borrowers hereby assign, pledge and grant to Agent, for its benefit and the ratable benefit of Issuer, the Lenders and each other Secured Party, a continuing security interest in and to and Lien on any such cash collateral and any right, title and interest of Borrowers in any deposit account, securities account or investment account into which such cash collateral may be deposited from time to time to secure the Obligations, specifically including all Obligations with respect to any Letters of Credit. Borrowers agree that upon the coming due of any Reimbursement Obligations (or any other Obligations, including Obligations for Letter of Credit Fees) with respect to the Letters of Credit, Agent may use such cash collateral to pay and satisfy such Obligations. In lieu of providing the cash collateral described above, Borrowers may replace any outstanding Letter of Credit (whereupon such outstanding Letter of Credit shall be cancelled) with a letter of credit issued by another issuer satisfactory to the beneficiary of such Letter of Credit.

3.3 Unused Facility Fee. Borrowers shall pay to Agent, for the ratable benefit of the Lenders based on their respective Revolving Commitment Percentages, an unused facility fee payable on the positive difference, if any, between (i) the Loan Cap and (ii) the sum of (A) the aggregate outstanding Revolving Advances (for the purpose of this computation, East West's Swing Loans shall be deemed to be borrowed amounts only under its commitment to make Revolving Advances and not for any other Lender), (B) the aggregate outstanding Swing Loans and (C) the Maximum Undrawn Amount of all outstanding Letters of Credit. Such fee shall be payable at a rate equal to 0.15% per annum on the unused amount of the facility (the "Facility Fee"). The Facility Fee shall be payable to Agent in arrears on the first day of each calendar quarter with respect to the previous calendar quarter.

3.4 Fee Letter and Appraisal Fees.

(a) Borrowers shall pay the amounts required to be paid in the Fee Letter in the manner and at the times required by the Fee Letter.

(b) All of the fees and out-of-pocket costs and expenses of any appraisals conducted pursuant to Section 4.7 hereof shall be paid for when due, in full and without deduction, off-set or counterclaim by Borrowers.

3.5 Computation of Interest and Fees. Interest and fees hereunder shall be computed on the basis of a year of 360 days and for the actual number of days elapsed. If any payment to be made hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day and interest thereon shall be payable at the Revolving Interest Rate for Domestic Rate Loans during such extension. For the purposes of Newegg Canada and the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "**deemed year**") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest with respect to any monetary obligation shall not apply to any interest calculation hereunder, (iii) the rates of interest with respect to any monetary obligation relating to such advances stipulated herein are intended to be nominal rates and not effective rates or yields and (iv) EACH BORROWER CONFIRMS THAT IT FULLY UNDERSTANDS AND IS ABLE TO CALCULATE THE RATE OF INTEREST APPLICABLE TO EACH OF THE ADVANCES BASED ON THE METHODOLOGY FOR CALCULATING PER ANNUM RATES PROVIDED FOR IN THIS AGREEMENT. EACH BORROWER, FOR AND ON BEHALF OF ITSELF AND ON BEHALF OF EACH GUARANTOR, HEREBY IRREVOCABLY AGREES NOT TO PLEAD OR ASSERT, WHETHER BY WAY OF DEFENSE OR OTHERWISE, IN ANY PROCEEDING RELATING TO THIS AGREEMENT OR ANY DOCUMENT RELATED THERETO, THAT THE INTEREST PAYABLE UNDER THIS AGREEMENT OR ANY OTHER DOCUMENT RELATED THERETO AND THE CALCULATION THEREOF HAS NOT BEEN ADEQUATELY DISCLOSED TO THE BORROWERS, THE GUARANTORS, OR ANY ONE OF THEM, WHETHER PURSUANT TO SECTION 4 OF THE INTEREST ACT (CANADA) OR ANY OTHER APPLICABLE LAW OR LEGAL PRINCIPLE.

3.6 Maximum Charges. In no event whatsoever shall interest and other charges charged hereunder exceed the highest rate permissible under Applicable Law. In the event interest and other charges as computed hereunder would otherwise exceed the highest rate permitted under Applicable Law: (i) the interest rates hereunder will be reduced to the maximum rate permitted under Applicable Law; (ii) such excess amount shall be first applied to any unpaid principal balance owed by Borrowers; and (iii) if the then remaining excess amount is greater than the previously unpaid principal balance, the Lenders shall promptly refund such excess amount to Borrowers and the provisions hereof shall be deemed amended to provide for such permissible rate.

3.7 Increased Costs. In the event that any Applicable Law or any Change in Law or compliance by any Lender (for purposes of this Section 3.7, the term "Lender" shall include Agent, Swing Loan Lender, any Issuer or any Lender and any corporation or bank controlling Agent, Swing Loan Lender, any Lender or Issuer and the office or branch where Agent, Swing Loan Lender, any Lender or Issuer (as so defined) makes or maintains any ~~LIBOR~~Term SOFR Rate Loans) with any request or directive (whether or not having the force of law) from any central bank or other financial, monetary or other authority, shall:

(a) subject Agent, Swing Loan Lender, any Lender or Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any ~~LIBOR~~Term SOFR Rate Loan, or change the basis of taxation of payments to Agent, Swing Loan Lender, such Lender or Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.10 and the imposition of, or any change in the rate of, any Excluded Tax payable by Agent, Swing Loan Lender, such Lender or the Issuer);

(b) impose, modify or deem applicable any reserve, special deposit, assessment, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits in or for the account of, advances or loans by, or other credit extended by, any office of Agent, Swing Loan Lender, Issuer or any Lender, including pursuant to Regulation D of the Board of Governors of the Federal Reserve System; or

(c) impose on Agent, Swing Loan Lender, any Lender or Issuer ~~or the London interbank LIBOR market~~ any other condition, loss or expense (other than Taxes) affecting this Agreement or any Other Document or any Advance made by any Lender, or any Letter of Credit or participation therein;

and the result of any of the foregoing is to increase the cost to Agent, Swing Loan Lender, any Lender or Issuer of making, converting to, continuing, renewing or maintaining its Advances hereunder by an amount that Agent, Swing Loan Lender, such Lender or Issuer deems to be material or to reduce the amount of any payment (whether of principal, interest or otherwise) in respect of any of the Advances by an amount that Agent, Swing Loan Lender or such Lender or Issuer deems to be material, then, in any case Borrowers shall promptly pay Agent, Swing Loan Lender, such Lender or Issuer, upon its demand, such additional amount as will compensate Agent, Swing Loan Lender or such Lender or Issuer for such additional cost or such reduction, as the case may be. Agent, Swing Loan Lender, such Lender or Issuer shall certify the amount of such additional cost or reduced amount to Borrowing Agent, and such certification shall be conclusive absent manifest error.

3.8 Basis For Determining Interest Rate Inadequate or Unfair. In the event that Agent or any Lender shall have determined that:

(a) reasonable means do not exist for ascertaining the ~~LIBOR~~Term SOFR Rate applicable pursuant to Section 2.2 hereof for any Interest Period; or

~~(b) Dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank LIBOR market, with respect to an outstanding LIBOR Rate Loan, a proposed LIBOR Rate Loan, or a proposed conversion of a Domestic Rate Loan into a LIBOR Rate Loan; or~~

(~~c~~b) the making, maintenance or funding of any ~~LIBOR~~Term SOFR Rate Loan has been made impracticable or unlawful by compliance by Agent or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Body or with any request or directive of any such Governmental Body (whether or not having the force of law),

then Agent shall give Borrowing Agent prompt written or telephonic notice of such determination. If such notice is given, (i) any such requested ~~LIBOR~~Term SOFR Rate Loan shall be made as a Domestic Rate Loan, unless Borrowing Agent shall notify Agent no later than 10:00 a.m. two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of ~~LIBOR~~Term SOFR Rate Loan, (ii) any Domestic Rate Loan or ~~LIBOR~~Term SOFR Rate Loan which was to have been converted to an affected type of ~~LIBOR~~Term SOFR Rate Loan shall be continued as or converted into a Domestic Rate Loan, or, if Borrowing Agent shall notify Agent, no later than 10:00 a.m. two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of ~~LIBOR~~Term SOFR Rate Loan, and (iii) any outstanding affected ~~LIBOR~~Term SOFR Rate Loans shall be converted into a Domestic Rate Loan, or, if Borrowing Agent shall notify Agent, no later than 10:00 a.m. two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected ~~LIBOR~~Term SOFR Rate Loan, shall be converted into an unaffected type of ~~LIBOR~~Term SOFR Rate Loan, on the last Business Day of the then current Interest Period for such affected ~~LIBOR~~Term SOFR Rate Loans (or sooner, if any Lender cannot continue to lawfully maintain such affected ~~LIBOR~~Term SOFR Rate Loan). Until such notice has been withdrawn, the Lenders shall have no obligation to make an affected type of ~~LIBOR~~Term SOFR Rate Loan or maintain outstanding affected ~~LIBOR~~Term SOFR Rate Loans and no Borrower shall have the right to convert a Domestic Rate Loan or an unaffected type of ~~LIBOR~~Term SOFR Rate Loan into an affected type of ~~LIBOR~~Term SOFR Rate Loan.

3.9 Capital Adequacy.

(a) In the event that Agent, Swing Loan Lender or any Lender shall have determined that any Applicable Law or guideline regarding capital adequacy, or any Change in Law or any change in the interpretation or administration thereof by any Governmental Body, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Agent, Swing Loan Lender, Issuer or any Lender (for purposes of this Section 3.9, the term "Lender" shall include Agent, Swing Loan Lender, Issuer or any Lender and any corporation or bank controlling Agent, Swing Loan Lender or any Lender ~~and the office or branch where Agent, Swing Loan Lender or any Lender (as so defined) makes or maintains any LIBOR Rate Loans)~~) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on Agent, Swing Loan Lender or any Lender's capital as a consequence of its obligations hereunder (including the making of any Swing Loans) to a level below that which Agent, Swing Loan Lender or such Lender could have achieved but for such adoption, change or compliance (taking into consideration Agent's, Swing Loan Lender's and each Lender's policies with respect to capital adequacy) by an amount deemed by Agent, Swing Loan Lender or any Lender to be material, then, from time to time, Borrowers shall pay upon demand to Agent, Swing Loan Lender or such Lender such additional amount or amounts as will compensate Agent, Swing Loan Lender or such Lender for such reduction. In determining such amount or amounts, Agent, Swing Loan Lender or such Lender may use any reasonable averaging or attribution methods. The protection of this Section 3.9 shall be available to Agent, Swing Loan Lender and each Lender regardless of any possible contention of invalidity or inapplicability with respect to the Applicable Law, rule, regulation, guideline or condition.

(b) A certificate of Agent, Swing Loan Lender or such Lender setting forth such amount or amounts as shall be necessary to compensate Agent, Swing Loan Lender or such Lender with respect to Section 3.9(a) hereof when delivered to Borrowing Agent shall be conclusive absent manifest error.

3.10 Taxes.

(a) Any and all payments by or on account of any Obligations hereunder or under any Other Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that if Borrowers shall be required by Applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) Agent, Swing Loan Lender, each Lender, Issuer or any Participant, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrowers shall make such deductions and (iii) Borrowers shall timely pay the full amount deducted to the relevant Governmental Body in accordance with Applicable Law.

(b) Without limiting the provisions of Section 3.10(a) above, Borrowers shall timely pay any Other Taxes to the relevant Governmental Body in accordance with Applicable Law.

(c) Each Borrower shall indemnify Agent, Swing Loan Lender, each Lender, Issuer and any Participant, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by Agent, Swing Loan Lender, such Lender, Issuer, or such Participant, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to Borrowers by any Lender, Swing Loan Lender, Participant, or Issuer (with a copy to Agent), or by Agent on its own behalf or on behalf of Swing Loan Lender, a Lender or Issuer, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Borrower to a Governmental Body, Borrowing Agent shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Borrower is resident for tax purposes, or under any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any Other Document shall deliver to Borrowing Agent (with a copy to Agent), at the time or times prescribed by Applicable Law or reasonably requested by Borrowing Agent or Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. Notwithstanding the submission of such documentation claiming a reduced rate of or exemption from U.S. withholding tax, Agent shall be entitled to withhold United States federal income taxes at the full 30% withholding rate if in its reasonable judgment it is required to do so under the due diligence requirements imposed upon a withholding agent under § 1.1441-7(b) of the United States Income Tax Regulations or other Applicable Law. Further, Agent is indemnified under § 1.1461-1(e) of the United States Income Tax Regulations against any claims and demands of any Lender, Issuer or assignee or participant of a Lender or Issuer for the amount of any tax it deducts and withholds in accordance with regulations under § 1441 of the Code. In addition, any Lender, if requested by Borrowing Agent or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowing Agent or Agent as will enable Borrowing Agent or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing, in the event that any Borrower is resident for tax purposes in the United States of America, any Foreign Lender (or other Lender) shall deliver to Borrowing Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender (or other Lender) becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrowing Agent or Agent, but only if such Foreign Lender (or other Lender) is legally entitled to do so), whichever of the following is applicable:

(i) two (2) duly completed valid originals of IRS Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) two (2) duly completed valid originals of IRS Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of Borrowers within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) two duly completed valid originals of IRS Form W-8BEN,

(iv) any other form prescribed by Applicable Law as a basis for claiming an exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers to determine the withholding or deduction required to be made, or

To the extent that any Lender is not a Foreign Lender, such Lender shall submit to Agent two (2) originals of an IRS Form W-9 or any other form prescribed by Applicable Law demonstrating that such Lender is not a Foreign Lender.

(f) If a payment made to a Lender, Swing Loan Lender, Participant, Issuer, or Agent under this Agreement or any Other Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Person fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender, Swing Loan Lender, Participant, Issuer, or Agent shall deliver to Agent (in the case of Swing Loan Lender, a Lender, Participant or Issuer) and Borrowers (A) a certification signed by the chief financial officer, principal accounting officer, treasurer or controller of such Person, and (B) other documentation reasonably requested by Agent or any Borrower sufficient for Agent and Borrowers to comply with their obligations under FATCA and to determine that Swing Loan Lender, such Lender, Participant, Issuer, or Agent has complied with such applicable reporting requirements.

(g) If Agent, Swing Loan Lender, a Lender, a Participant or Issuer determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this Section, it shall pay to Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund); net of all out-of-pocket expenses of Agent, Swing Loan Lender, such Lender, Participant, or Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund), provided that Borrowers, upon the request of Agent, Swing Loan Lender, such Lender, Participant, or Issuer, agrees to repay the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Body) to Agent, Swing Loan Lender, such Lender, Participant or Issuer in the event Agent, Swing Loan Lender, such Lender, Participant or Issuer is required to repay such refund to such Governmental Body. This Section shall not be construed to require Agent, Swing Loan Lender, any Lender, Participant, or Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrowers or any other Person.

3.11 Successor LIBOR Rate Index.

3.11.1 Interest Rate Inadequate or Unfair. In the event that Agent or any Lender shall have determined that

(a) reasonable means do not exist for ascertaining the LIBOR Rate applicable pursuant to Section 2.2 hereof for any Interest Period;

(b) Dollar deposits in the relevant amount and for the relevant maturity are not available in the London interbank market, with respect to an outstanding LIBOR Rate Loan, a proposed LIBOR Rate Loan, or a proposed conversion of an Alternate Base Rate Loan into a LIBOR Rate Loan;

(c) the making, maintenance or funding of any LIBOR Rate Loan has been made impracticable or unlawful by compliance by Agent or such Lender in good faith with any Applicable Law or any interpretation or application thereof by any Governmental Body or with any request or directive of any such Governmental Body (whether or not having the force of law); or

(d) the LIBOR Rate will not adequately and fairly reflect the cost to such Lender of the establishment or maintenance of any LIBOR Rate Loan,

then Agent shall give Borrowing Agent prompt written or telephonic notice of such determination. If such notice is given prior to a Benchmark Replacement Date (as defined below), (i) any such requested LIBOR Rate Loan shall be made as an Alternate Base Rate Loan, unless Borrowing Agent shall notify Agent no later than 1:00 p.m. two (2) Business Days prior to the date of such proposed borrowing, that its request for such borrowing shall be cancelled or made as an unaffected type of LIBOR Rate Loan, (ii) any Alternate Base Rate Loan or LIBOR Rate Loan which was to have been converted to an affected type of LIBOR Rate Loan shall be continued as or converted into an Alternate Base Rate Loan, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the proposed conversion, shall be maintained as an unaffected type of LIBOR Rate Loan, and (iii) any outstanding affected LIBOR Rate Loans shall be converted into Alternate Base Rate Loans, or, if Borrowing Agent shall notify Agent, no later than 1:00 p.m. two (2) Business Days prior to the last Business Day of the then current Interest Period applicable to such affected LIBOR Rate Loan, shall be converted into an unaffected type of LIBOR Rate Loan, on the last Business Day of the then current Interest Period for such affected LIBOR Rate Loans (or sooner, if any Lender cannot continue to lawfully maintain such affected LIBOR Rate Loan). Until such notice has been withdrawn, Lenders shall have no obligation to make an affected type of LIBOR Rate Loan or maintain outstanding affected LIBOR Rate Loans and Borrowers shall not have the right to convert an Alternate Base Rate Loan or an unaffected type of LIBOR Rate Loan into an affected type of LIBOR Rate Loan.

~~3.11.2~~3.11 Benchmark Replacement ~~Setting~~.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any Other ~~Loan~~ Document (and any ~~Swap~~ agreement governing Hedge Liabilities shall be deemed not to be ~~a~~an "~~Loan~~Other Document" for the purposes of this Section ~~3.11.2~~.

3.11(a)~~(a) *Replacing USD LIBOR*. On March 5, 2021 the Financial Conduct Authority (the "FCA"), the regulatory supervisor of USD LIBOR's administrator (the "IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by the IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if~~, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark ~~is USD LIBOR, the Benchmark~~, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any ~~Loan~~Other Document in respect of ~~any setting of~~ such Benchmark ~~on such day and all~~setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any Other ~~Loan~~ Document~~. If the~~ and (y) if a Benchmark Replacement is ~~Daily Simple SOFR, all interest payments will be payable on a monthly basis.~~

determined in accordance with clause (2) of ~~(b) *Replacing Future Benchmarks*. Upon the occurrence of a Benchmark Transition Event, the~~ the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace ~~the then-current~~such Benchmark for all purposes hereunder and under any ~~Loan~~Other Document in respect of any Benchmark setting at or after 5:00 p.m. (Pacific time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to ~~the~~ Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any Other ~~Loan~~ Document so long as ~~the~~ Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising ~~the~~ Required Lenders ~~At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Alternate Base Rate Loans.~~. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(~~e~~b) Benchmark Replacement Conforming Changes. In connection with the ~~implementation and~~use, administration, adoption or implementation of a Benchmark Replacement, Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any Other ~~Loan~~ Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any Other Document.

(~~d~~c) Notices~~:~~; Standards for Decisions and Determinations. Agent will promptly notify ~~Borrowing Agent~~Borrowers and Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any ~~Benchmark Replacement~~ Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Agent will notify Borrowers of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.11(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party ~~hereto~~to this Agreement or any Other Document, except, in each case, as expressly required pursuant to this Section~~. For the avoidance of doubt, it is the Parties' intention that any Benchmark Replacement and the analysis concurrent therewith will be made in a reasonable, good faith effort with the objective of minimizing the change in the cost to Borrowers of the Advances made under this Agreement.~~ 3.11(c).

(~~e~~d) Unavailability of Tenor~~.~~ ~~-~~of Term SOFR. Notwithstanding anything to the contrary herein or in any Other Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR ~~or USD LIBOR), then Agent may remove any tenor of such Benchmark that is~~ Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative ~~for Benchmark (including Benchmark Replacement) settings and (ii) Agent may~~tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate ~~any~~ such previously removed tenor ~~for Benchmark (including Benchmark Replacement) settings~~.

(e) Benchmark Unavailability Period. Upon Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, (i) Borrowers may revoke any request for a borrowing of, conversion to, or continuation of a Term SOFR Rate Loan to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to an Alternate Base Rate Loan and (ii) any outstanding affected Term Rate SOFR Rate Loan will be deemed to have been converted to an Alternate Base Rate Loan at the end of the applicable Interest Period.

~~(f) *Definitions*.~~

~~"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

~~"Benchmark" means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Section titled "Benchmark Replacement Setting," then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.~~

~~"Benchmark Replacement" means, for any Available Tenor:~~

~~(i) For purposes of clause (a) of this Section, the first alternative set forth below that can be determined by Agent:~~

~~(A) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161 % (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, or~~

~~(B) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (a) of this Section; and provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.~~

(ii) For purposes of clause (b) of this Section, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by Agent and Borrowers as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical , administrative or operational changes (including changes to the definition of the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Transition Event" means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely. provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided, that if Agent decides that any such convention is not administratively feasible for Agent, then Agent may establish another convention in its reasonable discretion.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to Lenders, so long as Agent has not received, by 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising Required Lenders.

"Early Opt-in Election" means the occurrence of:

(i) a notification by Agent to (or the request by Borrowers to Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(ii) the joint election by Agent and Borrowers to trigger a fallback from USD LIBOR and the provision by Agent of written notice of such election to the Lenders.

"Floor" means 0.25% per annum.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"SOFR" means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

"Term SOFR" means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"USD LIBOR" means the London interbank offered rate for U.S. dollars.

3.12 Replacement of Lenders. If any Lender (an "Affected Lender") (a) makes demand upon Borrowers for (or if Borrowers are otherwise required to pay) amounts pursuant to Section 3.7 or 3.9 hereof, (b) is unable to make or maintain LIBOR Rate Loans as a result of a condition described in Section 2.2(h) hereof, (c) is a Defaulting Lender, or (d) denies any consent requested by the Agent pursuant to Section 16.2(b) hereof, Borrowers may, within ninety (90) days of receipt of such demand, notice (or the occurrence of such other event causing Borrowers to be required to pay such compensation or causing Section 2.2(h) hereof to be applicable), or such Lender becoming a Defaulting Lender or denial of a request by Agent pursuant to Section 16.2(b) hereof, as the case may be, by notice in writing to the Agent and such Affected Lender (i) request the Affected Lender to cooperate with Borrowers in obtaining a replacement Lender satisfactory to Agent and Borrowers (the "Replacement Lender"); (ii) request the non-Affected Lenders to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment Percentage, as provided herein, but none of such Lenders shall be under any obligation to do so; or (iii) propose a Replacement Lender subject to approval by Agent in its good faith business judgment. If any satisfactory Replacement Lender shall be obtained, and/or if any one or more of the non-Affected Lenders shall agree to acquire and assume all of the Affected Lender's Advances and its Revolving Commitment Percentage, then such Affected Lender shall assign, in accordance with Section 16.3 hereof, all of its Advances and its Revolving Commitment Percentage, and other rights and obligations under this Loan Agreement and the Other Documents to such Replacement Lender or non-Affected Lenders, as the case may be, in exchange for payment of the principal amount so assigned and all interest and fees accrued on the amount so assigned, *plus* all other Obligations then due and payable to the Affected Lender.

4.1 Security Interest in the Collateral. To secure the prompt payment and performance to Agent, Issuer and each Lender (and each other holder of any Obligations) of the Obligations, each Borrower hereby assigns, pledges and grants to Agent for its benefit and for the ratable benefit of each Lender, Issuer and each other Secured Party, a continuing security interest in and to and Lien on all of its Collateral, whether now owned or existing or hereafter created, acquired or arising and wheresoever located. Each Borrower shall mark its books and records as may be necessary or appropriate to evidence, protect and perfect Agent's security interest and shall cause its financial statements to reflect such security interest (including, without limitation, in the case of any Borrower incorporated in the British Virgin Islands, the updating of its register of relevant charges maintained at its registered office in the British Virgin Islands pursuant to section 162 of the BVI Business Companies Act, and the filing of the relevant charge pursuant to section 163 of the BVI Business Companies Act on the Borrower's Register of Registered Charges at the BVI Registrar of Corporate Affairs to reflect the details of the security interests granted by such Borrower under this Agreement and the Other Documents). Each Borrower shall provide Agent with written notice of all commercial tort claims promptly upon the occurrence of any events giving rise to any such claim(s) (regardless of whether legal proceedings have yet been commenced), such notice to contain a brief description of the claim (s), the events out of which such claim(s) arose and the parties against which such claims may be asserted and, if applicable in any case where legal proceedings regarding such claim(s) have been commenced, the case title together with the applicable court and docket number. Upon delivery of each such notice, such Borrower shall be deemed to thereby grant to Agent a security interest and lien in and to such commercial tort claims described therein and all proceeds thereof. Each Borrower shall provide Agent with written notice promptly upon becoming the beneficiary under any letter of credit or otherwise obtaining any right, title or interest in any letter of credit rights, and at Agent's request shall take such actions as Agent may reasonably request for the perfection of Agent's security interest therein.

4.2 Attachment/Perfection of Security Interest. The security interest created hereby is intended to attach, in respect of Collateral in which any Borrower has the right at the time this Agreement is signed by such Borrower and delivered to Agent and, in respect of Collateral in which any Borrower subsequently acquires rights at the time such Borrower subsequently acquires such rights. Each Borrower shall take all action that may be necessary or desirable, or that Agent may request in its Permitted Discretion, so as at all times to maintain the validity, perfection, enforceability and priority of Agent's security interest in and Lien on the Collateral or to enable Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including, but not limited to, (i) immediately discharging all Liens other than Permitted Encumbrances, (ii) obtaining Lien Waiver Agreements, (iii) delivering to Agent, endorsed or accompanied by such instruments of assignment as Agent may specify, and stamping or marking, in such manner as Agent may specify, any and all chattel paper, instruments, letters of credits and advices thereof and documents evidencing or forming a part of the Collateral, (iv) entering into warehousing, lockbox, customs and freight agreements and other custodial arrangements satisfactory to Agent, and (v) executing and delivering financing statements, financing change statements, control agreements, instruments of pledge, mortgages, notices and assignments, in each case in form and substance satisfactory to Agent, relating to the creation, validity, perfection, maintenance or continuation of Agent's security interest and Lien under the Uniform Commercial Code, PPSA or other Applicable Law. By its signature hereto, each Borrower hereby authorizes Agent to file against such Borrower, one or more financing, financing change continuation, or variation of registered charge pursuant to the Uniform Commercial Code, PPSA or other Applicable Law, as applicable in form and substance satisfactory to Agent (which statements may have a description of collateral which is broader than that set forth herein, including without limitation a description of Collateral as "all assets other than intellectual property" and/or "all personal property other than intellectual property" of any Borrower). Each Borrower hereby acknowledges receipt of a signed copy of this Agreement and hereby waives the requirement to be provided a copy of any verification statement issued in respect of a financing statement or financing change statement registered under the PPSA in connection with this Agreement to perfect the security interest created herein. All charges, expenses and fees Agent may incur in doing any of the foregoing, and any local taxes relating thereto, shall be charged to Borrowers' Account as a Revolving Advance of a Domestic Rate Loan and added to the Obligations, or, at Agent's option, shall be paid by Borrowers to Agent for its benefit and for the ratable benefit of the Lenders immediately upon demand.

4.3 Preservation of Collateral. Following the occurrence and during the continuation of an Event of Default, in addition to the rights and remedies set forth in Section 11.1 hereof, Agent: (a) may at any time take such steps as Agent in its Permitted Discretion deems necessary to protect Agent's interest in and to preserve the Collateral, including the hiring of security guards or the placing of other security protection measures as Agent may deem appropriate; (b) may employ and maintain at any of any Borrower's premises a custodian who shall have full authority to do all acts necessary to protect Agent's interests in the Collateral; (c) may lease warehouse facilities to which Agent may move all or part of the Collateral; (d) may use any Borrower's owned or leased lifts, hoists, trucks and other facilities or equipment for handling or removing the Collateral; and (e) shall have, and is hereby granted, a right of ingress and egress to the places where the Collateral is located, and may proceed over and through any of Borrowers' owned or leased property. Each Borrower shall cooperate fully with all of Agent's efforts to preserve the Collateral and will take such actions to preserve the Collateral as Agent may direct. All of Agent's expenses of preserving the Collateral, including any expenses relating to the bonding of a custodian, shall be charged to Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations.

4.4 Ownership and Location of Collateral.

(a) With respect to the Collateral, at the time the Collateral becomes subject to Agent's security interest: (i) each Borrower shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a first priority security interest in each and every item of its respective Collateral to Agent; and, except for Permitted Encumbrances the Collateral shall be free and clear of all Liens whatsoever; (ii) each document and agreement executed by each Borrower or delivered to Agent or any Lender in connection with this Agreement shall be true and correct in all respects; (iii) all signatures and endorsements of each Borrower that appear on such documents and agreements shall be genuine and each Borrower shall have full capacity to execute same; and (iv) each Borrower's equipment and Inventory shall be located as set forth on Schedule 4.4 and shall not be removed from such location(s) without the prior written consent of Agent except with respect to the sale of Inventory in the Ordinary Course of Business and equipment to the extent permitted in Section 7.1(b) hereof.

(b) (i) There is no location at which any Borrower has any Inventory (except for Inventory in transit) or other Collateral other than those locations listed on Schedule 4.4(b)(i); (ii) Schedule 4.4(b)(ii) hereto contains a correct and complete list, as of the Closing Date, of the legal names and addresses of each warehouse at which Inventory of any Borrower is stored; (iii) Schedule 4.4(b)(iii) hereto sets forth a correct and complete list as of the Closing Date of (A) each place of business of each Borrower and (B) the chief executive officer of each Borrower; and (iv) Schedule 4.4(b)(iv) hereto sets forth a correct and complete list as of the Closing Date of the location, by state/province/territory and street address, of all Real Property owned or leased by each Borrower, identifying which properties are owned and which are leased, together with the names and addresses of any landlords.

4.5 Defense of Agents' and Lenders' Interests. Until (a) payment and performance in full of all of the Obligations and (b) termination of this Agreement, Agent's interests in the Collateral shall continue in full force and effect. During such period no Borrower shall, without Agent's prior written consent, pledge, sell (except for sales or other dispositions otherwise permitted in Section 7.1(b) hereof), assign, transfer, create or suffer to exist a Lien upon or encumber or allow or suffer to be encumbered in any way except for Permitted Encumbrances, any part of the Collateral. Each Borrower shall defend Agent's interests in the Collateral against any and all Persons whatsoever. At any time following demand by Agent for payment of all Obligations in accordance with this Agreement, Agent shall have the right to take possession of the indicia of the Collateral and the Collateral in whatever physical form contained, including: labels, stationery, documents, instruments and advertising materials. If Agent exercises this right to take possession of the Collateral, Borrowers shall, upon demand, assemble it in the best commercially reasonable manner possible and make it available to Agent at a place reasonably convenient to Agent. In addition, with respect to all Collateral, Agent and the Lenders shall be entitled to all of the rights and remedies set forth herein and further provided by the Uniform Commercial Code, PPSA or other Applicable Law. Each Borrower shall, and Agent may, at its option, instruct all suppliers, carriers, forwarders, warehousers or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver same to Agent and/or subject to Agent's order and if they shall come into any Borrower's possession, they, and each of them, shall be held by such Borrower in trust as Agent's trustee, and such Borrower will immediately deliver them to Agent in their original form together with any necessary endorsement.

4.6 Inspection of Premises. Within ninety (90) days after the Closing Date and, additionally, from time to time thereafter, subject to the limitations set forth below, in each case at reasonable times, Agent shall have full access to and the right to audit, check, inspect and make abstracts and copies from each Borrower's books, records, audits, correspondence and all other papers relating to the Collateral and the operation of each Borrower's business. Agent and its agents may enter upon any premises of any Borrower at any time during business hours and at any other reasonable time for the purpose of inspecting the Collateral and any and all records pertaining thereto and the operation of such Borrower's business. All such inspections by Agent pursuant to this Section 4.6 shall be at Borrowers' expense. Notwithstanding the foregoing, except as provided below, Agent may conduct such inspections no more frequently than once each year. Agent may conduct such inspections as frequently as Agent may elect in its Permitted Discretion (i) if and for so long as Excess Availability is below 30% of the Loan Cap or (ii) following the occurrence and during the continuation of an Event of Default.

4.7 Appraisals. Within ninety (90) days after the Closing Date and, additionally, from time to time thereafter, subject to the limitations set forth below, Agent may, in its sole discretion, exercised in a commercially reasonable manner, engage the services of an independent appraisal firm or firms of reputable standing, satisfactory to Agent, for the purpose of appraising the then current values of Borrowers' assets. Except as provided below, Agent may obtain such appraisals pursuant to this Section 4.7 no more than once each year. Each appraisal commissioned by Agent pursuant to this Section 4.7 shall be at Borrowers' expense. Absent the occurrence and continuance of an Event of Default at such time, Agent shall consult with Borrowers as to the identity of any such firm. Agent may conduct such appraisals as frequently as Agent may elect in its Permitted Discretion (i) if and for so long as Excess Availability is below 30% of the Loan Cap or (ii) following the occurrence and during the continuation of an Event of Default.

4.8 Receivables; Deposit Accounts and Securities Accounts.

(a) Each of the Receivables shall be a bona fide and valid account representing a bona fide indebtedness incurred by the Customer therein named, for a fixed sum as set forth in the invoice relating thereto (provided immaterial or unintentional invoice errors shall not be deemed to be a breach hereof) with respect to an absolute sale or lease and delivery of goods upon stated terms of a Borrower, or work, labor or services theretofore rendered by a Borrower as of the date each Receivable is created. Same shall be due and owing in accordance with the applicable Borrower's standard terms of sale and to such Borrower's knowledge at the time of sale shall be without dispute, setoff or counterclaim except as may be stated on the accounts receivable schedules delivered by Borrowers to Agent.

(b) Each Customer with respect to a so-called "B2B" Receivable of over $25,000, to the actual knowledge without the duty to investigate of the Borrower that owns such Receivable, as of the date such Receivable is created, is and will be solvent and able to pay all Receivables on which such Customer is obligated in full when due. With respect to any such Customer described in the immediately preceding sentence that is not solvent, the applicable Borrower has set up on its books and in its financial records bad debt reserves adequate to cover all Receivables owed by such Customer.

(c) Each Borrower's chief executive office is located as set forth on Schedule 4.4(b)(iii). Until written notice is given to Agent by Borrowing Agent of any other office at which any Borrower keeps its records pertaining to Receivables, all such records shall be kept at such executive office.

(d) Borrowers shall ensure that all remittances upon Receivables (whether paid by check or by wire transfer of funds) are remitted to a deposit account maintained by a Borrower at East West, to a deposit account at another depository institution in which Agent has a perfected security interest, or as otherwise agreed to from time to time by Agent. Notwithstanding the foregoing, upon the occurrence of a Cash Dominion Event, to the extent any Borrower directly receives any remittances upon Receivables, such Borrower shall, at such Borrower's sole cost and expense, but on Agent's behalf and for Agent's account, collect as Agent's property and in trust for Agent all amounts received on Receivables, and shall not commingle such collections with any Borrower's funds or use the same except to pay Obligations, and shall as soon as possible and in any event no later than one (1) Business Day after the receipt thereof (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements) and (ii) in the case of remittances paid by wire transfer of funds, transfer all such remittances, in each case, into the Control Account. Each Borrower shall deposit in the Control Account or, upon request by Agent, deliver to Agent, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness.

(e) At any time Agent shall have the right to send notice of the assignment of, and Agent's security interest in and Lien on, the Receivables to any and all Customers or any third party holding or otherwise concerned with any of the Collateral. Upon the occurrence and during the continuation of an Event of Default, Agent shall have the sole right to collect the Receivables, take possession of the Collateral, or both. Agent's actual collection expenses, including, but not limited to, stationery and postage, telephone, facsimile, telegraph, secretarial and clerical expenses and the salaries of any collection personnel used for collection, may be charged to Borrowers' Account and added to the Obligations.

(f) Agent shall have the right to receive, endorse, assign and/or deliver in the name of Agent or any Borrower any and all checks, drafts and other instruments for the payment of money relating to the Receivables, and each Borrower hereby waives notice of presentment, protest and non-payment of any instrument so endorsed. Each Borrower hereby constitutes Agent or Agent's designee as such Borrower's attorney with power (i) at any time: (A) to endorse such Borrower's name upon any notes, acceptances, checks, drafts, money orders or other evidences of payment or Collateral; (B) to sign such Borrower's name on any invoice or bill of lading relating to any of the Receivables, drafts against Customers, assignments and verifications of Receivables; (C) to send verifications of Receivables to any Customer; (D) to sign such Borrower's name on all financing statements or any other documents or instruments deemed necessary or appropriate by Agent to preserve, protect, or perfect Agent's interest in the Collateral and to file same; and (E) to receive, open and dispose of all mail addressed to any Borrower at any post office box/lockbox maintained by Agent for Borrowers or at any other business premises of Agent; and (ii) at any time following the occurrence of a Default or an Event of Default: (A) to demand payment of the Receivables; (B) to enforce payment of the Receivables by legal proceedings or otherwise; (C) to exercise all of such Borrower's rights and remedies with respect to the collection of the Receivables and any other Collateral; (D) to sue upon or otherwise collect, extend the time of payment of, settle, adjust, compromise, extend or renew the Receivables; (E) to settle, adjust or compromise any legal proceedings brought to collect Receivables; (F) to prepare, file and sign such Borrower's name on a proof of claim in bankruptcy or similar document against any Customer; (G) to prepare, file and sign such Borrower's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables; (H) to accept the return of goods represented by any of the Receivables; (I) to change the address for delivery of mail addressed to any Borrower to such address as Agent may designate; and (J) to do all other acts and things necessary to carry out this Agreement. All acts of said attorney or designee are hereby ratified and approved, and said attorney or designee shall not be liable for any acts of omission or commission nor for any error of judgment or mistake of fact or of law, unless done maliciously or with gross (not mere) negligence (as determined by a court of competent jurisdiction in a final non-appealable judgment); this power being coupled with an interest is irrevocable while any of the Obligations remain unpaid.

(g) Neither Agent nor any Lender shall, under any circumstances or in any event whatsoever, have any liability for any error or omission or delay of any kind occurring in the settlement, collection or payment of any of the Receivables or any instrument received in payment thereof, or for any damage resulting therefrom.

(h) Upon the occurrence of a Cash Dominion Event, all proceeds of Collateral shall be transferred from (i) the deposit account at East West or at such other depository institution in which such proceeds were first deposited in accordance with Section 4.8(d), to (ii) the deposit account maintained by Borrowers at East West with an account number having the last four numbers of 0041 (the "Control Account"). If requested by Required Lenders, each applicable Borrower, Agent and East West, in its capacity as the depository bank, shall enter into a deposit account control agreement in form and substance satisfactory to Agent that is sufficient to give Agent "control" (for purposes of Articles 8 and 9 of the Uniform Commercial Code) over the Control Account. All funds deposited in the Control Account shall immediately become subject to the security interest of Agent for its own benefit and the ratable benefit of Issuer, the Lenders and all other holders of the Obligations. Agent shall apply all funds on deposit in the Control Account to the satisfaction of the Obligations (including the cash collateralization of the Letters of Credit) in such order as Agent shall determine in its sole discretion, provided that, in the absence of any Event of Default, Agent shall apply all such funds representing collection of Receivables first to the prepayment of the principal amount of the Swing Loans, if any, and then to the Revolving Advances.

(i) No Borrower will, without Agent's consent, compromise or adjust any Receivables (or extend the time for payment thereof) or accept any returns of merchandise or grant any additional discounts, allowances or credits thereon except for those compromises, adjustments, returns, discounts, credits and allowances as have been heretofore customary in the Ordinary Course of Business of such Borrower.

(j) All deposit, money market and savings accounts (including the Control Account), securities accounts and investment accounts of each Borrower and its domestic United States Subsidiaries as of the Closing Date are set forth on Schedule 4.8(j). No Borrower shall open any new deposit account, securities account or investment account unless (i) Borrowers shall have given at least thirty (30) days prior written notice to Agent and (ii) if such account is to be maintained with a bank, depository institution or securities intermediary that is not East West, such bank, depository institution or securities intermediary, each applicable Borrower and Agent shall first have entered into an account control agreement in form and substance satisfactory to Agent sufficient to give Agent "control" (for purposes of Articles 8 and 9 of the Uniform Commercial Code) over such account, unless such account is a deposit account domiciled in Canada, in which case such Canadian-domiciled deposit account shall be subject to a blocked account agreement among Agent, the applicable Borrower, and the depository institution at which such account is maintained, and Agent shall have a perfected first-priority security interest in such account under the PPSA.

4.9 Inventory. To the extent Inventory held for sale or lease has been produced by any Borrower, it has been and will be produced by such Borrower in accordance with the Federal Fair Labor Standards Act of 1938, and any and all comparable laws in Canada, as amended, and all rules, regulations and orders thereunder.

4.10 Maintenance of Equipment. The equipment shall be maintained in good operating condition and repair (reasonable wear and tear excepted) and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the equipment shall be maintained and preserved. No Borrower shall use or operate the equipment in violation of any material law, statute, ordinance, code, rule or regulation.

4.11 Exculpation of Liability. Nothing herein contained shall be construed to constitute Agent or any Lender as any Borrower's agent for any purpose whatsoever, nor shall Agent or any Lender be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof, except to the extent of Agent's or such Lender's gross negligence or willful misconduct. Neither Agent nor any Lender, whether by anything herein or in any assignment or otherwise, assumes any of any Borrower's obligations under any contract or agreement assigned to Agent or such Lender, and neither Agent nor any Lender shall be responsible in any way for the performance by any Borrower of any of the terms and conditions thereof.

4.12 Financing Statements. Except as respects the financing statements filed by Agent, financing statements described on Schedule 1.2, and financing statements filed in connection with Permitted Encumbrances, no financing statement covering any of the Collateral or any proceeds thereof is or will be on file in any public office.

V. REPRESENTATIONS AND WARRANTIES.

Each Borrower represents and warrants as follows:

5.1 Authority. Each Borrower has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Borrower, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Borrower enforceable in accordance with their terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally. The execution, delivery and performance of this Agreement and of the Other Documents to which it is a party (a) are within such Borrower's corporate or company powers, as applicable, have been duly authorized by all necessary corporate or company action, as applicable, are not in contravention of law or the terms of such Borrower's Organizational Documents or to the conduct of such Borrower's business or of any Material Contract or undertaking to which such Borrower is a party or by which such Borrower is bound, (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Body, (c) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Borrower under the provisions of any agreement, instrument, or other document to which such Borrower is a party or by which it or its property is a party or by which it may be bound.

5.2 Formation and Qualification.

(a) Each Borrower is duly incorporated or formed, as applicable, and in good standing under the laws of its jurisdiction of incorporation or the state, province or territory (or Canada in the case of any Borrower which is a "Canadian Corporation," organized, amalgamated or continued under the Canada Business Corporations Act) listed on Schedule 5.2(a) and is qualified to do business and is in good standing in the jurisdictions listed on Schedule 5.2(a) which constitute all states, provinces and territories in which qualification and good standing are necessary for such Borrower to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect on such Borrower. Each Borrower has delivered to Agent true and complete copies of its Organizational Documents and will promptly notify Agent of any amendment or changes thereto.

(b) The only Subsidiaries of each Borrower are listed on Schedule 5.2(b).

5.3 Survival of Representations and Warranties. All representations and warranties of each Borrower contained in this Agreement and the Other Documents to which it is a party shall be true at the time of such Borrower's execution of this Agreement and the Other Documents to which it is a party, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

5.4 Tax Returns. Each Borrower's federal tax identification number is set forth on Schedule 5.4. Each Borrower has filed all federal, state, provincial, territorial and local tax returns and other reports each is required by law to file and has paid all taxes, assessments, fees and other governmental charges that are due and payable, except where such failure to file would not reasonably be expected to have a Material Adverse Effect. The provision for taxes on the books of each Borrower is adequate for all years not closed by applicable statutes, and for its current fiscal year, and no Borrower has any knowledge of any deficiency or additional assessment in connection therewith not provided for on its books.

5.5 Financial Statements. The consolidated and consolidating balance sheets of Borrowers, and such other Persons described therein, as of December 31, 2020, and the related statements of income, changes in stockholder's equity, and changes in cash flow for the period ended on such date, all accompanied by reports thereon containing opinions without qualification by independent certified public accountants, copies of which have been delivered to Agent, have been prepared in accordance with GAAP, consistently applied (except for changes in application to which such accountants concur and present fairly the financial position of Borrowers at such date and the results of their operations for such period. Since December 31, 2020 there has been no change in the condition, financial or otherwise, of Borrowers as shown on the consolidated balance sheet as of such date and no change in the aggregate value of machinery, equipment and Real Property owned by Borrowers, except changes in the Ordinary Course of Business, none of which individually or in the aggregate has been materially adverse.

5.6 Entity Names. No Borrower has been known by any other company or corporate name, as applicable, in the past five (5) years and does not sell Inventory under any other name except as set forth on Schedule 5.6, nor has any Borrower been the surviving corporation or company, as applicable, of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

5.7 O.S.H.A. Environmental Compliance; Flood Insurance.

(a) Except as set forth on Schedule 5.7 hereto, each Borrower is in compliance with, and its facilities, business, assets, property, leaseholds, Real Property and Equipment are in compliance with the Federal Occupational Safety and Health Act, and all federal, provincial, territorial or local laws applicable in Canada or any province or territory therein regarding health and occupational and safety and/or workplace safety and Environmental Laws and there are no outstanding citations, notices or orders of non-compliance issued to any Borrower or relating to its business, assets, property, leaseholds or Equipment under any such laws, rules or regulations, except in each such case where such non-compliance would not be reasonably expected to have a ~~Materially~~Material Adverse Effect.

(b) Except as set forth on Schedule 5.7 hereto, each Borrower has been issued all required federal, state, provincial, territorial and local licenses, certificates or permits (collectively, "Approvals") relating to all applicable Environmental Laws and all such Approvals are current and in full force and effect.

(c) Except as set forth on Schedule 5.7: (i) there have been no releases, spills, discharges, leaks or disposal (collectively referred to as "Releases") of Hazardous Materials at, upon, under or migrating from or onto any Real Property owned, leased or occupied by any Borrower, except for those Releases which are in full compliance with Environmental Laws; (ii) there are no underground storage tanks or polychlorinated biphenyls on any Real Property, except for such underground storage tanks or polychlorinated biphenyls that are present in compliance with Environmental Laws; (iii) the Real Property has never been used by any Borrower to dispose of Hazardous Materials, except as authorized by Environmental Laws; and (iv) no Hazardous Materials are managed by any Borrower on any Real Property, excepting such quantities as are managed in accordance with all applicable manufacturer's instructions and compliance with Environmental Laws and as are necessary for the operation of the commercial business of any Borrower or of its tenants.

5.8 Solvency; No Litigation, Violation, Indebtedness or Default; ERISA Compliance.

(a) (i) Borrowers, taken as a whole, are solvent, able to pay their debts as they mature, have capital sufficient to carry on their business and all businesses in which they are about to engage, (ii) as of the Closing Date, the fair present saleable value of the assets of Borrowers, taken as a whole and calculated on a going concern basis, are in excess of the amount of their liabilities, and (iii) subsequent to the Closing Date, the fair saleable value of the assets of Borrowers, taken as a whole (and calculated on a going concern basis) will be in excess of the amount of their liabilities.

(b) Except as disclosed in Schedule 5.8(b)(i), no Borrower has any pending or threatened litigation, arbitration, actions or proceedings. No Borrower has any outstanding Indebtedness other than the Obligations, except for (i) Indebtedness disclosed in Schedule 5.8(b)(ii) and (ii) Indebtedness otherwise permitted under Section 7.8 hereof.

(c) No Borrower is in violation of any applicable statute, law, rule, regulation or ordinance in any respect which could reasonably be expected to have a Material Adverse Effect, nor is any Borrower in violation of any order of any court, Governmental Body or arbitration board or tribunal. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws.

(d) No Borrower or any member of the Controlled Group maintains or is required to contribute to any Plan other than those listed on Schedule 5.8(d) hereto. (i) Each Borrower and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Plan, and each Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, without regard to waivers and variances; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Code or an application for such a determination is currently being processed by the Internal Revenue Code; (iii) neither any Borrower nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan; (v) the current value of the assets of each Plan exceeds the present value of the accrued benefits and other liabilities of such Plan and neither any Borrower nor any member of the Controlled Group knows of any facts or circumstances which would materially change the value of such assets and accrued benefits and other liabilities; (vi) neither any Borrower nor any member of the Controlled Group has breached any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vii) neither any Borrower nor any member of a Controlled Group has incurred any liability for any excise tax arising under Section 4971, 4972 or 4980B of the Code, and no fact exists which could give rise to any such liability; (viii) neither any Borrower nor any member of the Controlled Group nor any fiduciary of, nor any trustee to, any Plan, has engaged in a "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code nor taken any action which would constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (ix) no Termination Event has occurred or is reasonably expected to occur; (x) there exists no event described in Section 4043 of ERISA, for which the thirty (30) day notice period has not been waived; (xi) neither any Borrower nor any member of the Controlled Group has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; (xii) neither any Borrower nor any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; (xiii) neither any Borrower nor any member of the Controlled Group has withdrawn, completely or partially, within the meaning of Section 4203 or 4205 of ERISA, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability; and (xiv) no Plan fiduciary (as defined in Section 3(21) of ERISA) has any liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan.

(e) None of the Canadian Loan Parties maintains or is required to contribute to any Canadian Plan other than those listed on Schedule 5.8(e) hereto. Each Canadian Plan has been maintained in compliance with its terms and with the requirements of Applicable Law and has been maintained, where required, in good standing with applicable Governmental Bodies. None of the Canadian Loan Parties has incurred, or could reasonably be expected to incur, any obligation or liability in connection with the termination of or withdrawal from any Canadian Plan.

(f) None of the Canadian Plans is a Registered Pension Plan. All material obligations of each Canadian Loan Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Plans, and the funding agreements therefor, have been performed and satisfied when required to be performed or satisfied. All contributions or premiums required to be made or paid by the Canadian Loan Parties to the Canadian Plans have been made on a timely basis in accordance with the terms of such Canadian Plans and requirements of Applicable Law. None of the Canadian Plans is a supplemental pension plan or other retirement plan providing benefits in excess of any retirement benefits provided under a Registered Pension Plan or any other Canadian Plan. None of the Canadian Plans is a Canadian Multi-Employer Pension Plan.

5.9 Patents, Trademarks, Copyrights and Licenses. All Intellectual Property owned or utilized by any Borrower: (i) is set forth on Schedule 5.9; (ii) is valid and has been duly registered or filed with all appropriate Governmental Bodies; and (iii) constitutes all of the intellectual property rights which are necessary for the operation of its business. There is no objection to, pending challenge to the validity of, or proceeding by any Governmental Body to suspend, revoke, terminate or adversely modify, any such Intellectual Property and no Borrower is aware of any grounds for any challenge or proceedings, except as set forth in Schedule 5.9 hereto. All Intellectual Property owned or held by any Borrower consists of original material or property developed by such Borrower or was lawfully acquired or licensed by such Borrower from the proper and lawful owner thereof. Each of such items has been maintained so as to preserve the value thereof from the date of creation or acquisition thereof.

5.10 Licenses and Permits. Except as set forth in Schedule 5.10, each Borrower (a) is in compliance with and (b) has procured and is now in possession of, all material licenses or permits required by any applicable federal, state, provincial, territorial or local law, rule or regulation for the operation of its business in each jurisdiction wherein it is now conducting or proposes to conduct business and where the failure to procure such licenses or permits could reasonably be expected to have a Material Adverse Effect.

5.11 Default of Indebtedness. No Borrower is in default in the payment of the principal of or interest on any Indebtedness or under any instrument or agreement under or subject to which any Indebtedness has been issued and, to the knowledge of such Borrower, no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

5.12 No Default. No Borrower is in default in the payment or performance of any of its contractual obligations to an extent that could reasonably be expected to have a Material Adverse Effect, and no Default or Event of Default has occurred.

5.13 No Burdensome Restrictions. No Borrower is party to any contract or agreement the performance of which could reasonably be expected to have a Material Adverse Effect. Each Borrower has heretofore delivered to Agent true and complete copies of all Material Contracts to which it is a party or to which it or any of its properties is subject. No Borrower has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Encumbrance.

5.14 No Labor Disputes. No Borrower is involved in any labor dispute; there are no strikes or walkouts or union organization (or application for certification) of any Borrower's employees threatened or in existence and no labor contract is scheduled to expire during the Term other than as set forth on Schedule 5.14 hereto. No Canadian Loan Party is a party or subject to or bound by any collective agreement; and none of the employees of any Canadian Loan Party are employees or receive benefits under any collective agreement.

5.15 Margin Regulations. No Borrower is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of any Advance will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

5.16 Investment Company Act. No Borrower is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

5.17 Disclosure. No representation or warranty made by any Borrower in this Agreement or in any financial statement, report, certificate or any other document furnished in connection herewith or therewith contains any untrue statement of fact or omits to state any fact (a) necessary to make the statements herein or therein not misleading or (b) which could reasonably be expected to have a Material Adverse Effect.

5.18 Certificate of Beneficial Ownership. The Certificate of Beneficial Ownership executed and delivered to Agent on or prior to the date of this Agreement, as updated from time to time in accordance with this Agreement, is accurate, complete and correct as of the date hereof and as of the date any such update is delivered. The Borrowing Agent, for itself and the other Borrowers, acknowledges and agrees that the Certificate of Beneficial Ownership is one of the Other Documents.

5.19 Reserved.

5.20 Swaps. No Borrower is a party to, nor will it be a party to, any swap agreement whereby such Borrower has agreed or will agree to swap interest rates or currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited "two-way basis" without regard to fault on the part of either party.

5.21 Business and Property of Borrowers. Upon and after the Closing Date, Borrowers do not propose to engage in any business other than (a) the sale of computers, other electronic and consumer products (including the sale of computer hardware, software and peripherals, and consumer electronics), and other general merchandise, (b) providing services (including marketing and advertising) and engaging in activities necessary to conduct the foregoing, and (c) the providing third-party logistics services. On the Closing Date, each Borrower will own all the property and possess all of the material rights and Consents necessary for the conduct of the business of such Borrower.

5.22 Ineligible Securities. Borrowers do not intend to use and shall not use any portion of the proceeds of the Advances, directly or indirectly, to purchase during the underwriting period, or for 30 days thereafter, Ineligible Securities being underwritten by a securities Affiliate of Agent or any Lender.

5.23 Federal Securities Laws. No Borrower nor any Subsidiary of any Borrower (i) except in the case of Newegg Commerce, is required to file periodic reports under the Exchange Act, (ii) except in the case of Newegg Commerce, has any securities registered under the Exchange Act or (iii) has filed a registration statement that has not yet become effective under the Securities Act.

5.24 Equity Interests. All of the authorized and outstanding Equity Interests of each Borrower, except for Newegg, are wholly owned, directly or indirectly, by Newegg. All of the Equity Interests of each Borrower have been duly and validly authorized and issued and are fully paid and non-assessable and have been sold and delivered to the holders thereof in material compliance with, or under valid exemption from, all federal, state, provincial and territorial laws and the rules and regulations of each Governmental Body governing the sale and delivery of securities. Except for the rights and obligations set forth on Schedule 5.24(b), there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which any Borrower, except Newegg, or any of the shareholders of any Borrower, except Newegg, is bound relating to the issuance, transfer, voting or redemption of shares of its Equity Interests or any pre-emptive rights held by any Person with respect to the Equity Interests of Borrowers. Except as set forth on Schedule 5.24(c), Borrowers, except Newegg, have not issued any securities convertible into or exchangeable for shares of its Equity Interests or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

5.25 Commercial Tort Claims. No Borrower has any commercial tort claims except as set forth on Schedule 5.25 hereto.

5.26 Letter of Credit Rights. As of the Closing Date, no Borrower has any letter of credit rights except as set forth on Schedule 5.26 hereto.

5.27 Material Contracts. Schedule 5.27 sets forth all Material Contracts of the Borrowers. All Material Contracts are in full force and effect and no material defaults currently exist thereunder.

VI. AFFIRMATIVE COVENANTS.

Each Borrower shall, until payment in full of the Obligations and termination of this Agreement:

6.1 Compliance with Laws. Comply with all Applicable Laws with respect to the Collateral or any part thereof or to the operation of such Borrower's business the non-compliance with which could reasonably be expected to have a Material Adverse Effect (except to the extent any separate provision of this Agreement shall expressly require compliance with any particular Applicable Law(s) pursuant to another standard).

6.2 Conduct of Business and Maintenance of Existence and Assets. (a) Conduct continuously and operate actively its business according to good business practices and maintain all of its material properties useful or necessary in its business in good working order and condition (reasonable wear and tear excepted and except as may be disposed of in accordance with the terms of this Agreement), including all material Intellectual Property and take all actions necessary to enforce and protect the validity of any material intellectual property right or other right included in the Collateral; (b) keep in full force and effect its existence and comply in all material respects with the laws and regulations governing the conduct of its business where the failure to do so could reasonably be expected to have a Material Adverse Effect; and (c) make all such reports and pay all such franchise and other taxes and license fees and do all such other acts and things as may be lawfully required to maintain its rights, licenses, leases, powers and franchises under the laws of the United States or any political subdivision thereof where the failure to do so could reasonably be expected to have a Material Adverse Effect.

6.3 Books and Records. Keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs (including without limitation accruals for taxes, assessments, Charges, levies and claims, allowances against doubtful Receivables and accruals for depreciation, obsolescence or amortization of assets), all in accordance with, or as required by, GAAP consistently applied in the opinion of such independent public accountant as shall then be regularly engaged by Borrowers.

6.4 Payment of Taxes. Pay, when due, all taxes, assessments and other Charges lawfully levied or assessed upon such Borrower or any of the Collateral, including real and personal property taxes, assessments and charges and all franchise, income, employment, social security benefits, withholding, and sales taxes. If any tax by any Governmental Body is or may be imposed on or as a result of any transaction between any Borrower and Agent or any Lender which Agent or such Lender may be required to withhold or pay or if any taxes, assessments, or other Charges remain unpaid after the date fixed for their payment, or if any claim shall be made which, in Agent's or any Lender's opinion, may possibly create a valid Lien on the Collateral, Agent may without notice to Borrowers pay the taxes, assessments or other Charges and each Borrower hereby indemnifies and holds Agent and each Lender harmless in respect thereof. The amount of any payment by Agent under this Section 6.4 shall be charged to Borrowers' Account as a Revolving Advance maintained as a Domestic Rate Loan and added to the Obligations and, until Borrowers shall furnish Agent with an indemnity therefor (or supply Agent with evidence satisfactory to Agent that due provision for the payment thereof has been made), Agent may hold without interest any balance standing to Borrowers' credit and Agent shall retain its security interest in and Lien on any and all Collateral held by Agent.

6.5 Financial Covenants.

(a) Excess Availability. Cause to be maintained at all times Excess Availability of not less than 10% of the Loan Cap.

(b) Fixed Charge Coverage Ratio. If average daily Excess Availability for any fiscal quarter of Borrowers is less than 20% of the Loan Cap, cause to be maintained as of the end of each subsequent fiscal quarter of Borrowers, a Fixed Charge Coverage Ratio of not less than 1.10 to 1.0, measured on a rolling four (4) quarter basis. If this covenant applies, it shall remain in effect for at least two (2) fiscal quarters and until average daily Excess Availability for two (2) consecutive fiscal quarters is at least 20% of the Loan Cap. If this covenant applies and for as long as it is in effect, Borrowing Agent shall provide Agent calculations, supported by bank statements, of Borrowers' average daily Unrestricted Cash for the last fiscal quarter of the immediately preceding fiscal year to facilitate Agent's determination of the Fixed Charge Coverage Ratio.

(c) Unrestricted Cash. Cause to be maintained at all times average weekly Unrestricted Cash of not less than $20,000,000.

6.6 Insurance.

(a) (i) Keep all its insurable properties and properties in which such Borrower has an interest insured against the hazards of fire, flood, sprinkler leakage, those hazards covered by extended coverage insurance and such other hazards, and for such amounts, as is customary in the case of companies engaged in businesses similar to such Borrower's (but in any event in an aggregate amount for all Borrowers of not less than the total value of Borrowers' landed and in-transit inventory) including business interruption insurance; (ii) maintain a bond or insurance coverage in such amounts as is customary in the case of companies engaged in businesses similar to such Borrower insuring against larceny, embezzlement or other criminal misappropriation of insured's officers and employees who may either singly or jointly with others at any time have access to the assets or funds of such Borrower either directly or through authority to draw upon such funds or to direct generally the disposition of such assets; (iii) maintain public and product liability insurance against claims for personal injury, death or property damage suffered by others; (iv) maintain all such worker's compensation or similar insurance as may be required under the laws of any state, province, territory or jurisdiction in which such Borrower is engaged in business; (v) furnish Agent with (A) copies of all policies and evidence of the maintenance of such policies promptly upon the renewal thereof, which may be prior to or after the applicable expiration date, provided that there shall be no lapse in the coverage under such policies at any time, and (B) appropriate loss payable endorsements in form and substance satisfactory to Agent, naming Agent as an additional insured and mortgagee and/or lender loss payee (as applicable) as its interests may appear with respect to all insurance coverage referred to in clauses (i) and (iii) above, and providing (I) that all proceeds thereunder shall be payable to Agent, (II) no such insurance shall be affected by any act or neglect of the insured or owner of the property described in such policy, and (III) that such policy and loss payable clauses may not be cancelled, amended or terminated unless at least thirty (30) days prior written notice is given to Agent (or in the case of non-payment, at least ten (10) days prior written notice). In the event of any loss thereunder, the carriers named therein hereby are directed by Agent and the applicable Borrower to make payment for such loss to Agent and not to such Borrower and Agent jointly. If any insurance losses are paid by check, draft or other instrument payable to any Borrower and Agent jointly, Agent may endorse such Borrower's name thereon and do such other things as Agent may deem advisable to reduce the same to cash.

(b) Each Borrower shall take all actions required under the Flood Laws and/or requested by Agent to assist in ensuring that each Lender is in compliance with the Flood Laws applicable to the Collateral, including, but not limited to, providing Agent with the address and/or GPS coordinates of each structure on any real property that will be subject to a mortgage in favor of Agent, for the benefit of Lenders, and, to the extent required, obtaining flood insurance for such property, structures and contents prior to such property, structures and contents becoming Collateral, and thereafter maintaining such flood insurance in full force and effect for so long as required by the Flood Laws.

(c) Agent is hereby authorized to adjust and compromise claims under insurance coverage referred to in Sections 6.6(a)(i) and (iii) and 6.6(b) above. All loss recoveries received by Agent under any such insurance may be applied to the Obligations, in such order as Agent in its sole discretion shall determine. Any surplus shall be paid by Agent to Borrowers or applied as may be otherwise required by law. Any deficiency thereon shall be paid by Borrowers to Agent, on demand. If any Borrower fails to obtain insurance as hereinabove provided, or to keep the same in force, Agent, if Agent so elects, may obtain such insurance and pay the premium therefor on behalf of such Borrower, which payments shall be charged to Borrowers' Account and constitute part of the obligations.

6.7 Payment of Indebtedness and Leasehold Obligations. Pay, discharge or otherwise satisfy (i) at or before maturity (subject, where applicable, to specified grace periods) all its Indebtedness, except when the failure to do so could not reasonably be expected to have a Material Adverse Effect or when the amount or validity thereof is currently being Properly Contested, subject at all times to any applicable subordination arrangement in favor of Lenders and (ii) when due its rental obligations under all leases under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect.

6.8 Environmental Matters.

(a) Ensure that the Real Property are in compliance and remain in compliance in each case in all material respects with all Environmental Laws and it shall manage any and all Hazardous Materials on any Real Property in compliance in all material respects with Environmental Laws.

(b) Establish and maintain an environmental management and compliance system to assure and monitor continued compliance with all applicable Environmental Laws which system shall include periodic environmental compliance audits to be conducted by knowledgeable environmental professionals. All potential violations and violations of Environmental Laws shall be reviewed with legal counsel to determine any required reporting to applicable Governmental Bodies and any required corrective actions to address such potential violations or violations.

(c) Respond promptly to any Hazardous Discharge or Environmental Complaint and take all necessary action in order to safeguard the health of any Person and to avoid subjecting the Collateral or Real Property to any Lien. If any Borrower shall fail to respond promptly to any Hazardous Discharge or Environmental Complaint or any Borrower shall fail to comply with any of the requirements of any Environmental Laws, Agent on behalf of the Lenders may, but without the obligation to do so, for the sole purpose of protecting Agent's interest in the Collateral: (i) give such notices or (ii) enter onto the Real Property (or authorize third parties to enter onto the Real Property) and take such actions as Agent (or such third parties as directed by Agent) deem reasonably necessary or advisable, to remediate, remove, mitigate or otherwise manage with any such Hazardous Discharge or Environmental Complaint. All reasonable costs and expenses incurred by Agent (or such third parties) in the exercise of any such rights, including any sums paid in connection with any judicial or administrative investigation or proceedings, fines and penalties, together with interest thereon from the date expended at the Default Rate for Domestic Rate Loans constituting Revolving Advances shall be paid upon demand by Borrowers, and until paid shall be added to and become a part of the Obligations secured by the Liens created by the terms of this Agreement or any other agreement between Agent, any Lender and any Borrower.

(d) Promptly upon the written request of Agent from time to time, Borrowers shall provide Agent, at Borrowers' expense, with an environmental site assessment or environmental compliance audit report prepared by an environmental engineering firm acceptable in the reasonable opinion of Agent, to assess with a reasonable degree of certainty the existence of a Hazardous Discharge and the potential costs in connection with abatement, remediation and removal of any Hazardous Materials found on, under, at or within the Real Property. Any report or investigation of such Hazardous Discharge proposed and acceptable to the responsible Governmental Body shall be acceptable to Agent. If such estimates, individually or in the aggregate, exceed $100,000, Agent shall have the right to require Borrowers to post a bond, letter of credit or other security reasonably satisfactory to Agent to secure payment of these costs and expenses.

6.9 Standards of Financial Statements. Cause all financial statements referred to in Sections 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, and 9.13 as to which GAAP is applicable to be complete and correct in all material respects (subject, in the case of interim financial statements, to normal year-end audit adjustments) and to be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except as disclosed therein and agreed to by such reporting accountants or officer, as applicable).

6.10 Federal Securities Laws. Except in the case of Newegg Commerce, promptly notify Agent in writing if any Borrower or any Subsidiary of any Borrower (i) is required to file periodic reports under the Exchange Act or any Canadian Securities Laws, (ii) registers any securities under the Exchange Act or (iii) files a registration statement under the Securities Act or any Canadian Securities Laws.

6.11 Execution of Supplemental Instruments. Execute and deliver to Agent from time to time, upon demand, such supplemental agreements, statements, assignments and transfers, or instructions or documents relating to the Collateral, and such other instruments as Agent may request, in order that the full intent of this Agreement may be carried into effect.

6.12 Deposit Accounts. Cause Newegg Biz to maintain an operating deposit account with East West. The total month-end balance in such operating deposit account, together with the total month-end balances in all other money market and savings accounts with East West, shall be no less than 50% of Borrowers' total domestic month-end cash balances.

6.13 Government Receivables. Take all steps necessary to protect Agent's interest in the Collateral under the Federal Assignment of Claims Act, the Uniform Commercial Code, the PPSA, and all other applicable federal, state, provincial, territorial or local statutes or ordinances and deliver to Agent appropriately endorsed, any instrument or chattel paper connected with any Receivable arising out of any contract between any Borrower and the United States, Canada any state, province or territory, or any department, agency or instrumentality of any of them.

6.14 Membership / Partnership Interests. Designate and shall cause all of their Subsidiaries to designate (a) their limited liability company membership interests or partnership interests as the case may be, as securities as contemplated by the definition of "security" in Section 8-102(15) and Section 8-103 of Article 8 of the Uniform Commercial Code, and (b) certificate such limited liability company membership interests and partnership interests, as applicable.

6.15 Keepwell. If it is a Qualified ECP Loan Party, then jointly and severally, together with each other Qualified ECP Loan Party, each Borrower hereby absolutely unconditionally and irrevocably (a) guarantees the prompt payment and performance of all Swap Obligations owing by each Non-Qualifying Party (it being understood and agreed that this guarantee is a guaranty of payment and not of collection), and (b) undertakes to provide such funds or other support as may be needed from time to time by any Non-Qualifying Party to honor all of such Non-Qualifying Party's obligations under this Agreement or any Other Document in respect of Swap Obligations (provided, however, that each Qualified ECP Loan Party shall only be liable under this Section 6.15 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 6.15, or otherwise under this Agreement or any Other Document, voidable under applicable law, including applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Loan Party under this Section 6.15 shall remain in full force and effect until payment in full of the Obligations and termination of this Agreement and the Other Documents. Each Qualified ECP Loan Party intends that this Section 6.15 constitute, and this Section 6.15 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of each other Borrower and Guarantor for all purposes of Section 1a(18(A)(v)(II) of the CEA.

6.16 Credit Card Processing Agreements. Within thirty (30) days after the Closing Date, Borrowers shall cause each credit card processor of any Borrower to enter into a satisfactory tri-party agreement with Borrowing Agent and Agent.

6.17 Control Agreements. Within thirty (30) days after the Closing Date, Borrowers shall cause each depository institution in the United States or Canada (other than East West) at which any Borrower maintains any material deposit account to enter into a deposit account control agreement with Agent, each in form and substance satisfactory to Agent, with respect to such deposit account.

6.18 Lien Waiver Agreements. Within sixty (60) days after the Closing Date, Borrowers shall deliver to Agent Lien Waiver Agreements for all locations or places at which Inventory, Equipment and books and records are located or Agent shall have established a satisfactory reserve against the Borrowing Base for any such location or place for which Agent has not received a Lien Waiver Agreement;

6.19 Legal Opinions. Within fifteen (15) days after the Closing Date, Borrowers shall deliver to Agent one or more executed legal opinions of counsel to the Borrowers and Guarantors in form and substance satisfactory to Agent which shall cover such matters incident to the transactions contemplated by this Agreement, the Notes, the Other Documents, and related agreements as Agent may reasonably require, and each Borrower hereby authorizes and directs such counsel to deliver such opinions to Agent and Lenders.

6.20 Canadian Pension Plan Compliance. Comply with the requirements of each Canadian Pension Plan and all Applicable Law relating to any Canadian Plan.

6.21 Know your Customer. Borrowing Agent, for itself and the other Borrowers, shall provide to Agent: (i) confirmation of the accuracy of the information set forth in the most recent Certificate of Beneficial Ownership provided to Agent; (ii) a new Certificate of Beneficial Ownership, in form and substance acceptable to Agent, when the individual(s) to be identified as a Beneficial Owner have changed; and (iii) promptly following any request therefor, Borrowers shall provide such other information and documentation as may reasonably be requested by Agent from time to time for purposes of compliance by the Lenders with applicable laws (including without limitation the USA Patriot Act and other "know your customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Agent and/or any Lender to comply therewith.

6.22 Stock Certificates. Within sixty (60) days after the Closing Date, Borrowers shall deliver to Agent the original of each stock certificate pledged by Borrowers to Agent as Collateral pursuant to this Agreement or any Other Document and, in respect of any stock certificates representing pledged shares of any Person organized under the laws of Canada or any province or territory of Canada, such stock certificates shall be endorsed in blank or delivered with an effective endorsement acceptable to the Agent.

VII. NEGATIVE COVENANTS.

No Borrower shall, until satisfaction in full of the Obligations and termination of this Agreement, except with the prior written consent of the Lenders:

7.1 Merger, Consolidation, Acquisition and Sale of Assets.

(a) Enter into any merger, consolidation or other reorganization with or into any other Person or, except for (i) Permitted Investments, (ii) any merger, consolidation or other reorganization with respect to any Borrower that is not a Significant Borrower, and (iii) except pursuant to a Permitted Acquisition, acquire all or a substantial portion of the assets or Equity Interests of any Person or permit any other Person to consolidate with or merge with it, except any Borrower may merge, consolidate or reorganize with another Borrower, Guarantor or Affiliate, or acquire the assets or Equity Interests of another Borrower, Guarantor or Affiliate, so long as such Borrower is the surviving entity and provides Agent with ten (10) days prior written notice of such merger, consolidation or reorganization and delivers all of the relevant documents evidencing such merger, consolidation or reorganization.

(b) Sell, lease, transfer or otherwise dispose of any of its material properties or assets, except (i) (a) the sale of Inventory in the Ordinary Course of Business and (b) the disposition or transfer of obsolete and worn-out equipment in the Ordinary Course of Business during any fiscal year having an aggregate fair market value of not more than $2,000,000 and only to the extent that (x) the proceeds of any such disposition are used to acquire replacement equipment which is subject to Agent's first priority security interest or (y) the proceeds of which are remitted to Agent to be applied pursuant to Section 2.20, (ii) any other sales or dispositions expressly permitted by this Agreement, and (iii) the sale or all or any portion of the assets of a Borrower that is not a Significant Borrower.

7.2 Creation of Liens. Create or suffer to exist any Lien or transfer upon or against any of its property or assets now owned or hereafter created or acquired, except Permitted Encumbrances. For the avoidance of doubt, no Borrower may create or suffer to exist any Lien on any portion of its Intellectual Property.

7.3 Guarantees. Become liable upon the obligations or liabilities of any Person by assumption, endorsement or guaranty thereof or otherwise (other than to Lenders) except (a) as disclosed on Schedule 7.3, (b) guarantees made in the Ordinary Course of Business up to an aggregate amount of $2,000,000, (c) guarantees by one or more Borrower(s) of the Indebtedness or obligations of any other Borrower(s) or Guarantor(s) to the extent such Indebtedness or obligations are permitted to be incurred and/or outstanding pursuant to the provisions of this Agreement and (d) the endorsement of checks in the Ordinary Course of Business.

7.4 Investments. Purchase or acquire obligations or Equity Interests of, or any other interest in, any Person, other than: (a) Permitted Investments; (b) investments in the Equity Interests of Persons that are not Borrowers or Guarantors in an aggregate amount during the term of this Agreement not to exceed $15,000,000; and (c) investments in the Equity Interests of Foreign Subsidiaries of Borrowers in an aggregate amount in any fiscal year not to exceed $15,000,000, provided that: (i) if Borrower's total investments in the Equity Interests of Foreign Subsidiaries of Borrowers for any fiscal year is less than $15,000,000, Borrowers may carry over the unused amount of such investments for such fiscal year into the next succeeding fiscal year and increase the permitted amount of investments for such immediately succeeding fiscal year by the amount equal to such unused investments; and (ii) (A) if at the time of any Investment under clause (b) or (c) above and after giving effect thereto Excess Availability is at least 20% of the Loan Cap and (ii) so long as Borrowers satisfy the Transaction Conditions, if Borrowers make investments of the type described in clause (b) or (c) above with Net Equity Proceeds, such investments shall not count toward the dollar limits set forth in such clauses to the extent they are made with Net Equity Proceeds.

7.5 Loans. Make advances, loans or extensions of credit to any Person, including any Parent, Subsidiary or Affiliate other than Permitted Loans.

7.6 Capital Expenditures. Contract for, purchase or make any expenditure or commitments for Capital Expenditures in any fiscal year of Borrowers in an aggregate amount for all Borrowers in excess of $15,000,000, provided that: (i) if Borrowers' total Capital Expenditures for any fiscal year are less than the foregoing limit, Borrowers may carry over the unused amount of Capital Expenditures for such fiscal year into the next succeeding fiscal year and increase the permitted amount of Capital Expenditures for such immediately succeeding year by the amount equal to such unused Capital Expenditures; and (ii) so long as the Transaction Conditions are satisfied, if Borrowers make Capital Expenditures with Net Equity Proceeds, such Capital Expenditures shall not count toward the foregoing annual dollar limit on Capital Expenditures to the extent they are made with Net Equity Proceeds.

7.7 [Reserved].

7.8 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness other than Permitted Indebtedness.

7.9 Nature of Business. Substantially change the nature of the business in which it is presently engaged, nor except as specifically permitted hereby purchase or invest, directly or indirectly, in any assets or property other than in the Ordinary Course of Business for assets or property which are useful in, necessary for and are to be used in its business as presently conducted.

7.10 Transactions with Affiliates. Directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise enter into any transaction or deal with, any Affiliate, except for (i) transactions among Borrowers and Guarantors which are not expressly prohibited by the terms of this Agreement, (ii) payment by Borrowers of dividends and distributions permitted under Section 7.7 hereof, (iii) transactions disclosed to Agent in writing, (iv) transactions that are similar to transactions that Borrowers have heretofore engaged in with such Affiliates, (v) transactions in the Ordinary Course of Business, and (vi) transactions which are on an arm's-length basis on terms and conditions no less favorable than terms and conditions which would have been obtainable from a Person other than an Affiliate.

7.11 [Reserved].

7.12 Subsidiaries. Form any Subsidiary unless such Subsidiary (i) is not a Foreign Subsidiary, (ii) at Agent's discretion, (x) expressly joins in this Agreement as a borrower and becomes jointly and severally liable for the obligations of Borrowers hereunder, under the Notes, and under any other agreement between any Borrower and Lenders, or (y) becomes a Guarantor with respect to the Obligations and executes the Guarantor Security Agreement in favor of Agent, and (iii) Agent shall have received all documents, including without limitation, legal opinions and appraisals it may reasonably require to establish compliance with each of the foregoing conditions in connection therewith.

7.13 Fiscal Year and Accounting Changes. Change its fiscal year from December 31st or make any change (i) in accounting treatment and reporting practices except as required by GAAP or (ii) in tax reporting treatment except as required by law.

7.14 Pledge of Credit. Pledge Agent's or any Lender's credit on any purchases, commitments or contracts or for any purpose whatsoever or use any portion of any Advance in or for any business other than such Borrower's business operations as conducted on the Closing Date.

7.15 Amendment of Organizational Documents. (i) Change its legal name, (ii) change its form of legal entity (e.g., converting from a corporation to a limited liability company or vice versa), (iii) change its jurisdiction of organization or become (or attempt or purport to become) organized in more than one jurisdiction, or in the case of any Canadian Loan Party (x) change its chief executive office location or (y) have any tangible personal property located in any province or territory in Canada in which tangible personal property of such Canadian Loan Party was not located or disclosed in Schedule 4.4 or (iv) otherwise amend, modify or waive any term or material provision of its Organizational Documents unless required by law, in any such case without (x) giving at least thirty (30) days prior written notice of such intended change to Agent, (y) having received from Agent confirmation that Agent has taken all steps necessary for Agent to continue the perfection of and protect the enforceability and priority of its Liens in the Collateral belonging to such Borrower and in the Equity Interests of such Borrower and (z) in any case under clause (iv), having received the prior written consent of Agent and Required Lenders to such amendment, modification or waiver.

7.16 Compliance with ERISA. (i) (x) Maintain, or permit any member of the Controlled Group to maintain, or (y) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Plan (including, for certainty, any Foreign Plan), other than those Plans disclosed on Schedule 5.8(d), (ii) engage, or permit any member of the Controlled Group to engage, in any non-exempt "prohibited transaction," as that term is defined in Section 406 of ERISA or Section 4975 of the Code, (iii) terminate, or permit any member of the Controlled Group to terminate, any Plan where such event could result in any liability of any Borrower or any member of the Controlled Group or the imposition of a lien on the property of any Borrower or any member of the Controlled Group pursuant to Section 4068 of ERISA, (iv) incur, or permit any member of the Controlled Group to incur, any withdrawal liability to any Multiemployer Plan; (v) fail promptly to notify Agent of the occurrence of any Termination Event, (vi) fail to comply, or permit a member of the Controlled Group to fail to comply, with the requirements of ERISA or the Code or other Applicable Laws in respect of any Plan, (vii) fail to meet, permit any member of the Controlled Group to fail to meet, or permit any Plan to fail to meet all minimum funding requirements under ERISA and the Code, without regard to any waivers or variances, or postpone or delay or allow any member of the Controlled Group to postpone or delay any funding requirement with respect of any Plan, or (viii) cause, or permit any member of the Controlled Group to cause, a representation or warranty in Section 5.8(d) to cease to be true and correct.

7.17 Prepayment of Indebtedness. At any time, directly or indirectly, prepay any Indebtedness (other than to Lenders), or repurchase, redeem, retire or otherwise acquire any Indebtedness of any Borrower.

7.18 Double Negative Pledge on IP. Except pursuant to this Agreement and the Other Documents, no Borrower shall enter into any agreement, document or instrument that limits the ability of any Borrower or Guarantor to create, incur or suffer to exist any Lien on its Intellectual Property other than in favor of Agent.

VIII. CONDITIONS PRECEDENT.

8.1 Conditions to Initial Advances. The agreement of the Lenders to make the initial Advances requested to be made on the Closing Date is subject to the satisfaction, or waiver by Agent, immediately prior to or concurrently with the making of such Advances, of the following conditions precedent:

(a) This Agreement. Agent shall have received this Agreement duly executed and delivered by an authorized officer of each Borrower, each Lender and Agent;

(b) Notes. Agent shall have received the Notes duly executed and delivered by an authorized officer of each Borrower;

(c) Other Documents. Agent shall have received each of the executed Other Documents;

(d) Financial Condition Certificates. Agent shall have received an executed Financial Condition Certificate in the form of Exhibit 8.1(d).

(e) Closing Certificate. Agent shall have received a closing certificate signed by the Chief Financial Officer, Treasurer or other responsible officer of Borrowing Agent on behalf of each Borrower dated as of the date hereof, stating that (i) all representations and warranties set forth in this Agreement and the Other Documents are true and correct on and as of such date, and (ii) on such date no Default or Event of Default has occurred or is continuing;

(f) Borrowing Base. Agent shall have received evidence from Borrowers that the aggregate amount of Eligible Receivables and Eligible Inventory is sufficient in value and amount to support Advances in the amount requested by Borrowers on the Closing Date;

(g) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code or PPSA financing statement) and, in the case of any Borrower incorporated in the British Virgin Islands, the updating of its register of mortgages and charges maintained at its registered office in the British Virgin Islands, and the filing of a register of charge on the Borrower's Register of Registered Charges at the BVI Registry of Corporate Affairs to reflect the details of the security interests granted by such Borrower under this Agreement and the Other Documents) required by this Agreement, any related agreement or under law or reasonably requested by Agent to be filed, registered or recorded in order to create, in favor of Agent, a perfected security interest in or lien upon the Collateral shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto;

(h) Legal Opinions. Agent shall have received, in form and substance reasonably satisfactory to Agent, one or more executed legal opinions of counsel to the Loan Parties which shall cover such matters as Agent may reasonably require and each Loan Party hereby authorizes and directs such counsel to deliver such opinion or opinions to Agent and Lenders;

(i) Secretary's Certificates, Authorizing Resolutions and Good Standings of Borrowers. Agent shall have received a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Borrower in form and substance satisfactory to Agent dated as of the Closing Date which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of such Borrower authorizing (x) the execution, delivery and performance of this Agreement, the Notes and each Other Document to which such Borrower is a party (including authorization of the incurrence of indebtedness, borrowing of Revolving Advances, Swing Loans, and requesting of Letters of Credit on a joint and several basis with all Borrowers as provided for herein), and (y) the granting by such Borrower of the security interests in and liens upon the Collateral to secure all of the joint and several Obligations of Borrowers (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Borrower authorized to execute this Agreement and the Other Documents, (iii) copies of the Organizational Documents of such Borrower as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of such Borrower in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Borrower's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction) dated not more than 30 days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction;

(j) Secretary's Certificates, Authorizing Resolutions and Good Standings of Guarantors. Agent shall have received a certificate of the Secretary or Assistant Secretary (or other equivalent officer, partner or manager) of each Guarantor in form and substance satisfactory to Agent dated as of the Closing Date which shall certify (i) copies of resolutions in form and substance reasonably satisfactory to Agent, of the board of directors (or other equivalent governing body, member or partner) of each Guarantor authorizing (x) the execution, delivery and performance of such Guarantor's Guaranty and each Other Loan Document to which such Guarantor is a party and (y) the granting by such Guarantor of the security interests in and liens upon the Collateral to secure its obligations under its Guaranty (and such certificate shall state that such resolutions have not been amended, modified, revoked or rescinded as of the date of such certificate), (ii) the incumbency and signature of the officers of such Guarantor authorized to execute this Agreement and the Other Documents, (iii) copies of the Organizational Documents of such Guarantor as in effect on such date, complete with all amendments thereto, and (iv) the good standing (or equivalent status) of such Guarantor in its jurisdiction of organization and each applicable jurisdiction where the conduct of such Guarantor's business activities or the ownership of its properties necessitates qualification, as evidenced by good standing certificate(s) (or the equivalent thereof issued by any applicable jurisdiction) dated not more than 30 days prior to the Closing Date, issued by the Secretary of State or other appropriate official of each such jurisdiction;

(k) [Reserved.];

(l) No Litigation. No litigation, investigation or proceeding before or by any arbitrator or Governmental Body shall be continuing or threatened against any Borrower or against the officers or directors of any Borrower (A) in connection with this Agreement, the Other Documents or any of the transactions contemplated thereby and which, in the reasonable opinion of Agent, is deemed material or (B) which could, in the reasonable opinion of Agent, have a Material Adverse Effect; and (ii) no injunction, writ, restraining order or other order of any nature materially adverse to any Borrower or the conduct of its business or inconsistent with the due consummation of the Transactions shall have been issued by any Governmental Body;

(m) Collateral Examination. Agent shall have completed Collateral examinations and received appraisals, the results of which shall be satisfactory in form and substance to Agent, of the Receivables, Inventory, General Intangibles, and equipment of each Borrower and all books and records in connection therewith;

(n) Background Searches. Agent shall have completed background searches on such members of Borrowing Agent's management team as Agent shall require, the results of which shall be satisfactory to Agent in its Permitted Discretion.

(o) Fees. Agent shall have received all fees payable to Agent and the Lenders on or prior to the Closing Date hereunder, including pursuant to Article III hereof and the Fee Letter;

(p) Financial Statements. Agent shall have received internally prepared financial statements for Borrowers as of a date not earlier than March 31, 2021;

(q) Insurance. Agent shall have received in form and substance satisfactory to Agent, (i) evidence that adequate insurance, including without limitation, casualty and liability insurance, required to be maintained under this Agreement is in full force and effect, (ii) insurance certificates issued by Borrowers' insurance broker containing such information regarding Borrowers' casualty and liability insurance policies as Agent shall request and naming Agent as an additional insured, lenders loss payee and/or mortgagee, as applicable, and (iii) loss payable endorsements issued by Borrowers' insurer naming Agent as lenders loss payee and mortgagee, as applicable;

(r) Payment Instructions. Agent shall have received written instructions from Borrowing Agent directing the application of proceeds of the initial Advances made pursuant to this Agreement;

(s) Consents. Agent shall have received any and all Consents necessary to permit the effectuation of the transactions contemplated by this Agreement and the Other Documents; and Agent shall have received such Consents and waivers of such third parties as might assert claims with respect to the Collateral as Agent and its counsel shall deem necessary;

(t) No Adverse Material Change. Since December 31, 2020, there shall not have occurred any event, condition or state of facts which could reasonably be expected to have a Material Adverse Effect;

(u) Contract Review. Agent shall have received and reviewed all Material Contracts of Borrowers including leases, union contracts, labor contracts, vendor supply contracts, license agreements and distributorship agreements and such contracts and agreements shall be satisfactory in all respects to Agent;

(v) Compliance with Laws. Agent shall be reasonably satisfied that each Borrower is in material compliance with all pertinent federal, state, local or territorial regulations, including those with respect to the Federal Occupational Safety and Health Act, the Environmental Protection Act, ERISA and the Anti-Terrorism Laws;

(w) Certificate of Beneficial Ownership. Agent shall have received, in form and substance acceptable to Agent, an executed Certificate of Beneficial Ownership and such other documentation and other information requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(x) Other. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the Transactions shall be reasonably satisfactory in form and substance to Agent and its counsel.

8.2 Conditions to Each Advance. The agreement of the Lenders to make any Advance requested to be made on any date (including the initial Advance), is subject to the satisfaction of the following conditions precedent as of the date such Advance is made:

(a) Representations and Warranties. Each of the representations and warranties made by any Borrower in or pursuant to this Agreement, the Other Documents and any related agreements to which it is a party, and each of the representations and warranties contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement, the Other Documents or any related agreement shall be true and correct in all respects on and as of such date as if made on and as of such date (except to the extent any such representation or warranty expressly relates only to any earlier and/or specified date);

(b) No Default. No Event of Default or Default shall have occurred and be continuing on such date, or would exist after giving effect to the Advances requested to be made, on such date; provided, however that Agent, in its sole discretion, may continue to make Advances notwithstanding the existence of an Event of Default or Default and that any Advances so made shall not be deemed a waiver of any such Event of Default or Default;

(c) Maximum Advances. In the case of any type of Advance requested to be made, after giving effect thereto, the aggregate amount of such type of Advance shall not exceed the maximum amount of such type of Advance permitted under this Agreement; and

(d) Neither Agent nor any of the Lenders shall have received any order or demand in respect to Newegg Canada under Section 224(1) of the Income Tax Act (Canada) or any replacement for such section of such legislation.

Each request for an Advance by any Borrower hereunder shall constitute a representation and warranty by each Borrower as of the date of such Advance that the conditions contained in this subsection shall have been satisfied.

IX. INFORMATION AS TO BORROWERS.

Each Borrower shall, or (except with respect to Section 9.11) shall cause Borrowing Agent on its behalf to, until satisfaction in full of the Obligations and the termination of this Agreement:

9.1 Disclosure of Material Matters. Immediately upon learning thereof, report to Agent (a) all matters materially affecting the value, enforceability or collectability of any portion of the Collateral, including any Borrower's reclamation or repossession of, or (b) the return to any Borrower of, a material amount of goods or claims or disputes asserted by any Customer or other obligor, which in each case of (a) or (b) above would be reasonably expected to have a Material Adverse Effect.

9.2 Schedules. Deliver to Agent on or before the twentieth (20th) day of each month as and for the prior month (a) accounts receivable agings inclusive of reconciliations to the general ledger, (b) accounts payable schedules inclusive of reconciliations to the general ledger, (c) Inventory reports and (d) a Borrowing Base Certificate in form and substance satisfactory to Agent (which shall be calculated as of the last day of the prior month and which shall not be binding upon Agent or restrictive of Agent's rights under this Agreement), provided that if average daily Excess Availability for any fiscal quarter is less than 20% of the Loan Cap, Borrowing Agent at all times thereafter shall deliver Borrowing Base Certificates to Agent bi-weekly, within 7 days after period end. In addition, each Borrower will deliver to Agent: (A) weekly, no later than the third (3rd) Business Day of each week, a cash balance report in a form satisfactory to Agent, (B) immediate notice if the aggregate amount of Eligible Cash is less than the aggregate amount of Eligible Cash reported on the most recent Borrowing Base Certificate delivered by Borrowing Agent to Agent; and (C) at such intervals as Agent may require in its Permitted Discretion: (i) confirmatory assignment schedules; (ii) copies of Customer's invoices; (iii) evidence of shipment or delivery; and (iv) such further schedules, documents and/or information regarding the Collateral as Agent may require in its Permitted Discretion, including trial balances and test verifications. Agent shall have the right to confirm and verify all Receivables by any manner and through any medium it considers advisable and do whatever it may deem reasonably necessary to protect its interests hereunder. The items to be provided under this Section are to be in form satisfactory to Agent in its Permitted Discretion and executed by each Borrower and delivered to Agent from time to time solely for Agent's convenience in maintaining records of the Collateral, and any Borrower's failure to deliver any of such items to Agent shall not affect, terminate, modify or otherwise limit Agent's Lien with respect to the Collateral.

9.3 Environmental Reports.

(a) Furnish Agent, concurrently with the delivery of the financial statements referred to in Sections 9.7 and 9.8, with a certificate signed by the President of Borrowing Agent stating, to the best of his knowledge, that each Borrower is in compliance in all material respects with all applicable Environmental Laws. To the extent any Borrower is not in compliance with the foregoing laws, the certificate shall set forth with specificity all areas of non-compliance and the proposed action such Borrower will implement in order to achieve full compliance.

(b) In the event any Borrower obtains, gives or receives notice of any Release or threat of Release of a reportable quantity of any Hazardous Materials at the Real Property (any such event being hereinafter referred to as a "Hazardous Discharge") or receives any notice of violation, request for information or notification that it is potentially responsible for investigation or cleanup of environmental conditions at the Real Property, demand letter or complaint, order, citation, or other written notice with regard to any Hazardous Discharge or violation of Environmental Laws affecting the Real Property or any Borrower's interest therein or the operations or the business (any of the foregoing is referred to herein as an "Environmental Complaint") from any Person, including any Governmental Body, then Borrowing Agent shall, within five (5) Business Days, give written notice of same to Agent detailing facts and circumstances of which any Borrower is aware giving rise to the Hazardous Discharge or Environmental Complaint. Such information is to be provided to allow Agent to protect its security interest in and Lien on the Collateral and is not intended to create nor shall it create any obligation upon Agent or any Lender with respect thereto.

(c) Borrowing Agent shall promptly forward to Agent copies of any request for information, notification of potential liability, demand letter relating to potential responsibility with respect to the investigation or cleanup of Hazardous Materials at any other site owned, operated or used by any Borrower to manage of Hazardous Materials and shall continue to forward copies of correspondence between any Borrower and the Governmental Body regarding such claims to Agent until the claim is settled. Borrowing Agent shall promptly forward to Agent copies of all documents and reports concerning a Hazardous Discharge or Environmental Complaint at the Real Property, operations or business that any Borrower is required to file under any Environmental Laws. Such information is to be provided solely to allow Agent to protect Agent's security interest in and Lien on the Collateral.

9.4 Litigation. Promptly notify Agent in writing of (a) any claim, litigation, suit or administrative proceeding affecting any Borrower or any Guarantor, whether or not the claim is covered by insurance, and (b) of any litigation, suit or administrative proceeding, which in any such case affects the Collateral, which in each case of (a) or (b) could reasonably be expected to have a Material Adverse Effect.

9.5 Material Occurrences. Immediately notify Agent in writing upon the occurrence of: (a) any Event of Default or Default; (b) any event, development or circumstance whereby any financial statements or other reports furnished to Agent fail in any material respect to present fairly, in accordance with GAAP consistently applied, the financial condition or operating results of any Borrower as of the date of such statements; (c) any accumulated retirement plan funding deficiency which, if such deficiency continued for two plan years and was not corrected as provided in Section 4971 of the Code, could subject any Borrower to a tax imposed by Section 4971 of the Code; (d) each and every default by any Borrower which might result in the acceleration of the maturity of any Indebtedness, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; and (e) any other development in the business or affairs of any Borrower or any Guarantor, which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action Borrowers propose to take with respect thereto.

9.6 Government Receivables. Notify Agent immediately if any of its Receivables arise out of contracts between any Borrower and the United States or any state thereof, or Canada or any province or territory thereof, and in each such case, any department, agency or instrumentality of any of them.

9.7 Annual Financial Statements. Furnish Agent, as applicable, (a) within one hundred fifty (150) days after the end of each fiscal year of Borrowers or (b) no later than the deadline for the delivery thereof imposed by the SEC, financial statements of Borrowers on a consolidated basis including, but not limited to, statements of income and stockholders' equity and cash flow from the beginning of the current fiscal year to the end of such fiscal year and the balance sheet as at the end of such fiscal year, all prepared in accordance with GAAP applied on a basis consistent with prior practices, and in reasonable detail and reported upon without qualification by an independent certified public accounting firm selected by Borrowers and satisfactory to Agent (the "Accountants"). In addition, the reports shall be accompanied by a Compliance Certificate, which shall contain or have appended thereto calculations which set forth Borrowers' compliance with the requirements imposed by Sections 6.5 and 7.11 hereof.

9.8 Quarterly Financial Statements. Furnish Agent, as applicable, (a) within thirty (30) days after the end of each fiscal quarter or (b) no later than the deadline for the delivery thereof imposed by the SEC, an unaudited balance sheet of Borrowers on a consolidated and consolidating basis and unaudited statements of income and stockholders' equity and cash flow of Borrower on a consolidated and consolidating basis reflecting results of operations from the beginning of the fiscal year to the end of such quarter and for such quarter, prepared on a basis consistent with prior practices and complete and correct in all material respects, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Borrowers' business operations and setting forth in comparative form the respective financial statements for the corresponding date and period in the previous fiscal year. The reports shall be accompanied by a Compliance Certificate.

9.9 Compliance with Canadian Pension Plans; Employee Benefit Plans. (i) Fail to make full payment when due of all amounts which, under the provisions of any Canadian Plans and requirements of Applicable Law, any of the Canadian Loan Parties is required to pay as contributions thereto; (ii) create or become obligated under any Registered Pension Plan; (iii) contribute to or assume an obligation to contribute to any Multi-Employer Pension Plan, (iv) acquire an interest in any Person if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to any Registered Pension Plan having a Defined Benefit provision.

9.10 [Reserved].

9.11 Additional Information. Furnish Agent with such additional information as Agent shall reasonably request in order to enable Agent to determine whether the terms, covenants, provisions and conditions of this Agreement have been complied with by Borrowers including, without the necessity of any request by Agent, (a) copies of all environmental audits and reviews, (b) at least thirty (30) days prior thereto, notice of any Borrower's opening of any new office or place of business or any Borrower's closing of any existing office or place of business, and (c) promptly upon any Borrower's learning thereof, notice of any labor dispute to which any Borrower may become a party, any strikes or walkouts relating to any of its plants or other facilities, and the expiration of any labor contract to which any Borrower is a party or by which any Borrower is bound.

9.12 Projected Operating Budget. Furnish Agent, no later than forty-five (45) days after the beginning of each Borrower's fiscal years commencing with fiscal year 2022, a month by month projected operating budget and cash flow of Borrowers on a consolidated and consolidating basis for such fiscal year (including an income statement for each month and a balance sheet as at the end of the last month in each fiscal quarter), such projections to be accompanied by a certificate signed by the President or Chief Financial Officer of each Borrower to the effect that such projections have been approved by the board of directors (or other applicable government body of such Borrower) and prepared on the basis of sound financial planning practice consistent with past budgets and financial statements and that such officer has no reason to question the reasonableness of any material assumptions on which such projections were prepared.

9.13 Variances From Operating Budget. Furnish Agent, concurrently with the delivery of the financial statements referred to in Section 9.7 and at least the consolidated quarterly financial statements referred to in Section 9.8, a written report summarizing all material variances from budgets submitted by Borrowers pursuant to Section 9.12 and a discussion and analysis by management with respect to such variances.

9.14 Notice of Suits, Adverse Events. Furnish Agent with prompt written notice of (i) any lapse or other termination of any Consent issued to any Borrower by any Governmental Body or any other Person that is material to the operation of any Borrower's business, (ii) any refusal by any Governmental Body or any other Person to renew or extend any such Consent; and (iii) copies of any periodic or special reports filed by any Borrower or any Guarantor with any Governmental Body or Person, if such reports indicate any material change in the business, operations, affairs or condition of any Borrower or any Guarantor, or if copies thereof are requested by Lender, and (iv) copies of any material notices and other communications from any Governmental Body or Person which specifically relate to any Borrower or any Guarantor.

9.15 ERISA Notices and Requests. Furnish Agent with immediate written notice in the event that (i) any Borrower or any member of the Controlled Group knows or has reason to know that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Borrower or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (ii) any Borrower or any member of the Controlled Group knows or has reason to know that a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred together with a written statement describing such transaction and the action which such Borrower or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Plan together with all communications received by any Borrower or any member of the Controlled Group with respect to such request, (iv) any increase in the benefits of any existing Plan or the establishment of any new Plan or the commencement of contributions to any Plan to which any Borrower or any member of the Controlled Group was not previously contributing shall occur, (v) any Borrower or any member of the Controlled Group shall receive from the PBGC a notice of intention to terminate a Plan or to have a trustee appointed to administer a Plan, together with copies of each such notice, (vi) any Borrower or any member of the Controlled Group shall receive any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of a Plan under Section 401(a) of the Code, together with copies of each such letter; (vii) any Borrower or any member of the Controlled Group shall receive a notice regarding the imposition of withdrawal liability, together with copies of each such notice; (viii) any Borrower or any member of the Controlled Group shall fail to make a required installment or any other required payment under the Code or ERISA on or before the due date for such installment or payment; or (ix) any Borrower or any member of the Controlled Group knows that (a) a Multiemployer Plan has been terminated, (b) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, (c) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan or (d) a Multiemployer Plan is subject to Section 432 of the Code or Section 305 of ERISA.

9.16 Additional Documents. Execute and deliver to Agent, upon request, such documents and agreements as Agent may, from time to time, reasonably request to carry out the purposes, terms or conditions of this Agreement.

9.17 Updates to Certain Schedules. Deliver to Agent promptly as shall be required to maintain the related representations and warranties as true and correct, updates to Schedules 4.4 (Locations of equipment and Inventory), 5.9 (Intellectual Property), 5.24 (Equity Interests), 5.25 (Commercial Tort Claims), and 5.26 (Letter-of-Credit Rights); provided, that absent the occurrence and continuance of any Event of Default, Borrowers shall only be required to provide such updates on a monthly basis in connection with delivery of a Compliance Certificate with respect to the applicable month. Any such updated Schedules delivered by Borrowers to Agent in accordance with this Section 9.17 shall automatically and immediately be deemed to amend and restate the prior version of such Schedule previously delivered to Agent and attached to and made part of this Agreement.

9.18 Financial Disclosure. Each Borrower hereby irrevocably authorizes and directs all accountants and auditors employed by such Borrower at any time during the Term to exhibit and deliver to Agent copies of any of such Borrower's financial statements, trial balances or other accounting records of any sort in the accountant's or auditor's possession, and to disclose to Agent any information such accountants may have concerning such Borrower's financial status and business operations. Each Borrower hereby authorizes all Governmental Bodies to furnish to Agent and each Lender copies of reports or examinations relating to such Borrower, whether made by such Borrower or otherwise; however, notwithstanding anything in the foregoing to the contrary, Agent will attempt to obtain such information or materials directly from such Borrower, and provide such Borrower a reasonable time to provide such information, prior to obtaining such information or materials from such accountants or Governmental Bodies.

X. EVENTS OF DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default":

10.1 Nonpayment. Failure by any Borrower to pay when due (a) any principal or interest on the Obligations (including without limitation pursuant to Section 2.9), or (b) any other fee, charge, amount or liability provided for herein or in any Other Document, in each case whether at maturity, by reason of acceleration pursuant to the terms of this Agreement, by notice of intention to prepay or by required prepayment.

10.2 Breach of Representation. Any representation or warranty made or deemed made by any Borrower or any Guarantor in this Agreement, any Other Document or any related agreement or in any certificate, document or financial or other statement furnished at any time in connection herewith or therewith shall prove to have been incorrect or misleading in any material respect on the date when made or deemed to have been made;

10.3 Financial Information. Failure by any Borrower to (i) furnish financial information when due or promptly when requested (provided that any failure by Borrowers to deliver the weekly cash reports required by Section 9.2 shall not constitute an Event of Default unless Borrowers fail to deliver such reports for two (2) consecutive weeks) or (ii) permit the inspection of its books or records or access to its premises for audits and appraisals in accordance with the terms hereof;

10.4 Judicial Actions. Issuance of a notice of Lien, levy, assessment, injunction or attachment (a) against any material portion of any Borrower's Inventory or Receivables or (b) against a material portion of any Borrower's other property which is not stayed or lifted within thirty (30) days;

10.5 Noncompliance. Except as otherwise provided for in Sections 10.1 and 10.3, (i) failure or neglect of any Borrower or any Guarantor to perform, keep or observe any negative covenant contained in Article VII or any term, provision, condition or covenant contained in Section 9.1, 9.3 or 9.5, (ii) failure or neglect of any Borrower to perform, keep or observe any term, provision, condition or covenant, contained in Section 9.2, provided that on no more than three (3) occasions in any year during the Term of this Agreement, Borrowers may cure a breach of Section 9.2 within ten (10) days after its occurrence (such grace period to be applicable only in the event that such failure or neglect can be remedied by corrective action), or (iii) failure or neglect of any Borrower to perform, keep or observe any other term, provision, condition or covenant, contained in this Agreement or any Other Document, which failure or neglect is not cured within thirty (30) days after any officer of any Borrower or Guarantor becomes aware of the occurrence thereof (such grace period to be applicable only in the event that such failure or neglect can be remedied by corrective action);

10.6 Judgments. Any (a) judgment or judgments, writ(s), order(s) or decree(s) for the payment of money are rendered against any Borrower or any Guarantor for an aggregate amount in excess of $1,000,000 or against all Borrowers or Guarantors for an aggregate amount in excess of $2,500,000 and (b) (i) action shall be legally taken by any judgment creditor to levy upon assets or properties of any Borrower or any Guarantor to enforce any such judgment, (ii) such judgment shall remain undischarged for a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) any Liens arising by virtue of the rendition, entry or issuance of such judgment upon assets or properties of any Borrower or any Guarantor shall be senior to any Liens in favor of Agent on such assets or properties;

10.7 Bankruptcy. Any Borrower, any Guarantor, any Subsidiary or Affiliate of any Borrower, except, for the avoidance of doubt, any Chang Entity that does not have any outstanding Indebtedness to any Lender, shall (i) apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, interim receiver, receiver and manager, custodian, trustee, liquidator or similar fiduciary or administrator of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due or cease operations of its present business, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under any state or federal bankruptcy or receivership laws (as now or hereafter in effect), (v) be adjudicated a bankrupt or insolvent (including by entry of any order for relief in any involuntary bankruptcy or insolvency proceeding commenced against it), (vi) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesce to, or fail to have dismissed, within sixty (60) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) take any action for the purpose of effecting any of the foregoing;

10.8 Material Adverse Effect. The occurrence of any event or development which could reasonably be expected to have a Material Adverse Effect;

10.9 Lien Priority. Any Lien created hereunder or provided for hereby or under any related agreement for any reason ceases to be or is not a valid and perfected Lien having a first priority interest (subject only to Permitted Encumbrances that have priority as a matter of Applicable Law to the extent such Liens only attach to Collateral other than Receivables or Inventory);

10.10 Reserved.

10.11 Cross Default. Either (x) any specified "event of default" under any Indebtedness (other than the Obligations) of any Borrower with a then-outstanding principal balance (or, in the case of any Indebtedness not so denominated, with a then-outstanding total obligation amount) of $1,000,000 or more, or any other event or circumstance which would permit the holder of any such Indebtedness of any Borrower to accelerate such Indebtedness (and/or the obligations of Borrower thereunder) prior to the scheduled maturity or termination thereof, shall occur (regardless of whether the holder of such Indebtedness shall actually accelerate, terminate or otherwise exercise any rights or remedies with respect to such Indebtedness) or (y) a default of the obligations of any Borrower under any other agreement to which it is a party shall occur which has or is reasonably likely to have a Material Adverse Effect;

10.12 [Reserved].

10.13 Change of Control. Any Change of Control shall occur;

10.14 Invalidity. Any material provision of this Agreement or any Other Document shall, for any reason, cease to be valid and binding on any Borrower or any Guarantor, or any Borrower or any Guarantor shall so claim in writing to Agent or any Lender or any Borrower challenges the validity of or its liability under this Agreement or any Other Document;

10.15 Seizures. Any (a) portion of the Collateral shall be seized, subject to garnishment or taken by a Governmental Body, or any Borrower or any Guarantor, or (b) the title and rights of any Borrower or any Guarantor which is the owner of any material portion of the Collateral shall have become the subject matter of claim, litigation, suit, garnishment or other proceeding which might, in the opinion of Agent, in its Permitted Discretion, upon final determination, result in impairment or loss of the Collateral provided by this Agreement or the Other Documents;

10.16 Operations. The operations of any Borrower's or any Guarantor's manufacturing facility are interrupted (other than in connection with any regularly scheduled shutdown for employee vacations and/or maintenance in the Ordinary Course of Business) at any time for more than ten (10) consecutive Business Days, unless such Borrower or Guarantor shall (i) be entitled to receive for such period of interruption, proceeds of business interruption insurance sufficient to assure that its per diem cash needs during such period is at least equal to its average per diem cash needs for the consecutive three month period immediately preceding the initial date of interruption and (ii) receive such proceeds in the amount described in clause (i) preceding not later than thirty (30) days following the initial date of any such interruption; provided, however, that notwithstanding the provisions of clauses (i) and (ii) of this section, an Event of Default shall be deemed to have occurred if such Borrower or Guarantor shall be receiving the proceeds of business interruption insurance for a period of thirty (30) consecutive days;

10.17 Pension Plans. An event or condition specified in Sections 7.16 or 9.15 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, any Borrower or any member of the Controlled Group shall incur, or in the opinion of Agent be reasonably likely to incur, a liability to a Plan or the PBGC (or both) which, in the reasonable judgment of Agent, would have a Material Adverse Effect; or the occurrence of any Termination Event, or any Borrower's failure to immediately report a Termination Event in accordance with Section 9.15 hereof.

10.18 Reportable Compliance Event. The occurrence of any Reportable Compliance Event, or any Borrower's failure to immediately report a Reportable Compliance Event in accordance with Section 16.18 hereof.

XI. LENDERS' RIGHTS AND REMEDIES AFTER DEFAULT.

11.1 Rights and Remedies.

(a) Upon the occurrence of: (i) an Event of Default pursuant to Section 10.7 (other than Section 10.7(vii)), all Obligations shall be immediately due and payable and this Agreement and the obligation of the Lenders to make Advances shall be deemed terminated, (ii) any of the other Events of Default and at any time thereafter, at the direction of Required Lenders (or without direction of Required Lenders if necessary for Agent to pursue pre-judgment or provisional remedies) all Obligations shall be immediately due and payable and Agent or Required Lenders shall have the right to terminate this Agreement and to terminate the obligation of the Lenders to make Advances; and (iii) without limiting Section 8.2 hereof, any Default under Section 10.7(vii) hereof, the obligation of the Lenders to make Advances hereunder shall be suspended until such time as such involuntary petition shall be dismissed. Upon the occurrence of any Event of Default, at the direction of Required Lenders (or without direction of the Required Lenders if necessary for Agent to pursue pre-judgment or provisional remedies), Agent shall have the right to exercise any and all rights and remedies provided for herein, under the Other Documents, under the Uniform Commercial Code or PPSA, as applicable, and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Agent may enter any of any Borrower's premises or other premises without legal process and without incurring liability to any Borrower therefor, and Agent may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Agent may deem advisable and Agent may require Borrowers to make the Collateral available to Agent at a convenient place. With or without having the Collateral at the time or place of sale, Agent may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Agent may elect. Except as to that part of the Collateral which is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Agent shall give Borrowers reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to Borrowing Agent at least ten (10) days prior to such sale or sales is reasonable notification. At any public sale Agent or any Lender may bid (including credit bid) for and become the purchaser, and Agent, any Lender or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and all such claims, rights and equities are hereby expressly waived and released by each Borrower. In connection with the exercise of the foregoing remedies, including the sale of Inventory, Agent is granted a perpetual nonrevocable, royalty free, nonexclusive license and Agent is granted permission to use all of each Borrower's (a) Intellectual Property which is used or useful in connection with Inventory for the purpose of marketing, advertising for sale and selling or otherwise disposing of such Inventory and (b) equipment for the purpose of completing the manufacture of unfinished goods. The cash proceeds realized from the sale of any Collateral shall be applied to the Obligations in the order set forth in Section 11.5 hereof. Noncash proceeds will only be applied to the Obligations as they are converted into cash. If any deficiency shall arise, Borrowers shall remain liable to Agent and the Lenders therefor.

(b) To the extent that Applicable Law imposes duties on Agent to exercise remedies in a commercially reasonable manner, each Borrower acknowledges and agrees that it is not commercially unreasonable for Agent: (i) to fail to incur expenses reasonably deemed significant by Agent to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition; (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (iii) to fail to exercise collection remedies against Customers or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral; (iv) to exercise collection remedies against Customers and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature; (vi) to contact other Persons, whether or not in the same business as any Borrower, for expressions of interest in acquiring all or any portion of such Collateral; (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature; (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets; (ix) to dispose of assets in wholesale rather than retail markets; (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure Agent against risks of loss, collection or disposition of Collateral or to provide to Agent a guaranteed return from the collection or disposition of Collateral; or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each Borrower acknowledges that the purpose of this Section 11.1(b) is to provide non-exhaustive indications of what actions or omissions by Agent would not be commercially unreasonable in Agent's exercise of remedies against the Collateral and that other actions or omissions by Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 11.1(b). Without limitation upon the foregoing, nothing contained in this Section 11.1(b) shall be construed to grant any rights to any Borrower or to impose any duties on Agent that would not have been granted or imposed by this Agreement or by Applicable Law in the absence of this Section 11.1(b).

(c) Agent may appoint, remove or reappoint by instrument in writing, any Person or Person, whether an office or officer or an employee or employees of any such Borrower or not, to be interim receiver, receiver or receivers (hereinafter called a "Receiver" which term when used herein shall include a receiver and manager) of such Collateral (including an interest, income or profits therefrom). Any such Receiver shall to the extent permitted by applicable law, be deemed the agent of such Borrower and not of Agent, and Agent shall not be in any way responsible for any misconduct or negligence on the part of any such Receiver or its servants, agents or employees. Subject to the provisions of the instrument appointing it, any such Receiver shall (i) have such powers as have been granted to Agent under this Section 11.1 and (ii) shall be entitled to exercise such powers at any time that such powers would otherwise be exercisable by Agent under this Section 11.1. Except as may be otherwise directed by Agent, all money received from time to time by such Receiver in carrying out their appointment shall be received in trust for and be paid over to Agent and any surplus shall be applied in accordance with applicable law. Every such Receiver may, in the discretion of Agent be vested with, in addition to the rights set out herein, all or any of the rights and powers of Agent described in the PPSA, the Companies' Creditors Arrangement Act (Canada), the Winding-up and Restructuring Act (Canada) or the Bankruptcy and Insolvency Act (Canada).

11.2 Agent's Discretion. Agent shall have the right in its sole discretion to determine which rights, Liens, security interests or remedies Agent may at any time pursue, relinquish, subordinate, or modify, which procedures, timing and methodologies to employ, and what any other action to take with respect to any or all of the Collateral and in what order, thereto and such determination will not in any way modify or affect any of Agent's or Lenders' rights hereunder as against Borrowers or each other.

11.3 Setoff. Subject to Section 14.13, in addition to any other rights which Agent or any Lender may have under Applicable Law, upon the occurrence of an Event of Default hereunder, Agent and such Lender shall have a right, immediately and without notice of any kind, to apply any Borrower's property held by Agent or such Lender or any of their Affiliates to reduce the Obligations and to exercise any and all rights of setoff which may be available to Agent and such Lender with respect to any deposits held by Agent or such Lender.

11.4 Rights and Remedies not Exclusive. The enumeration of the foregoing rights and remedies is not intended to be exhaustive and the exercise of any rights or remedy shall not preclude the exercise of any other right or remedies provided for herein or otherwise provided by law, all of which shall be cumulative and not alternative.

11.5 Allocation of Payments After Event of Default. Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by Agent on account of the Obligations (including without limitation any amounts on account of any of Cash Management Liabilities or Hedge Liabilities), or in respect of the Collateral may, at Agent's discretion, be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Agent in connection with enforcing its rights and the rights of the Lenders under this Agreement and the Other Documents, and any Out-of-Formula Loans and Protective Advances funded by Agent with respect to the Collateral under or pursuant to the terms of this Agreement;

SECOND, to payment of any fees owed to Agent;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of the Lenders to the extent owing to the Lenders pursuant to the terms of this Agreement or any Other Document;

FOURTH, to the payment of all of the Obligations consisting of accrued interest on account of the Swing Loans;

FIFTH, to the payment of the outstanding principal amount of the Obligations consisting of Swing Loans;

SIXTH, to the payment of all Obligations arising under this Agreement and the Other Documents consisting of accrued fees and interest (other than interest in respect of Swing Loans paid pursuant to clause FOURTH above);

SEVENTH, to the payment of the outstanding principal amount of the Obligations (other than principal in respect of Swing Loans paid pursuant to clause FIFTH above) arising under this Agreement (including Cash Management Liabilities and Hedge Liabilities and the payment or cash collateralization of any outstanding Letters of Credit in accordance with Section 3.2(b) hereof) or any Other Document.

EIGHTH, to all other Obligations arising under this Agreement or any Other Document which shall have become due and payable (hereunder, under the Other Documents or otherwise) and not repaid pursuant to clauses "FIRST" through "SEVENTH" above;

NINTH, to all other Obligations which shall have become due and payable and not repaid pursuant to clauses "FIRST" through "EIGHTH"; and

TENTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of the Lenders shall receive (so long as it is not a Defaulting Lender) an amount equal to its pro rata share (based on the proportion that the then outstanding Advances, Cash Management Liabilities and Hedge Liabilities held by such Lender bears to the aggregate then outstanding Advances, Cash Management Liabilities and Hedge Liabilities) of amounts available to be applied pursuant to clauses "SIXTH," "SEVENTH," "EIGHTH" and "NINTH" above; and (iii) notwithstanding anything to the contrary in this Section 11.5, no Swap Obligations of any Non-Qualifying Party shall be paid with amounts received from such Non-Qualifying Party under its Guaranty (including sums received as a result of the exercise of remedies with respect to such Guaranty) or from the proceeds of such Non-Qualifying Party's Collateral if such Swap Obligations would constitute Excluded Hedge Liabilities, provided, however, that to the extent possible appropriate adjustments shall be made with respect to payments and/or the proceeds of Collateral from other Borrowers and/or Guarantors that are Eligible Contract Participants with respect to such Swap Obligations to preserve the allocation to Obligations otherwise set forth above in this Section 11.5; and (iv) to the extent that any amounts available for distribution pursuant to clause "SEVENTH" above are attributable to the issued but undrawn amount of outstanding Letters of Credit, such amounts shall be held by Agent as cash collateral for the Letters of Credit pursuant to Section 3.2(b) hereof and applied (A) first, to reimburse Issuer from time to time for any drawings under such Letters of Credit and (B) then, following the expiration of all Letters of Credit, to all other obligations of the types described in clauses "SEVENTH," "EIGHTH" and "NINTH" above in the manner provided in this Section 11.5.

XII. WAIVERS AND JUDICIAL PROCEEDINGS.

12.1 Waiver of Notice. Each Borrower hereby waives notice of non-payment of any of the Receivables, demand, presentment, protest and notice thereof with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, Collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

12.2 Delay. No delay or omission on Agent's or any Lender's part in exercising any right, remedy or option shall operate as a waiver of such or any other right, remedy or option or of any Default or Event of Default.

12.3 Jury Waiver. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

XIII. EFFECTIVE DATE AND TERMINATION.

13.1 Term. This Agreement, which shall inure to the benefit of and shall be binding upon the respective successors and permitted assigns of each Borrower, Agent and each Lender, shall become effective on the date hereof and shall continue in full force and effect until August 20, 2024 (the "Term") unless sooner terminated as herein provided. Borrowers may terminate this Agreement at any time upon ninety (90) days prior written notice to Agent upon payment in full of the Obligations, provided that if Borrowers terminate this Agreement prior to the first anniversary of the Closing Date, Borrowers shall also pay to Agent, for the ratable benefit of the Lenders, on the termination date an early termination fee equal to 0.50% of the then applicable Maximum Revolving Advance Amount.

13.2 Termination. The termination of the Agreement shall not affect Agent's or any Lender's rights, or any of the Obligations having their inception prior to the effective date of such termination or any Obligations which pursuant to the terms hereof continue to accrue after such date, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created and Obligations have been fully and indefeasibly paid, disposed of, concluded or liquidated. The security interests, Liens and rights granted to Agent and the Lenders hereunder and the financing statements filed hereunder shall continue in full force and effect, notwithstanding the termination of this Agreement or the fact that Borrowers' Account may from time to time be temporarily in a zero or credit position, until all of the Obligations of each Borrower have been indefeasibly paid and performed in full after the termination of this Agreement or each Borrower has furnished Agent and the Lenders with an indemnification satisfactory to Agent and the Lenders with respect thereto. Accordingly, each Borrower waives any rights which it may have under the Uniform Commercial Code or PPSA, as applicable, to demand the filing of termination statements or discharges with respect to the Collateral, and Agent shall not be required to send such termination statements or discharges to each Borrower, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations have been indefeasibly paid in full in immediately available funds. All representations, warranties, covenants, waivers and agreements contained herein shall survive termination hereof until all Obligations are indefeasibly paid and performed in full.

XIV. REGARDING AGENT.

14.1 Appointment. Each Lender hereby designates East West to act as administrative agent and as collateral agent for such Lender under this Agreement and the Other Documents. Each Lender hereby irrevocably authorizes Agent to take such action on its behalf under the provisions of this Agreement and the Other Documents and to exercise such powers and to perform such duties hereunder and thereunder as are specifically delegated to or required of Agent by the terms hereof and thereof and such other powers as are reasonably incidental thereto and Agent shall hold all Collateral, payments of principal and interest, fees (except the fees set forth in Sections 2.8(b), 3.3(a), 3.4 and the Fee Letter), charges and collections received pursuant to this Agreement, for the ratable benefit of the Lenders. Agent may perform any of its duties hereunder by or through its agents or employees. As to any matters not expressly provided for by this Agreement (including collection of the Note) Agent shall not be required to exercise any discretion or take any action, but Agent shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Required Lenders, and such instructions shall be binding; provided, however, that Agent shall not be required to take any action which, in Agent's discretion, exposes Agent to liability or which is contrary to this Agreement or the Other Documents or Applicable Law unless Agent is furnished with an indemnification reasonably satisfactory to Agent with respect thereto.

14.2 Nature of Duties. Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and the Other Documents. Agent shall exercise such care on behalf of the Lenders as Agent would exercise for similar loans in its own portfolio, provided that neither Agent nor any of its officers, directors, employees or agents shall be (i) liable for any action taken or omitted by them as such hereunder or in connection herewith, unless caused by their gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment), or (ii) responsible in any manner for any recitals, statements, representations or warranties made by any Borrower or any officer thereof contained in this Agreement, or in any of the Other Documents or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any of the Other Documents or for the value, validity, effectiveness, genuineness, due execution, enforceability or sufficiency of this Agreement, or any of the Other Documents or for any failure of any Borrower to perform its obligations hereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any of the Other Documents, or to inspect the properties, books or records of any Borrower. The duties of Agent as respects the Advances to Borrowers and the duties of Agent as respects the Collateral shall be mechanical and administrative in nature; Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect of this Agreement or the transactions described herein except as expressly set forth herein.

14.3 Lack of Reliance on Agent. Independently and without reliance upon Agent or any other Lender, each Lender has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of each Borrower and each Guarantor in connection with the making and the continuance of the Advances hereunder and the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of each Borrower and each Guarantor. Except for notices, reports and other documents expressly required to be furnished by Agent to the Lenders, Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before making of the Advances or at any time or times thereafter except as shall be provided by any Borrower pursuant to the terms hereof and any third party reports, appraisals, audits or examinations prepared in connection with the credit provided herein. Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any agreement, document, certificate or a statement delivered in connection with or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any Other Document, or of the financial condition of any Borrower or any Guarantor, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement, the Note, the Other Documents or the financial condition or prospects of any Borrower, or the existence of any Event of Default or any Default.

14.4 Resignation of Agent; Successor Agent. Agent may resign on sixty (60) days written notice to each Lender and Borrowing Agent and upon such resignation, Required Lenders will promptly designate a successor to Agent reasonably satisfactory to Borrowers (provided that no such approval by Borrowers shall be required (i) in any case where the successor Agent is one of the Lenders or (ii) after the occurrence and during the continuance of any Event of Default). Any successor Agent shall succeed to the rights, powers and duties of Agent and to Agent's right, title and interest in and to all of the Liens in the Collateral securing the Obligations created hereunder or any Other Document (including the Pledge Agreement and all account control agreements). The term "Agent" shall mean such successor agent effective upon its appointment, and the former Agent's rights, powers and duties as such Agent shall be terminated, without any other or further act or deed on the part of such former Agent. However, notwithstanding the foregoing, if at the time of the effectiveness of a new Agent's appointment, any further actions need to be taken in order to provide for the legally binding and valid transfer of any Liens in the Collateral from the former Agent to such new Agent and/or for the perfection of any Liens in the Collateral as held by such new Agent or it is otherwise not then possible for a new Agent to become the holder of a fully valid, enforceable and perfected Lien as to any of the Collateral, the former Agent shall continue to hold such Liens solely as agent for perfection of such Liens on behalf of the new Agent until such time as the new Agent can obtain a fully valid, enforceable and perfected Lien on all Collateral, provided that the resigning Agent shall not be required to or have any liability or responsibility to take any further actions after such date as such agent for perfection to continue the perfection of any such Liens (other than to forego from taking any affirmative action to release any such Liens). After any Agent's resignation as Agent, the provisions of this Article XIV, and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement (and in the event a resigning Agent continues to hold any Liens pursuant to the provisions of the immediately preceding sentence, the provisions of this Article XIV and any indemnification rights under this Agreement, including without limitation, rights arising under Section 16.5 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it in connection with such Liens).

14.5 Certain Rights of Agent. If Agent shall request instructions from the Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any Other Document, Agent shall be entitled to refrain from such act or taking such action unless and until Agent shall have received instructions from Required Lenders; and Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, the Lenders shall not have any right of action whatsoever against Agent as a result of its acting or refraining from acting hereunder in accordance with the instructions of Required Lenders.

14.6 Reliance. Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, email, facsimile, telex, teletype or telecopier message, cablegram, order or other document or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to this Agreement and the Other Documents and its duties hereunder, upon advice of counsel selected by it. Agent may employ agents and attorneys-in-fact and shall not be liable for the default or misconduct of any such agents or attorneys-in-fact selected by Agent with reasonable care.

14.7 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder or under the Other Documents, unless Agent has received notice from a Lender or Borrowing Agent referring to this Agreement or the Other Documents, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that Agent receives such a notice, Agent shall give notice thereof to Lenders. Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by Required Lenders; provided, that, unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

14.8 Indemnification. To the extent Agent is not reimbursed and indemnified by Borrowers, each Lender will reimburse and indemnify Agent in proportion to its respective portion of the outstanding Advances and its respective Participation Commitments in the outstanding Letters of Credit and outstanding Swing Loans (or, if no Advances are outstanding, pro rata according to the percentage that its Revolving Commitment Amount constitutes of the total aggregate Revolving Commitment Amounts), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against Agent in performing its duties hereunder, or in any way relating to or arising out of this Agreement or any Other Document; provided that the Lenders shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from Agent's gross (not mere) negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment).

14.9 Agent in its Individual Capacity. With respect to the obligation of Agent to lend under this Agreement, the Advances made by it shall have the same rights and powers hereunder as any other Lender and as if it were not performing the duties as Agent specified herein; and the term "Lender" or any similar term shall, unless the context clearly otherwise indicates, includes Agent in its individual capacity as a Lender. Agent may engage in business with any Borrower as if it were not performing the duties specified herein, and may accept fees and other consideration from any Borrower for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

14.10 Delivery of Documents. To the extent Agent receives financial statements required under Sections 9.7, 9.8, 9.9, 9.12 and 9.13 or Borrowing Base Certificates from any Borrower pursuant to the terms of this Agreement which any Borrower is not obligated to deliver to each Lender, Agent will promptly furnish such documents and information to Lenders.

14.11 Borrowers' Undertaking to Agent. Without prejudice to their respective obligations to the Lenders under the other provisions of this Agreement, each Borrower hereby undertakes with Agent to pay to Agent from time to time on demand all amounts from time to time due and payable by it for the account of Agent or the Lenders or any of them pursuant to this Agreement, the Fee Letter or any Other Document to the extent not already paid. Any payment made pursuant to any such demand shall pro tanto satisfy the relevant Borrower's obligations to make payments for the account of the Lenders or the relevant one or more of them pursuant to this Agreement.

14.12 No Reliance on Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the USA PATRIOT Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of Borrowers, their Affiliates or their agents, the Other Documents or the transactions hereunder or contemplated hereby: (i) any identity verification procedures, (ii) any recordkeeping, (iii) comparisons with government lists, (iv) customer notices or (v) other procedures required under the CIP Regulations or such Anti-Terrorism Laws.

14.13 ERISA.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrowers, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Plans in connection with the Revolving Advances or the Revolving Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Revolving Advances, its Revolving Commitment and this Agreement, (C) the entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrowers, that:

(i) neither Agent nor any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E);

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Revolving Advances, its Revolving Commitment and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Revolving Advances, its Revolving Commitment and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(v) no fee or other compensation is being paid directly to Agent or any its Affiliates for investment advice (as opposed to other services) in connection with the Revolving Advances, the Revolving Commitments or this Agreement.

(c) Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Revolving Advances, the Revolving Commitments and this Agreement, (ii) may recognize a gain if it extended the Revolving Advances or the Revolving Commitments for an amount less than the amount being paid for an interest in the Revolving Advances or the Revolving Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

14.14 Other Agreements. Each of the Lenders agrees that it shall not, without the express consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the request of Agent, set off against the Obligations, any amounts owing by such Lender to any Borrower or any deposit accounts of any Borrower now or hereafter maintained with such Lender. Anything in this Agreement to the contrary notwithstanding, each of the Lenders further agrees that it shall not, unless specifically requested to do so by Agent, take any action to protect or enforce its rights arising out of this Agreement or the Other Documents, it being the intent of the Lenders that any such action to protect or enforce rights under this Agreement and the Other Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

14.15 Erroneous Payments.

(a) Each Lender hereby agrees that (i) if Agent notifies such Lender that Agent has determined in its sole discretion that any funds received by such Lender from Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise), individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Lender to the date such amount is repaid to Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (ii) such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine. A notice of Agent to any Lender under this subsection (a) shall be conclusive, absent manifest error.

(b) Without limiting subsection (a) above, each Lender hereby further agrees that if it receives an Erroneous Payment from Agent (or any of its Affiliates) (i) that is in an amount different than (other than a de minimis difference), or on a different date from, that specified in a notice of payment sent by Agent (or any of its Affiliates) with respect to such Erroneous Payment (an "Erroneous Payment Notice"), or (ii) that was not preceded or accompanied by an Erroneous Payment Notice, it shall be on notice that, in each such case, an error has been made with respect to such Erroneous Payment. Each Lender further agrees that, in each such case, or if it otherwise becomes aware an Erroneous Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify Agent of such occurrence and, upon demand from Agent, it shall promptly, but in no event later than one (1) Business Day thereafter, return to Agent the amount of any such Erroneous Payment (or portion thereof) that was received by such Lender to the date such amount is repaid to Agent in same day funds at the greater of the Overnight Bank Funding Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

XV. BORROWING AGENCY.

15.1 Borrowing Agency Provisions.

(a) Each Borrower hereby irrevocably designates Borrowing Agent to be its attorney and agent and in such capacity to (i) borrow, (ii) request advances, (iii) request the issuance of Letters of Credit, (iv) sign and endorse notes, (v) execute and deliver all instruments, documents, applications, security agreements, reimbursement agreements and letter of credit agreements for Letters of Credit and all other certificates, notice, writings and further assurances now or hereafter required hereunder, (vi) make elections regarding interest rates, (vii) give instructions regarding Letters of Credit and agree with Issuer upon any amendment, extension or renewal of any Letter of Credit and (viii) otherwise take action under and in connection with this Agreement and the Other Documents, all on behalf of and in the name such Borrower or Borrowers, and hereby authorizes Agent to pay over or credit all loan proceeds hereunder in accordance with the request of Borrowing Agent.

(b) The handling of this credit facility as a co-borrowing facility with a borrowing agent in the manner set forth in this Agreement is solely as an accommodation to Borrowers and at their request. Neither Agent nor any Lender shall incur liability to Borrowers as a result thereof. To induce Agent and the Lenders to do so and in consideration thereof, each Borrower hereby indemnifies Agent and each Lender and holds Agent and each Lender harmless from and against any and all liabilities, expenses, losses, damages and claims of damage or injury asserted against Agent or any Lender by any Person arising from or incurred by reason of the handling of the financing arrangements of Borrowers as provided herein, reliance by Agent or any Lender on any request or instruction from Borrowing Agent or any other action taken by Agent or any Lender with respect to this Section 15.1 except due to willful misconduct or gross (not mere) negligence by the indemnified party (as determined by a court of competent jurisdiction in a final and non-appealable judgment).

(c) All Obligations shall be joint and several, and each Borrower shall make payment upon the maturity of the Obligations by acceleration or otherwise, and such obligation and liability on the part of each Borrower shall in no way be affected by any extensions, renewals and forbearance granted by Agent or any Lender to any Borrower, failure of Agent or any Lender to give any Borrower notice of borrowing or any other notice, any failure of Agent or any Lender to pursue or preserve its rights against any Borrower, the release by Agent or any Lender of any Collateral now or thereafter acquired from any Borrower, and such agreement by each Borrower to pay upon any notice issued pursuant thereto is unconditional and unaffected by prior recourse by Agent or any Lender to the other Borrowers or any Collateral for such Borrower's Obligations or the lack thereof. Each Borrower waives all suretyship defenses.

15.2 Waiver of Subrogation. Each Borrower expressly waives any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution of any other claim which such Borrower may now or hereafter have against the other Borrowers or any other Person directly or contingently liable for the Obligations hereunder, or against or with respect to any other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this Agreement and repayment in full of the Obligations.

XVI. MISCELLANEOUS.

16.1 Governing Law. This Agreement and each Other Document (unless and except to the extent expressly provided otherwise in any such Other Document), and all matters relating hereto or thereto or arising herefrom or therefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York. Any judicial proceeding brought by or against any Borrower with respect to any of the Obligations, this Agreement, the Other Documents or any related agreement may be brought in any court of competent jurisdiction in the State of New York, United States of America, and, by execution and delivery of this Agreement, each Borrower accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each Borrower hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified or registered mail (return receipt requested) directed to Borrowing Agent at its address set forth in Section 16.6 and service so made shall be deemed completed five (5) days after the same shall have been so deposited in the mails of the United States of America, or, at any Agent's option, by service upon Borrowing Agent which each Borrower irrevocably appoints as such Borrower's Agent for the purpose of accepting service within the State of New York. Nothing herein shall affect the right to serve process in any manner permitted by law or shall limit the right of Agent or any Lender to bring proceedings against any Borrower in the courts of any other jurisdiction. Each Borrower waives any objection to jurisdiction and venue of any action instituted hereunder and shall not assert any defense based on lack of jurisdiction or venue or based upon forum non conveniens. Each Borrower waives the right to remove any judicial proceeding brought against such Borrower in any state court to any federal court. Any judicial proceeding by any Borrower against Agent or any Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any related agreement, shall be brought only in a federal or state court located in the County of New York, State of New York.

16.2 Entire Understanding.

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between each Borrower, Agent and each Lender and supersede all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by each Borrower's, Agent's and each Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Each Borrower acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

(b) Required Lenders, Agent with the consent in writing of Required Lenders, and Borrowers may, subject to the provisions of this Section 16.2(b), from time to time enter into written supplemental agreements to this Agreement or the Other Documents executed by Borrowers, for the purpose of adding or deleting any provisions or otherwise changing, varying or waiving in any manner the rights of the Lenders, Agent or Borrowers thereunder or the conditions, provisions or terms thereof or waiving any Event of Default thereunder, but only to the extent specified in such written agreements; provided, however, that no such supplemental agreement shall:

(i) increase the Revolving Commitment Percentage, or the maximum dollar amount of the Revolving Commitment Amount of any Lender without the consent of such Lender directly affected thereby;

(ii) whether or not any Advances are outstanding, extend the Term or the time for payment of principal or interest of any Advance (excluding the due date of any mandatory prepayment of an Advance), or any fee payable to any Lender, or reduce the principal amount of or the rate of interest borne by any Advances or reduce any fee payable to any Lender, without the consent of each Lender directly affected thereby (except that Required Lenders may elect to waive or rescind any imposition of the Default Rate under Section 3.1 or of default rates of Letter of Credit fees under Section 3.2 (unless imposed by Agent));

(iii) increase the Maximum Revolving Advance Amount without the consent of all Lenders;

(iv) alter the definition of the term Required Lenders or alter, amend or modify this Section 16.2(b) without the consent of all Lenders;

(v) alter, amend or modify the provisions of Section 11.5 without the consent of all Lenders;

(vi) release any Collateral during any calendar year (other than in accordance with the provisions of this Agreement) having an aggregate value in excess of $250,000 without the consent of all Lenders;

(vii) change the rights and duties of Agent without the consent of all Lenders and Agent;

(viii) subject to clause (e) below, permit any Revolving Advance to be made if after giving effect thereto the total of Revolving Advances outstanding hereunder would exceed the Borrowing Base for more than sixty (60) consecutive Business Days or exceed one hundred and ten percent (110%) of the Borrowing Base without the consent of all Lenders without the consent of all Lenders;

(ix) increase the Advance Rates above the Advance Rates in effect on the Closing Date without the consent of all Lenders; or

(x) release any Guarantor or Borrower without the consent of all Lenders.

(c) Any such supplemental agreement shall apply equally to each Lender and shall be binding upon Borrowers, the Lenders and Agent and all future holders of the Obligations. In the case of any waiver, Borrowers, Agent and the Lenders shall be restored to their former positions and rights, and any Event of Default waived shall be deemed to be cured and not continuing, but no waiver of a specific Event of Default shall extend to any subsequent Event of Default (whether or not the subsequent Event of Default is the same as the Event of Default which was waived), or impair any right consequent thereon.

(d) In the event that Agent requests the consent of a Lender pursuant to this Section 16.2 and such consent is denied, then Agent may, at its option, require such Lender to assign its interest in the Advances to Agent or to another Lender or to any other Person designated by Agent (the "Designated Lender"), for a price equal to (i) the then outstanding principal amount thereof plus (ii) accrued and unpaid interest and fees due such Lender, which interest and fees shall be paid when collected from Borrowers. In the event Agent elects to require any Lender to assign its interest to Agent or to the Designated Lender, Agent will so notify such Lender in writing within forty five (45) days following such Lender's denial, and such Lender will assign its interest to Agent or the Designated Lender no later than five (5) days following receipt of such notice pursuant to a Commitment Transfer Supplement executed by such Lender, Agent or the Designated Lender, as appropriate, and Agent.

(e) Notwithstanding (i) the existence of a Default or an Event of Default, (ii) that any of the other applicable conditions precedent set forth in Section 8.2 hereof have not been satisfied or the commitments of Lenders to make Revolving Advances hereunder have been terminated for any reason, or (iii) any other contrary provision of this Agreement, Agent may at its discretion and without the consent of any Lender, voluntarily permit the outstanding Revolving Advances at any time to exceed an amount equal to the sum of (A) the Borrowing Base minus (B) the amount of minimum Excess Availability required by Section 6.5(a) hereof at such time (such sum, the "Overadvance Threshold Amount") by up to ten percent (10%) of the Overadvance Threshold Amount for up to sixty (60) consecutive Business Days (the "Out-of-Formula Loans"). If Agent is willing in its sole and absolute discretion to permit such Out-of-Formula Loans, Lenders holding the Revolving Commitments shall be obligated to fund such Out-of-Formula Loans in accordance with their respective Revolving Commitment Percentages, and such Out-of-Formula Loans shall be payable on demand and shall bear interest at the Default Rate for Revolving Advances consisting of Domestic Rate Loans; provided that, if Agent does permit Out-of-Formula Loans, neither Agent nor any Lender shall be deemed thereby to have changed the limits of Section 2.1(a) nor shall any Lender be obligated to fund Revolving Advances in excess of its Revolving Commitment Amount. For purposes of this paragraph, the discretion granted to Agent hereunder shall not preclude involuntary overadvances that may result from time to time due to the fact that the Overadvance Threshold Amount was unintentionally exceeded for any reason, including, but not limited to, Collateral previously deemed to be either "Eligible Receivables" or "Eligible Inventory," as applicable, becomes ineligible, collections of Receivables applied to reduce outstanding Revolving Advances are thereafter returned for insufficient funds or overadvances are made to protect or preserve the Collateral. In the event Agent involuntarily permits the outstanding Revolving Advances to exceed the Overadvance Threshold Amount by more than ten percent (10%), Agent shall use its efforts to have Borrowers decrease such excess in as expeditious a manner as is practicable under the circumstances and not inconsistent with the reason for such excess. Revolving Advances made after Agent has determined the existence of involuntary overadvances shall be deemed to be involuntary overadvances and shall be decreased in accordance with the preceding sentence. To the extent any Out-of-Formula Loans are not actually funded by the other Lenders as provided for in this Section 16.2(e), Agent may elect in its discretion to fund such Out-of-Formula Loans and any such Out-of-Formula Loans so funded by Agent shall be deemed to be Revolving Advances made by and owing to Agent, and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender holding a Revolving Commitment under this Agreement and the Other Documents with respect to such Revolving Advances.

(f) In addition to (and not in substitution of) the discretionary Revolving Advances permitted above in this Section 16.2, Agent is hereby authorized by Borrowers and the Lenders, at any time in Agent's sole discretion, regardless of (i) the existence of a Default or an Event of Default, (ii) whether any of the other applicable conditions precedent set forth in Section 8.2 hereof have not been satisfied or the commitments of the Lenders to make Revolving Advances hereunder have been terminated for any reason, or (iii) any other contrary provision of this Agreement, to make Revolving Advances to Borrowers on behalf of the Lenders which Agent, in its reasonable business judgment, deems necessary or desirable (a) to preserve or protect the Collateral, or any portion thereof, (b) to enhance the likelihood of, or maximize the amount of, repayment of the Advances and other Obligations, or (c) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement (any such discretionary Revolving Advances pursuant to this Section 16.2(f), a "Protective Advance"). Lenders holding the Revolving Commitments shall be obligated to fund such Protective Advances and effect a settlement with Agent therefor upon demand of Agent in accordance with their respective Revolving Commitment Percentages. To the extent any Protective Advances are not actually funded by the other Lenders as provided for in this Section 16.2(f), any such Protective Advances funded by Agent shall be deemed to be Revolving Advances made by and owing to Agent, and Agent shall be entitled to all rights (including accrual of interest) and remedies of a Lender holding a Revolving Commitment under this Agreement and the Other Documents with respect to such Revolving Advances.

16.3 Successors and Assigns; Participations.

(a) This Agreement shall be binding upon and inure to the benefit of Borrowers, Agent, each Lender, all future holders of the Obligations and their respective successors and assigns, except that no Borrower may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Agent and each Lender.

(b) Each Borrower acknowledges that in the regular course of commercial banking business one or more Lenders may at any time and from time to time sell participating interests in the Advances to other Persons (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that (i) Borrowers shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had such Lender retained such interest in the Advances hereunder or other Obligations payable hereunder unless the sale of the participation to such Participant is made with Borrower's prior written consent, and (ii) in no event shall Borrowers be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both such Lender and such Participant. Each Borrower hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances.

(c) Any Lender, with the consent of Agent, may sell, assign or transfer all or any part of its rights and obligations under or relating to Revolving Advances under this Agreement and the Other Documents to one or more additional Persons and one or more additional Persons may commit to make Advances hereunder (each a "Purchasing Lender"), in minimum amounts of not less than $5,000,000, pursuant to a Commitment Transfer Supplement, executed by a Purchasing Lender, the transferor Lender and Agent and delivered to Agent for recording. Upon such execution, delivery, acceptance and recording, from and after the transfer effective date determined pursuant to such Commitment Transfer Supplement, (i) Purchasing Lender thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder with a Revolving Commitment Percentage, as set forth therein, and (ii) the transferor Lender thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement, the Commitment Transfer Supplement creating a novation for that purpose. Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing Lender and the resulting adjustment of the Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Each Borrower hereby consents to the addition of such Purchasing Lender and the resulting adjustment of the Revolving Commitment Percentages arising from the purchase by such Purchasing Lender of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Other Documents. Borrowers shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing; provided, however, that the consent of Borrowers, which shall be provided by Borrowing Agent on behalf of all Borrowers (such consent not to be unreasonably withheld or delayed), shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Permitted Assignee; provided further that Borrowers, shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to Agent within five (5) Business Days after having received prior notice thereof.

(d) Any Lender, with the consent of Agent, which shall not be unreasonably withheld or delayed, may directly or indirectly sell, assign or transfer all or any portion of its rights and obligations under or relating to Revolving Advances under this Agreement and the Other Documents to an entity, whether a corporation, partnership, trust, limited liability company or other entity that (i) is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and (ii) is administered, serviced or managed by the assigning Lender or an Affiliate of such Lender (a "Purchasing CLO" and together with each Participant and Purchasing Lender, each a "Transferee" and collectively the "Transferees"), pursuant to a Commitment Transfer Supplement modified as appropriate to reflect the interest being assigned ("Modified Commitment Transfer Supplement"), executed by any intermediate purchaser, the Purchasing CLO, the transferor Lender, and Agent as appropriate and delivered to Agent for recording. Upon such execution and delivery, from and after the transfer effective date determined pursuant to such Modified Commitment Transfer Supplement, (i) Purchasing CLO thereunder shall be a party hereto and, to the extent provided in such Modified Commitment Transfer Supplement, have the rights and obligations of a Lender thereunder and (ii) the transferor Lender thereunder shall, to the extent provided in such Modified Commitment Transfer Supplement, be released from its obligations under this Agreement, the Modified Commitment Transfer Supplement creating a novation for that purpose. Such Modified Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Purchasing CLO. Each Borrower hereby consents to the addition of such Purchasing CLO. Borrowers shall execute and deliver such further documents and do such further acts and things in order to effectuate the foregoing.

(e) Agent shall maintain at its address a copy of each Commitment Transfer Supplement and Modified Commitment Transfer Supplement delivered to it and a register (the "Register") for the recordation of the names and addresses of each Lender and the outstanding principal, accrued and unpaid interest and other fees due hereunder. The entries in the Register shall be conclusive, in the absence of manifest error, and each Borrower, Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Advance recorded therein for the purposes of this Agreement. The Register shall be available for inspection by Borrowing Agent or any Lender at any reasonable time and from time to time upon reasonable prior notice. Agent shall receive a fee in the amount of $3,500 payable by the applicable Purchasing Lender and/or Purchasing CLO upon the effective date of each transfer or assignment (other than to an intermediate purchaser) to such Purchasing Lender and/or Purchasing CLO.

(f) Each Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee any and all financial information in such Lender's possession concerning such Borrower which has been delivered to such Lender by or on behalf of such Borrower pursuant to this Agreement or in connection with such Lender's credit evaluation of such Borrower.

(g) Notwithstanding anything to the contrary contained in this Agreement, any Lender may at any time and from time to time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

16.4 Application of Payments. Agent shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that any Borrower makes a payment or Agent or any Lender receives any payment or proceeds of the Collateral for any Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Agent or such Lender.

16.5 Indemnity. Each Borrower shall defend, protect, indemnify, pay and save harmless Agent, Issuer, each Lender and each of their respective officers, directors, Affiliates, attorneys, employees and agents (each an "Indemnified Party") for and from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, actions, judgments, suits, costs, charges, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel (including allocated costs of internal counsel)) (collectively, "Claims") which may be imposed on, incurred by, or asserted against any Indemnified Party in arising out of or in any way relating to or as a consequence, direct or indirect, of: (i) this Agreement, the Other Documents, the Advances and other Obligations and/or the transactions contemplated hereby including the Transactions, (ii) any action or failure to act or action taken only after delay or the satisfaction of any conditions by any Indemnified Party in connection with and/or relating to the negotiation, execution, delivery or administration of the Agreement and the Other Documents, the credit facilities established hereunder and thereunder and/or the transactions contemplated hereby including the Transactions, (iii) any Borrower's or any Guarantor's failure to observe, perform or discharge any of its covenants, obligations, agreements or duties under or breach of any of the representations or warranties made in this Agreement and the Other Documents, (iv) the enforcement of any of the rights and remedies of Agent, Issuer or any Lender under the Agreement and the Other Documents, (v) any threatened or actual imposition of fines or penalties, or disgorgement of benefits, for violation of any Anti-Terrorism Law by any Borrower, any Affiliate or Subsidiary of any Borrowers, or any Guarantor, and (vi) any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Agent or any Lender is a party thereto, provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such Claim or Claims (x) result from the gross negligence or willful misconduct of such Indemnified Party, or (y) result from a claim brought by a Borrower against an Indemnified Party for breach in bad faith of such Indemnified Party's obligations under this Agreement or any Other Document. Without limiting the generality of any of the foregoing, each Borrower shall defend, protect, indemnify, pay and save harmless each Indemnified Party from any Claims which may be imposed on, incurred by, or asserted against any Indemnified Party arising out of or in any way relating to or as a consequence, direct or indirect, of the issuance of any Letter of Credit hereunder. Additionally, if any taxes (excluding taxes imposed upon or measured solely by the net income of Agent and the Lenders, but including any intangibles taxes, stamp tax, recording tax or franchise tax) shall be payable by Agent, the Lenders or Borrowers on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the Other Documents, or the creation or repayment of any of the Obligations hereunder, by reason of any Applicable Law now or hereafter in effect, Borrowers will pay (or will promptly reimburse Agent and the Lenders for payment of) all such taxes, including interest and penalties thereon, and will indemnify and hold the Indemnified Parties harmless from and against all liability in connection therewith.

16.6 Notice. Any notice or request hereunder may be given to Borrowing Agent or any Borrower or to Agent or any Lender at their respective addresses set forth below or at such other address as may hereafter be specified in a notice designated as a notice of change of address under this Section. Any notice, request, demand, direction or other communication (for purposes of this Section 16.6 only, a "Notice") to be given to or made upon any party hereto under any provision of this Agreement shall be given or made by telephone or in writing (which includes by means of electronic transmission (i.e., "e-mail") or facsimile transmission or by setting forth such Notice on a website to which Borrowers are directed (an "Internet Posting") if Notice of such Internet Posting (including the information necessary to access such site) has previously been delivered to the applicable parties hereto by another means set forth in this Section 16.6) in accordance with this Section 16.6. Any such Notice must be delivered to the applicable parties hereto at the addresses and numbers set forth under their respective names on Section 16.6 hereof or in accordance with any subsequent unrevoked Notice from any such party that is given in accordance with this Section 16.6. Any Notice shall be effective:

(a) In the case of hand-delivery, when delivered;

(b) If given by mail, four (4) days after such Notice is deposited with the United States Postal Service, with first-class postage prepaid, return receipt requested;

(c) In the case of a telephonic Notice, when a party is contacted by telephone, if delivery of such telephonic Notice is confirmed no later than the next Business Day by hand delivery, a facsimile or electronic transmission, an Internet Posting or an overnight courier delivery of a confirmatory Notice (received at or before noon on such next Business Day);

(d) In the case of a facsimile transmission, when sent to the applicable party's facsimile machine's telephone number, if the party sending such Notice receives confirmation of the delivery thereof from its own facsimile machine;

(e) In the case of electronic transmission, when actually received;

(f) In the case of an Internet Posting, upon delivery of a Notice of such posting (including the information necessary to access such site) by another means set forth in this Section 16.6; and

(g) If given by any other means (including by overnight courier), when actually received.

Any Lender giving a Notice to Borrowing Agent or any Borrower shall concurrently send a copy thereof to Agent, and Agent shall promptly notify the other Lenders of its receipt of such Notice.

(A) If to Agent or East West at:

East West Bank
2350 Mission College Boulevard, Suite 988
Santa Clara, CA 95054
Attention: Linda Lee
Telephone: (408) 330-2060
Facsimile: (408) 588-9684
E-mail: linda.lee@eastwestbank.com

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

Blank Rome LLP
2029 Century Park East, 6th Floor
Los Angeles, California 90067
Attention: Anthony R. Callobre, Esq.
Telephone: (424) 239-3871
E-mail: acallobre@blankrome.com

(B) If to a Lender other than Agent, as specified on the signature pages hereof

(C) If to Borrowing Agent or any Borrower:

Newegg Inc.
17560 Rowland Street
City of Industry, California 91748
Attention: Robert Chang, Vice President
and Chief Financial Officer
Telephone: (626) 201-3628
Facsimile: (626) 271-9511
E-mail: robert.y.chang@newegg.com

with a copy to:

Gibson Dunn & Crutcher LLC
3161 Michelson Drive
Irvine, CA 92612-4412
~~Steptoe& Johnson PLLC~~
~~Suite 4940~~

~~500 Grant Street~~

~~Pittsburgh, Pennsylvania 15219~~

Attention: ~~Edward G. Rice~~David C. Lee, Esq.
Telephone: (~~412~~949) ~~504-8054~~451-3842
Facsimile: (~~412) 504-8011~~949 475-4742
E-mail: ~~ed.rice@steptoe-johnson~~dlee@gibsondunn.com

16.7 Survival. The obligations of Borrowers under Sections 2.2(f), 2.2(g), 2.2(h), 3.7, 3.8, 3.9, 3.10, 16.5 and 16.9 and the obligations of the Lenders under Sections 2.2, 2.15(b), 2.16, 2.18, 2.19, 14.8 and 16.5, shall survive termination of this Agreement and the Other Documents and payment in full of the Obligations.

16.8 Severability. If any part of this Agreement is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16.9 Expenses. Borrowers shall pay (i) all out-of-pocket expenses incurred by Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Agent), and shall pay all fees and time charges and disbursements for attorneys who may be employees of Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the Other Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out-of-pocket expenses incurred by Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (iii) all out-of-pocket expenses incurred by Agent, any Lender or Issuer (including the fees, charges and disbursements of any counsel for Agent, any Lender or Issuer), and shall pay all fees and time charges for attorneys who may be employees of Agent, any Lender or Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the Other Documents, including its rights under this Section, or (B) in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, and (iv) all reasonable out-of-pocket expenses of Agent's regular employees and agents engaged periodically to perform audits of any Borrower's or any Borrower's Affiliate's or Subsidiary's books, records and business properties.

16.10 Injunctive Relief. Each Borrower recognizes that, in the event any Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, or threatens to fail to perform, observe or discharge such obligations or liabilities, any remedy at law may prove to be inadequate relief to Lenders; therefor, Agent, if Agent so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving that actual damages are not an adequate remedy.

16.11 Consequential Damages. Neither Agent nor any Lender, nor any agent or attorney for any of them, shall be liable to any Borrower, or any Guarantor (or any Affiliate of any such Person) for indirect, punitive, exemplary or consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations or as a result of any transaction contemplated under this Agreement or any Other Document.

16.12 Captions. The captions at various places in this Agreement are intended for convenience only and do not constitute and shall not be interpreted as part of this Agreement.

16.13 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

16.14 Construction. The parties acknowledge that each party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, schedules or exhibits thereto.

16.15 Confidentiality; Sharing Information. Agent, each Lender and each Transferee shall hold all non-public information obtained by Agent, such Lender or such Transferee pursuant to the requirements of this Agreement in accordance with Agent's, such Lender's and such Transferee's customary procedures for handling confidential information of this nature; provided, however, Agent, each Lender and each Transferee may disclose such confidential information (a) to its examiners, Affiliates, outside auditors, counsel and other professional advisors, (b) to Agent, any Lender or to any prospective Transferees, provided that such prospective Transferee is bound by a confidentiality or non-disclosure agreement no less restrictive than as set forth in this Section 16.15, and (c) as required or requested by any Governmental Body or representative thereof or pursuant to legal process; provided, further that (i) unless specifically prohibited by Applicable Law, Agent, each Lender and each Transferee shall use its reasonable best efforts prior to disclosure thereof, to notify the applicable Borrower of the applicable request for disclosure of such non-public information (A) by a Governmental Body or representative thereof (other than any such request in connection with an examination of the financial condition of a Lender or a Transferee by such Governmental Body) or (B) pursuant to legal process and (ii) in no event shall Agent, any Lender or any Transferee be obligated to return any materials furnished by any Borrower other than those documents and instruments in possession of Agent or any Lender in order to perfect its Lien on the Collateral once the Obligations have been paid in full and this Agreement has been terminated. Each Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to such Borrower or one or more of its Affiliates (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and each Borrower hereby authorizes each Lender to share any information delivered to such Lender by such Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate of such Lender, it being understood that any such Subsidiary or Affiliate of any Lender receiving such information shall be bound by the provisions of this Section 16.15 as if it were a Lender hereunder. Such authorization shall survive the repayment of the other Obligations and the termination of this Agreement. Notwithstanding any non-disclosure agreement or similar document executed by Agent in favor of any Borrower or any of any Borrower's affiliates, the provisions of this Agreement shall supersede such agreements.

16.16 Publicity. Each Borrower and each Lender hereby authorizes Agent to make appropriate announcements of the financial arrangement entered into among Borrowers, Agent and the Lenders, including announcements which are commonly known as tombstones, in such publications and to such selected parties as Agent shall in its sole and absolute discretion deem appropriate.

16.17 Certifications From Banks and Participants; USA PATRIOT Act.

(a) Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA PATRIOT Act and the applicable regulations because it is both (i) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (ii) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to Agent the certification, or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the USA PATRIOT Act and the applicable regulations: (1) within ten (10) days after the Closing Date, and (2) as such other times as are required under the USA PATRIOT Act.

(b) Each Lender that is subject to the USA PATRIOT Act and Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the names and addresses of Borrowers and other information that will allow such Lender or Agent, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act. Borrowers shall, promptly following a request by either Agent or any Lender, provide all documentation and other information that Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money-laundering rules and regulations, including the USA PATRIOT Act.

16.18 Anti-Money Laundering/International Trade Law Compliance. Each Borrower represents and warrants to Agent, as of the date of this Agreement, the date of each Advance, the date of any renewal, extension or modification of this Agreement, and at all times until this Agreement has been terminated and all Obligations have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the Advances will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay the Obligations are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States or Canada, including but not limited to any Anti-Terrorism Laws. Borrowers covenant and agree that they shall immediately notify Agent in writing upon the occurrence of a Reportable Compliance Event.

16.19 Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in one currency into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures Agent could purchase the first mentioned currency with such other currency at Agent's principal office on the Business Day preceding the date on which final judgment is given. Each Borrower hereby agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent against, and to pay Agent on demand, Dollars in the amount equal to any difference between the sum originally due to Agent in Dollars and the amount of Dollars so purchased and transferred.

[Signature Pages Follow]

Each of the parties has signed this Agreement as of the day and year first above written.

BORROWERS:

NEWEGG COMMERCE, INC.,
a British Virgin Islands business company
incorporated with limited liability

By: _____
Name:
Title:

NEWEGG INC.,
a Delaware corporation

By: _____
Name:
Title:

NEWEGG NORTH AMERICA INC.,
a Delaware corporation

By: _____
Name:
Title:

NEWEGG.COM AMERICAS INC.,
a Delaware corporation

By: _____
Name:
Title:

NEWEGG CANADA INC.,
an Ontario corporation

By: _____
Name:
Title:

BORROWERS CONTINUED:

MAGNELL ASSOCIATE, INC.,
a California corporation

By: _____
Name:
Title:

ROSEWILL INC.,
a Delaware corporation

By: _____
Name:
Title:

NEWEGG BUSINESS INC.,
a Delaware corporation

By: _____
Name:
Title:

OZZO INC.,
a Delaware corporation

By: _____
Name:
Title:

NEWEGG STAFFING INC.,
a Delaware corporation

By: _____
Name:
Title:

BORROWERS CONTINUED:

INOPC, INC.,
an Indiana corporation

By: _____
Name:
Title:

CAOPC, INC.,
a California corporation

By: _____
Name:
Title:

NJOPC, INC.,
a New Jersey corporation

By: _____
Name:
Title:

NEWEGG LOGISTICS SERVICES INC.,
a Delaware corporation

By: _____
Name:
Title:

NUTREND AUTOMOTIVE INC.,

By: _____
Name:
Title:

NEWEGG TEXAS, INC.,
a Texas corporation

By: _____
Name:
Title:

NEWEGG FACILITY SOLUTIONS INC.,
a Delaware corporation

By: _____
Name:
Title:

EAST WEST BANK,
as Agent and a Lender

By: /s/ Linda Lee
Linda Lee
Senior Vice President

2350 Mission College Blvd., Suite 988
Santa Clara, CA 95054

Revolving Commitment Percentage: 50.000000%
Revolving Commitment Amount: $50,000,000

CATHAY BANK,
as a Lender

By: _____
Name:
Title:

Address: _____

Revolving Commitment Percentage: 30.000000%
Revolving Commitment Amount: $30,000,000

PREFERRED BANK,
as a Lender

By: _____
Name:
Title:

601 S. Figueroa Street, 29th Floor
Los Angeles, CA 90017

Revolving Commitment Percentage: 20.000000%
Revolving Commitment Amount: $20,000,000

EXECUTION COPY

AMENDED AND RESTATED
SUPPLEMENTAL AGREEMENT

This AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT, dated as of December [19], 2022 (as amended, restated or otherwise modified from time to time, this "**Supplemental Agreement**"), is by and among Digital Grid (Hong Kong) Technology Co. Limited, a Hong Kong company ("**Digital Grid**"); Bank of China Limited Zhejiang Branch ("**Bank of China**"); Newegg Inc., a Delaware corporation ("**Newegg DE**"); Newegg Commerce, Inc., a limited liability company organized in the British Virgin Islands with its common shares traded on The Nasdaq Capital Market under the symbol "NEGG" and formerly known as Lianluo Smart Limited ("**Newegg Commerce**"); and Hangzhou Lianluo Interactive Information Technology Co., Ltd., a company organized under the laws of the People's Republic of China ("**Hangzhou Lianluo**").

WITNESSETH:

WHEREAS, Digital Grid and Bank of China entered into that certain Term Loan Facility of $140,000,000 on June 26, 2017, and Digital Grid, Hangzhou Lianluo and their affiliates on the one hand and Bank of China and its affiliates on the other hand entered into subsequent credit agreements, amending and supplementing the Term Loan Facility (including without limitation the Working Capital Loan Contracts (Contract Nos. 19ARJ016, 19ARJ059, 19ARJ060, 19ARJ061) between Hangzhou Lianluo and Bank of China, the Letter of Guarantee/Standby Letter of Credit (Contract No. Letter of Guarantee 17001467), and collectively, the "**Credit Agreements**"), pursuant to which Bank of China has provided certain loans and extension of credits in the total principle amount of RMB 399,964,013.79 and USD $66,463,774.94 to Digital Grid, Hangzhou Lianluo and their affiliates (such loans and credits, the "**Loan**");

WHEREAS, Digital Grid was the record and beneficial owner of a total of 38,143,279 shares of common and preferred stock of Newegg DE (the "**Original Pledged Shares**"), and in order to induce Bank of China to provide the Loan, Digital Grid entered into a Pledge Agreement with Bank of China dated April 26, 2019, as amended and restated from time to time including without limitation by that Supplemental and Novation Agreement dated February 10, 2021 (the "**Pledge Agreement**") and pursuant thereto and in connection therewith, pledged the Original Pledged Shares to Bank of China (the "**Pledge**");

WHEREAS, Newegg Commerce (under its former name Lianluo Smart Limited), Lightning Delaware Sub, Inc., a Delaware corporation and wholly owned subsidiary of Newegg Commerce, and Newegg DE entered into an Agreement and Plan of Merger dated October 23, 2020, pursuant to which each share of the capital stock of Newegg DE that was issued and outstanding immediately prior to the effective time of the merger (the "**Merger**") was converted into the right to receive 5.8417 common shares, par value $0.021848, of Newegg Commerce ("**Common Shares**") and the Merger was completed on May 19, 2021;

WHEREAS, Digital Grid, Bank of China and Hangzhou Lianluo entered into a Supplemental and Novation Agreement dated February 10, 2021 (the "**Merger Consent**"), pursuant to which Bank of China consented to the Merger and Digital Grid, upon the completion

of the Merger, would surrender the Original Pledged Shares in exchange for, and to convert the same into, 222,821,592 Common Shares (the "**Exchange Shares**");

WHEREAS, on January 26, 2022, the parties hereto entered into a Share Exchange Agreement (the "**Share Exchange Agreement**"), pursuant to which the parties recertified that upon the consummation of the Merger and their issuance, the Exchange Shares immediately and automatically, without further action on the part of any party, became Pledged Collateral (as defined in the Pledge Agreement) and have since become subject to the Pledge Agreement in replacement of, the Original Pledged Shares;

WHEREAS, prior to the date hereof, (1) Bank of China, at Digital Grid's request, couriered the physical stock certificates for the Original Pledged Shares to Computershare Limited ("Computershare") and (2) Computershare exchanged the physical stock certificates for the Original Pledged Shares for a newly issued electronic certificate for the Exchange Shares; and (3) the Exchange Shares are being held in Digital Grid's name but contain electronic restrictive legends necessary to reflect that the Exchange Shares (i) constitute the Pledged Collateral and are subject to Bank of China's pledge pursuant to the Pledge Agreement and (ii) are restricted from assignment, transfer, conveyance or other disposition until Bank of China's pledge is removed from the Exchange Shares. The physical stock certificates for the Original Pledged Shares so surrendered have been cancelled and the Exchange Shares have been duly issued in electronic form with the restrictive legends noted as set forth above;

WHEREAS, in May 2020, Bank of China filed several lawsuits against Hangzhou Lianluo, Digital Grid, Beijing Digital Grid Technology Co., Ltd., a wholly-owned subsidiary of Hangzhou Lianluo and the sole parent company of Digital Grid ("**Beijing Digital Grid**"), and Mr. Zhitao He in the Hangzhou Intermediate People's Court in China. On December 31, 2021, such court entered final and binding judgments against Digital Grid, Hangzhou Lianluo, Beijing Digital Grid and Mr. Zhitao He, ruling that Digital Grid and its affiliates must repay Bank of China certain amounts owed under the Credit Agreements, which judgments were subsequently upheld by the Zhejiang Provincial People's Court (the "**Final Court Judgments**");

WHEREAS, at the request of Hangzhou Lianluo and Digital Grid, Bank of China executed and provided a certain letter, dated November 10, 2021 (the "**Payoff Letter**"), with respect to the intention and plan of Hangzhou Lianluo and Digital Grid to repay all of the debts relating to the Loan on or before June 30, 2022;

WHEREAS the parties entered into a supplemental agreement dated as of April 22, 2022 (the "**Original Supplemental Agreement**"), whereby the parties agreed, among other things, to a procedure whereby Digital Grid could offer and sell a certain number of Exchange Shares by June 30, 2022 (the "**Original Deadline**") free and clear of any liens placed upon such Exchange Shares from the Pledge Agreement, so long as the proceeds from such sale by Digital Grid would be used to pay down the Loan;

WHEREAS, due to reasons beyond the control of Digital Grid and Hangzhou Lianluo, no Exchange Shares were sold pursuant to the Original Supplemental Agreement by the Original Deadline;

WHEREAS, Newegg Commerce filed a Registration Statement with the Securities and Exchange Commission on Form F-3 on July 1, 2022 (as amended from time to time, the "**Form F-3 Registration Statement**") pursuant to which, Digital Grid (as the selling shareholder) may offer and sell up to 60,000,000 Common Shares in various distribution methods described therein, including offer and sale in one or more underwritten public offerings (each, an "**Offering**", and collectively, the "**Offerings**", and the closing of such Offering, the "**Closing**") by filing a prospectus supplement describing the Offering (each, a "**Prospectus Supplement**", and the date of the filing of a Prospectus Supplement, the "**Filing Date**");

WHEREAS, an underwriting agreement (the "**Underwriting Agreement**") relating to an Offering is contemplated to be entered into by and between Stifel, Nicolaus & Company, Incorporated or another qualified investment bank selected by Newegg Commerce (the "**Lead Underwriter**"), as the representative of the underwriters participating in an Offering (the "**Underwriters**"), and Newegg Commerce with respect to each Offering;

WHEREAS, Digital Grid might also seek to sell Common Shares into the open market through broker-assisted sales pursuant to (1) the safe harbor provided by Rule 144 under the Securities Act of 1933, as amended (each such sale, a "**Rule 144 Sale**") and/or (2) a trading plan that complies with the requirements of Rule 10b5-1 under the Securities Exchange Act of 1934, as amended (each such sale, a "**Rule 10b5-1 Sale**");

WHEREAS, Computershare is acting as the transfer agent for the Common Shares for Newegg Commerce pursuant to an executed transfer agent engagement/service agreement; and

WHEREAS the parties hereto now wish to amend and restate the Original Supplemental Agreement to provide for, among other things, an extension of the Original Deadline to November 30, 2023 (the "**New Deadline**").

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, the Original Supplemental Agreement is hereby amended and restated in its entirety as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Pledge Agreement and the Credit Agreements.

"**Outstanding Obligations**" as of a certain date shall mean the difference of (i) the outstanding payment obligations of Digital Grid and its affiliates calculated pursuant to the Final Court Judgments as of such date ***minus*** (ii) the total and an accumulative sum of all payments made by Digital Grid and its such affiliates to Bank of China pursuant to the Final Court Judgments as of such date, including but not limited to, from the sales proceeds from any Offering(s), any other distributions pursuant to the Form F-3 Registration Statement, Rule 144 Sale or Rule 10b5-1 Sale.

2. Removal of the Pledge on the Exchange Shares.

(a) Subject to the terms and conditions set forth herein, Bank of China agrees to allow Digital Grid to offer and sell up to 60,000,000 Exchange Shares (the "**Aggregate Cap**") prior to the New Deadline through any combination of Offerings, any other sales or distributions pursuant to Form F-3 Registration Statement, Rule 144 Sales or Rule 10b5-1 Sales pursuant to the terms, conditions and procedures contained in this Section 2.

(b) With respect to Rule 10b5-1 Sales, Digital Grid shall enter into a separate agreement with Bank of China and Newegg Commerce with terms not inconsistent with the terms hereof and with 100% proceeds from the sales thereof payable directly to Bank of China.

(c) With respect to Rule 144 Sales, the parties hereby agree as follows:

(i) Digital Grid will not sell more than 1,000,000 Exchange Shares on each Rule 144 Sale.

(ii) With respect to each Rule 144 Sale, no later than 1 day from the filing of Form 144, (aa) Digital Grid will inform Bank of China of such proposed sale by forwarding thereto a copy of the filed Form 144 (email being sufficient); (bb) within 1 day upon receiving such notice, Bank of China shall inform Digital Grid and Newegg Commerce of its consent to remove the Pledge (and security interest) from up to 1,000,000 Exchange Shares that are subject to such Rule 144 Sale; and (cc) as promptly as practicable and no later than 2 business days after receiving such consent from Bank of China, subject to compliance with any other trading restrictions imposed by Newegg Commerce pursuant to its insider trading policy or other legal and contractual restrictions, Newegg Commerce shall issue an instruction letter to Computershare, properly acknowledged by Computershare and with Bank of China and Digital Grid prominently copied, in the form attached hereto as Exhibit A, instructing Computershare to (1) transfer such Exchange Shares to a broker designated by Digital Grid that is reasonably acceptable to Newegg and (2) remove the Bank of China pledge-related legends and restrictions from such Exchange Shares as specified in such instruction letter. Simultaneously therewith, such Exchange Shares shall be immediately released from, and no longer subject to, the Pledge Agreement and free from any encumbrances created thereunder. Digital Grid agrees to use such allocation of Exchange Shares solely for Rule 144 Sales made in compliance with the terms of this Supplemental Agreement.

(iii) All sales proceeds from each and every Rule 144 Sale completed prior to the New Deadline (after deducting fees and expenses related to such sale, including any wire transfer fees) shall be used solely to discharge the Outstanding Obligations in accordance with Section 3 hereof.

(iv) As soon as Newegg Commerce has received a written confirmation from Digital Grid and Bank of China (email being sufficient) that the sales proceeds for such Rule 144 Sale of the Exchange Shares have been duly received by Bank of China, subject to compliance with any other trading restrictions imposed by Newegg Commerce pursuant to its insider trading policy or other legal and contractual restrictions, Newegg Commerce shall issue an instruction letter to Computershare, properly acknowledged by Computershare and with Bank of China and Digital Grid prominently copied, in the form attached hereto as Exhibit A, instructing Computershare to (1) transfer up to 1,000,000 of the remaining Exchange Shares permitted under the existing Form 144 (if any) to a broker designated by Digital Grid that is reasonably acceptable to Newegg and (2)

remove the Bank of China pledge-related legends and restrictions from such Exchange Shares as specified in such instruction letter. Simultaneously therewith, such Exchange Shares shall be immediately released from, and no longer subject to, the Pledge Agreement and free from any encumbrances created thereunder. Digital Grid agrees to use such allocation of Exchange Shares solely for Rule 144 Sales made in compliance with the terms of this Supplemental Agreement, including without limitation its obligations under subsections (ii) and (iii) above. The parties should repeat the steps described in this Paragraph 2(c) with respect to each Rule 144 Sale until the earlier of (1) the New Deadline and (2) the date the Outstanding Obligations are paid in full.

(d) With respect to an Offering that occurs before the New Deadline, the parties hereby agree as follows:

(i) Upon the Filing Date of a Prospectus Supplement, Newegg Commerce shall issue an instruction letter to Computershare, properly acknowledged by Computershare and with Bank of China and Digital Grid prominently copied, in the form attached hereto as Exhibit A, instructing Computershare to, subject to the terms of the Underwriting Agreement, (1) transfer to the Lead Underwriter's brokerage account, at the time the Underwriting Agreement is fully executed for such Offering, the number of Exchange Shares that are being offered, which must be the lesser of (aa) the balance of Aggregate Cap minus the sum of all Exchange Shares that have been sold by Digital Grid through Rule 144 Sales, Rule 10b5-1 Sales (as agreed in a separate agreement) and Offering(s) from the date hereof to the Filing Date and (bb) the quotient of the Outstanding Obligations as of Closing divided by the per-share price (net of underwriting discounts) of such Offering, and (2) remove the Bank of China pledge-related legends and restrictions from such Exchange Shares as specified in such instruction letter. Simultaneously therewith, such Exchange Shares shall be immediately released from, and no longer subject to, the Pledge Agreement and free from any encumbrances created thereunder.

(ii) For each Offering, Digital Grid and Newegg Commerce shall cause the Underwriting Agreement to contain provisions which shall explicitly and irrevocably instruct and direct the Underwriters to remit and pay and contain an affirmative covenant by the Underwriters to so remit and pay, immediately upon Closing, with the cash proceeds from such Offering generated from the sale of Exchange Shares directly to the USD bank account(s) designated by Bank of China. Bank of China shall provide its USD bank account(s) details in a timely fashion to be included in the Underwriting Agreement and such bank account(s) cannot be subsequently altered without written consent from Bank of China.

(e) With respect to any privately negotiated sales by Digital Grid pursuant to Form F-3 Registration Statement before the New Deadline, the parties hereto agree as follows:

(i) Digital Grid shall be permitted to electronically deposit up to 43,000,000 Exchange Shares to a brokerage account of Digital Grid's in Hong Kong ("**Digital Grid's Broker**") pursuant to the procedures described in this subsection, which shall remain subject to the Pledge until removed pursuant to this subsection.

(ii) Upon securing a potential buyer(s) with respect to which Digital Grid intends to pursue a sale of its such deposited Exchange Shares, or upon filing a prospectus supplement related to such planned sale, whichever is earlier, Digital Grid shall immediately notify Bank of China of such proposed sale with necessary transaction terms and supporting documentation, and subject to the consent of Bank of China, which consent shall not be unreasonably withheld, and subject to subparaph (iv) below, the parties shall work in good faith to remove the Bank of China-specific restrictive legends from such Exchange Shares by promptly delivering an instruction letter in the form attached hereto as Exhibit A to Computershare instructing Computershare to immediately remove the Bank of China-specific restrictive legends from such Exchange Shares. Digital Grid will comply with all requirements by Newegg Commerce and its transfer agent related to such transfer.

(iii) The parties understand that the buyer(s) will receive the shares free from the Pledge and any Bank of China restrictions except that the buyer may be subject to certain restrictions and filing requirements pursuant to the securities laws of the U.S. and other contractual obligations and policies of Newegg Commerce.

(iv) Digital Grid shall, and shall cause Digital Grid's Broker to, enter into a three-party agreement with Bank of China, pursuant to which Digital Grid's Broker shall wire transfer the sales proceeds of such Exchange Shares (excluding transaction fees and expenses) directly to Bank of China's designated bank account immediately upon the closing of such sales. Such agreement will be provided to Newegg Commerce.

(v) In the event that the private sale contemplated herein does not close within 30 days of earlier of the execution of the term sheet or filing of the prospectus supplement, the parties agree to return such Exchange Shares to Computershare from the deposit and reinstate all applicable restrictive legends on such Exchange Shares with effect *ab initio*.

(f) Unless otherwise provided under this Agreement, with respect to each release by Bank of China contemplated herein, Bank of China hereby authorizes Digital Grid and its counsel to file on behalf of Bank of China immediately after such release any UCC-3 termination statement and other releases necessary to effectuate such releases without recourse and without representation or warranty of any kind (either express or implied). At any time and from time to time, upon the reasonable written request and at the expense of Digital Grid, Bank of China will promptly execute and deliver any and all further instruments and documents and take such further action as Digital Grid may reasonably request to effectuate, evidence or reflect of public record, the release of the security interests and liens referred to herein, in each case, without recourse and without any representation or warranty of any kind (either express or implied). For the avoidance of doubt, any Exchange Share that has not been duly released from the Pledge as set forth above shall remain subject to the Pledge and other restriction set forth therein unless and until the full and complete repayment and satisfaction of the Outstanding Obligations.

3. Priority of Payment. Digital Grid and Bank of China agree that all sales proceeds from any Offering, any other sales pursuant to Form F-3 Registration Statement, Rule

144 Sale or Rule 10b5-1 Sale shall be used exclusively to discharge the Outstanding Obligations in the following order:

(a) First, one hundred percent (100%) to Bank of China until any outstanding and unpaid expenses as of such date incurred by Bank of China in connection with the Loan and its extension and amendment is paid off.

(b) Second, one hundred percent (100%) to Bank of China until the principal of the Loan representing the sum of RMB 399,964,013.79 and $66,432,774.94 is paid off. Upon payment in full of the amounts specified in Paragraphs 3(a) and (b) set forth herein, the outstanding principal amount of the Loan shall be deemed to have been paid in full.

(c) Third, one hundred percent (100%) to Bank of China until the accrued interest on the Loan as of the date of the Closing of such Offering or as of the date of a Rule 144 Sale or Rule 10b5-1 Sale is paid off.

(d) Fourth, one hundred percent (100%) to Bank of China until the penalty interest set forth in the Final Court Judgments is paid off.

(e) Thereafter, one hundred percent (100%) to Bank of China until the interest on the interests and other fees (复利) set forth in the Final Court Judgments is paid off. Upon payment in full of the amounts specified through Paragraphs 3(a) to (e), the Outstanding Obligations and Loans shall be deemed fully and completely paid off and satisfied.

Schedule 1 hereto sets forth the amounts described immediately above as of certain reference dates. Digital Grid, Hangzhou Lianluo and their affiliates on the one hand, and Bank of China on the other hand, hereby agree that the amounts specified in Schedule 1 are the final agreed-upon amounts by the parties as of each date referenced therein. When any of the sales proceeds from an Offering, privately negotiated sales, other distributions pursuant to Form F-3 Registration Statement or Rule 144 Sale (or Rule 10b5-1 Sale as agreed in a separate agreement) are paid to, and received at, the bank accounts of Bank of China and upon Digital Grid's or any of its affiliates' written request (email being sufficient), Bank of China shall promptly execute a satisfaction and payoff letter with respect to the portion of the Outstanding Obligations that has been paid off, in a form that is satisfactory to the parties hereof.

Notwithstanding anything to the contrary set forth above, any and all remaining liabilities related to the Loan as of a Closing, or the date of a Rule 144 Sale or Rule 10b5-1 Sale or any other type of sale (the "**Remaining Liabilities**") shall remain outstanding subject to the terms of the Credit Agreements, the Pledge Agreement and this Supplemental Agreement in accordance with the Final Court Judgement unless and until the Outstanding Obligations are completely paid off. Upon the full and complete repayment and satisfaction of the Remaining Liabilities, (i) Bank of China, Hangzhou Lianluo, Digital Grid, Beijing Digital Grid and Mr. Zhitao He shall immediately and jointly execute a satisfaction and payoff letter to acknowledge and confirm the full repayment of the Loan, the Outstanding Obligations and/or the Remaining Liabilities; and (ii) all security interests, pledges and liens granted to, held by or in favor of Bank of China in the Original Pledged Shares ,the Exchange Shares and any additional collateral as security for the

Loan are immediately and automatically discharged and released in full pursuant to Section 5 hereof.

4. Other Collaterals. In consideration of and in connection with Bank of China's agreements and cooperation hereunder, Digital Grid and its affiliates have agreed to provide and arrange additional collaterals, that are separate from and unrelated to the Exchange Shares, to secure its performance of each Rule 144 Sale, Rule 10b5-1 Sale and Offering pursuant to this Agreement, and the parties will enter into separate agreements therefor.

5. UCC Lien Release. Immediately upon the full and complete repayment and satisfaction of the Outstanding Obligations, all security interests, pledges and liens granted to, held by or in favor of Bank of China in the Original Pledged Shares, the Exchange Shares, and any additional collateral as security for the Loan are immediately and automatically discharged and released in full. Bank of China hereby authorizes Digital Grid and its counsel to file on behalf of Bank of China any UCC-3 termination statement and other releases necessary to effectuate the releases contemplated in this Supplemental Agreement, in each case, without recourse and without representation or warranty of any kind (either express or implied). At any time and from time to time, upon the reasonable written request and at the expense of Digital Grid, Bank of China will promptly execute and deliver any and all further instruments and documents and take such further action as Digital Grid may reasonably request to effectuate, evidence or reflect of public record, the release of the security interests and liens referred to in this Supplemental Agreement, in each case, without recourse and without any representation or warranty of any kind (either express or implied).

6. Representations and Warranties and Further Agreements. Each party hereto represents and warrants and agrees as follows:

(a) This Supplemental Agreement has been duly authorized, executed and delivered by such party.

(b) The execution and delivery by such party of, and the performance by such party of its obligations under, this Supplemental Agreement does not and will not contravene (i) any provision of applicable law, (ii) the governing documents of such party, (iii) any judgment, order or decree of any governmental body, agency or court having jurisdiction over such party or any subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body, court or agency is required for the performance by such party of its obligations under this Supplemental Agreement.

(c) Digital Grid hereby covenants that it shall faithfully comply, and cause Newegg Commerce to comply, with all its public disclosure obligations under applicable securities laws and regulations with respect to the pledge of Exchange Shares and the re-pledged Exchange Shares.

7. Governing Law; Binding Agreement. The provisions of this Supplemental Agreement shall be construed and interpreted, and all rights and obligations of the parties hereto determined, in accordance with the internal laws of the State of New York without regard to conflict of laws principles. This Supplemental Agreement may not be amended, modified,

restated or waived except by a writing executed by the parties hereto. This Supplemental Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No party may assign either this Supplemental Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties.

8. Effectiveness.

(a) The Pledge Agreement, the Credit Agreements and other related agreements and instruments shall remain in full force and effect unless and until explicitly and specifically terminated, amended, modified, novated or superseded, as the case may be, by this Supplemental Agreement.

(b) The Purchase and Sale Agreement dated November 11, 2021, between Newegg Commerce and Digital Grid is hereby terminated.

(c) The Payoff Letter is hereby terminated.

[Signature Pages Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Supplemental Agreement to be duly executed as of the date first written above.

DIGITAL GRID (HONG KONG) TECHNOLOGY CO., LIMITED

By:_____
Name:_____
Title:_____

BANK OF CHINA LIMITED ZHEJIANG BRANCH

By:_____
Name:_____
Title:_____

NEWEGG INC.

By:_____
Name: Michael Chen
Title: Chief Legal Officer

NEWEGG COMMERCE, INC.

By:_____
Name: Michael Chen
Title: Chief Legal Officer

HANGZHOU LIANLUO INTERACTIVE INFORMATION TECHNOLOGY CO., LTD.

By:_____
Name:_____
Title:_____

EXHIBIT A

INSTRUCTION LETTER
Issued at Filing Date to Transfer Shares to Underwriters or Issued for Rule 144 Sales or for Privately Negotiated Sales pursuant to Form F-3 Registration Statement

Newegg Commerce, Inc.
17560 Rowland Street
City of Industry, CA 91748

[__]

VIA EMAIL
Computershare
6200 S. Quebec St.
Greenwood Village, CO 80111
Attn: [_____]

Re: Newegg Commerce, Inc.

Computershare team,

Newegg Commerce, Inc., a business company incorporated under the laws of the British Virgin Islands (NEGG), hereby authorizes and direct you, as transfer agent for NEGG securities, to do the following:

1) Remove legend 71 (Bank of China Restricted Stock Agreement) and 72 (SH Agreement) with respect to the following:

Units	Paper / Electronic	Class	Holder Identifier
[X]	Electronic	C01 (Newegg Commerce common shares)	C0000000027 (Digital Grid (Hong Kong) Technology Co Limited)

After release of the legends noted in step 1 above, this holder should have:

[222,821,592 - X] remaining units in book entry form with legends 71 and 72

2) After step 1, please transfer the [X] book entry units without legends through the DWAC process with the following transaction information:

Broker Name:	[Digital Grid Broker or Lead Underwriter]
DTC Participant #:	[____]
Broker Phone/email:	[____]
# of Shares:	[X] units; Class C01; Issuer Newegg Commerce, Inc.
Control #:	[____]
Entry Date:	[____]
Settlement Date:	[____]
Special Instructions:	[____]

Please contact [Newegg contact] at (626) 271-9700 extension [____] or [email address]@newegg.com if you need any additional information regarding this request.

NEWEGG COMMERCE, INC.

By:_____
Name:
Title:

SCHEDULE 1

Repayment Amount

The "Repayment Amount" listed in the table below only shows the sum of the Outstanding Obligations as of a specific date. Any repayment that occurs in between the dates above shall be interpolated on a straight-line basis for each full or partial calendar day that elapses, rounded to the nearest whole calendar day.

Principal and Regular Interest

Repayment Date	Repayment Amount
12/31/2022	133,914,023.63
1/31/2023	134,446,726.89
2/28/2023	134,929,496.81
3/31/2023	135,464,005.55
4/30/2023	135,981,272.08
5/31/2023	136,515,780.82
6/30/2023	137,033,047.34
7/31/2023	137,567,556.09
8/31/2023	138,102,064.83
9/30/2023	138,619,331.36
10/31/2023	139,153,840.10
11/30/2023	139,671,106.62

Any repayment that occurs in between the dates above shall be interpolated on a straight line basis for each full or partial calendar day that elapses, rounded to the nearest whole calendar day.

另说明，计息规则依据法院判决执行，人民币折美元牌价暂先按 7 计算；截止时点金额将由于 LPR、中行当日汇率牌价变化略有调整。

Exhibit 4.17

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

BSP SENITA GATEWAY CENTER, LLC

AS SELLER

AND

NEWEGG INC.

AS PURCHASER

FOR

21688 Gateway Center Drive
Diamond Bar, California 91765

Dated as of April 21, 2023

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 21st day of April, 2023 (the "Effective Date") by and between BSP SENITA GATEWAY CENTER, LLC, a Delaware limited liability company ("Seller"), and NEWEGG INC., a Delaware corporation ("Purchaser").

ARTICLE I

PURCHASE AND SALE

1.1 Purchase and Sale of Property. Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase, all of Seller's right, title and interest in and to the following (collectively, the "Property"):

(a) (i) all of that certain parcel of land known as Parcel 2 ("Parcel 2") of Parcel Map No. 74368, filed on July 18, 2018 in Book 398, Pages 53 and 54 of Parcel Maps, in the office of the County Recorder of Los Angeles (the "Parcel Map"), having an APN of 8293-050-045, and (ii) fifty percent (50%) of a tenant-in-common interest of that certain parcel of land known as Parcel A ("Parcel A") of the Parcel Map, having an APN of 8293-050-046, each of which are situated in Diamond Bar, California, and as more particularly described on **Exhibit A** attached hereto and made a part hereof, together with any and all rights, title and interest of Seller in and to the rights and appurtenances pertaining to Parcel 2 and Parcel A, including in and to adjacent streets, alleys or rights-of-way (collectively, the "Land");

(b) the improvements on Parcel 2, and a fifty percent (50%) tenant-in-common interest in the improvements located on Parcel A, if any, (collectively, the "Improvements" and collectively with the Land, the "Real Property") including, without limitation, that certain commercial office building located on Parcel 2, having the street address of approximately 21688 Gateway Center Drive containing approximately 81,796 rentable square feet, together with any and all fixtures of any kind owned by Seller and attached to the Real Property together with all rights, title, and interests appurtenant thereto;

(c) all tangible personal property and unattached fixtures owned by Seller and located in or upon the Land or within the Real Property (excluding cash) which is used by Seller exclusively in connection with the operation of the Real Property (the "Personal Property");

(d) the rental, use, and occupancy agreements and leases, subleases, and licenses of space concerning or relating to the Improvements located on Parcel 2, together with all rents and other monetary charges paid by tenants, licensees or other occupants under such documents and agreements, subject to prorations and adjustments as herein provided, and all security and or rental deposits in Seller's possession thereto in effect as of the Closing (the "Leases"); and

(e) the following intangible property (collectively, the "Intangibles") (i) all assignable licenses, permits, certificates of occupancy, architectural and engineering plans and specifications, governmental approvals, warranties and guaranties (expressed or implied), telephone exchange relating to the Property, and (ii) all tradenames, trademarks, service marks, websites, telephone listings, data bases, plans and specifications owned by Seller and used exclusively in connection with the operation of the Property.

For the avoidance of doubt, it is understood and agreed that Seller owns, and will continue to own, land adjacent to the Property known as Parcel 1 of the Parcel Map (APN 8293-050-044) ("Parcel 1"), and the remaining fifty percent (50%) tenant-in-common interest of Parcel A. Accordingly, (i) the Property shall expressly exclude any of Seller's right, title or interest in or to any property that is located on or used in connection with Parcel 1, and (ii) Seller's conveyance of any portion of the Property relating to Parcel A shall be limited to a fifty percent (50%) tenant-in-common interest. In addition, Seller shall not assign, and Purchaser shall not assume, any contracts or agreements relating to the upkeep, repair, maintenance or operation of the Property.

1.2 Purchase Price. The purchase price to be paid by Purchaser for the Property shall be Twenty-Three Million and No/100 Dollars ($23,000,000.00) (the "Purchase Price"), subject to adjustment as provided in this Agreement.

1.3 Payment of Purchase Price. The Purchase Price, subject to prorations and adjustments as herein provided, shall be payable in full at Closing in cash by wire transfer of immediately available federal funds to a bank account designated by Title Company (defined below) in writing to Purchaser prior to the Closing.

1.4 Initial Deposit. Not later than three (3) business days after the Effective Date of this Agreement, Purchaser shall deposit with Fidelity National Title Insurance Company (in its capacity as escrow agent and title company, the "Title Company"), having its office at 555 S. Flower Street, Suite 4420, Los Angeles, CA 90071, Attention: Brad Shaw, the sum of Six Hundred Ninety Thousand Dollars and No/100 Dollars ($690,000.00) (the "Initial Deposit"), in good funds, either by certified bank or cashier's check or by federal wire transfer. The Title Company shall hold the Initial Deposit in an interest-bearing account in accordance with the terms and conditions hereof and any supplementary instructions executed by the parties pursuant to the provisions of Section 1.7 hereof. All interest accruing on such sums shall become a part of the Initial Deposit and shall be distributed as Initial Deposit in accordance with the terms of this Agreement. Upon the expiration of the Inspection Period, the Initial Deposit shall be non-refundable to Purchaser except as expressly set forth in this Agreement. At the Closing, the Initial Deposit shall be applied in full toward the Purchase Price as described in Section 1.2 above. Time is of the essence for the delivery of the Initial Deposit under this Agreement.

1.5 Additional Deposit. Not later than three (3) business days after the Effective Date of this Agreement, Purchaser shall deliver to the Title Company, for immediate release to Seller, the sum of Fifty Thousand and No/100 Dollars ($50,000.00) (the "Additional Deposit"), which amount shall be non-refundable to Purchaser except in the event of a default by Seller as described in Section 6.2 hereof. In the event of a default by Seller as described in Section 6.2 hereof, Seller shall, within three (3) business days, return to Purchaser the Additional Deposit in full. At the Closing, the Additional Deposit shall be applied in full toward the Purchase Price as described in Section 1.2 above. If Closing does not occur for any other reason besides a Seller default or as otherwise expressly provided in this Agreement, the Additional Deposit shall be retained by Seller, which Additional Deposit has been bargained for and agreed to as consideration for Purchaser's exclusive right to purchase the Property and the Inspection Period provided herein, and for Seller's execution and delivery of this Agreement. Time is of the essence for the delivery of the Additional Deposit under this Agreement. By initialing below, Purchaser hereby instructs Title Company to release the Additional Deposit to Seller immediately upon receipt, without further instruction or authorization from Purchaser.

Purchaser's Initials

1.6 Extension Deposit(s). In the event Purchaser elects to exercise the First Closing Extension (as defined in Section 4.1 hereof) in accordance with Section 4.1 hereof, as a condition precedent to the effectiveness of exercising the First Closing Extension, Purchaser shall deposit with the Title Company within one (1) business day of delivering the First Closing Extension Notice (as defined in Section 4.1 hereof) an amount equal to Fifty Thousand Dollars ($50,000) (the "First Extension Deposit") in good funds, either by certified bank or cashier's check or by federal wire transfer. In the event Purchaser elects to exercise the Second Closing Extension (as defined in Section 4.1 hereof) in accordance with Section 4.1 hereof, as a condition precedent to the effectiveness of exercising the Second Closing Extension, Purchaser shall deposit with the Title Company within one (1) business day of delivering the Second Closing Extension Notice (as defined in Section 4.1 hereof) an amount equal to One Hundred Thousand Dollars ($100,000) (the "First Extension Deposit", and together with the First Extension Deposit, if applicable, the "Extension Deposits")) in good funds, either by certified bank or cashier's check or by federal wire transfer. The Extension Deposits shall be non-refundable to Purchaser except as expressly set forth in this Agreement. At the Closing, the Extension Deposits shall be applied in full toward the Purchase Price as described in Section 1.2 above. Time is of the essence for the delivery of the Initial Deposit under this Agreement.

1.7 Delivery to Title Company. Upon mutual execution of this Agreement, the parties hereto shall deposit an executed copy of this Agreement with Title Company and this Agreement shall (along with such supplementary instructions not inconsistent herewith as either party hereto may deliver to Title Company) serve as escrow instructions to Title Company for the consummation of the purchase and sale contemplated hereby. Seller and Purchaser agree to execute such additional escrow instructions as Title Company may reasonably require and which are not inconsistent with the provisions hereof; provided, however, that in the event of any conflict between the provisions of this Agreement, as may be amended by the mutual execution by the parties and any supplementary escrow instructions, the terms of this Agreement, as may be amended, shall control.

ARTICLE II

TITLE AND SURVEY

2.1 Title Examination; Commitment for Title Insurance. Seller shall obtain from the Title Company and deliver, to Purchaser, within five (5) business days after the Effective Date, a current preliminary title insurance report (the "Title Commitment") covering the Real Property, together with copies of the recorded exception documents identified therein.

2.2 Survey. Seller has delivered or shall deliver to Purchaser and the Title Company, within five (5) days after the Effective Date, Seller's most current as-built survey of the Real Property (the "Survey"). Purchaser may, at its sole cost and expense, update and/or recertify the Survey to the extent required by the Title Company to issue the Title Policy.

2.3 Title Objections; Cure of Title Objections.

(a) Purchaser shall have until the date (the "Title Exam Deadline") which is five (5) business days prior to the expiration of the Inspection Period to review the Title Commitment and the Survey and to notify Seller, in writing, of such objections within Purchaser's sole and subjective discretion as Purchaser may have to any matter disclosed in the Title Commitment or the Survey. Any item contained in the Title Commitment or any matter shown on the Survey to which Purchaser does not object in writing prior to the Title Exam Deadline shall be deemed accepted by Purchaser and shall be a Permitted Exception under this Agreement.

(b) In the event Purchaser shall notify Seller of objections to title or to matters shown on the Survey prior to the Title Exam Deadline, Seller shall have the right, but not the obligation, to cure such objections. Within three (3) business days after receipt of Purchaser's notice of objections (the "Seller's Title Objection Response Deadline"), Seller shall notify Purchaser in writing whether Seller elects to attempt to cure such objections. Seller's failure to respond prior to the expiration of Seller's Title Objection Response Deadline shall be deemed to be Seller's election not to cure any such objections. If Seller elects to attempt to cure, and provided that Purchaser shall not have terminated this Agreement in accordance with Section 3.3 hereof, Seller shall have until the date of Closing to attempt to remove, satisfy or cure the same and for this purpose. If Seller elects not to cure (or is deemed to have elected not to cure) any objections specified in Purchaser's notice, or if Seller is unable to effect a cure prior to the Closing, Seller shall deliver notice to Purchaser stating the same ("Seller's No Cure Notice"), then prior to the expiration of the Inspection Period, Purchaser shall have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Purchaser which Seller is unwilling or unable to cure, and without reduction of the Purchase Price; or (ii) to terminate this Agreement by sending written notice thereof to Seller, and upon delivery of such notice of termination, this Agreement shall terminate and the entirety of the Initial Deposit shall be returned to Purchaser, and thereafter neither party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. Purchaser's failure to respond within the period described in the immediately preceding sentence shall be deemed to be Purchaser's election to accept the conveyance under clause (i) above.

(c) If at the time of expiration of the Inspection Period, Seller has agreed to attempt to cure or remedy Purchaser's title objections, should Seller fail to cure or remedy said Purchaser's title objections prior to Closing, Purchaser shall retain the right to terminate this Agreement as if such termination was effected prior to the expiration of the Inspection Period, in which case Purchaser shall receive and the Title Company shall disburse to Purchaser the entirety of the Initial Deposit to Purchaser.

2.4 Conveyance of Title. At Closing, Seller shall convey and transfer to Purchaser such title to the Property as will enable the Title Company to issue to Purchaser a standard coverage owner's title insurance policy (the "Title Policy") covering the Real Property, in the full amount of the Purchase Price, subject only to the "Permitted Exceptions" (as hereinafter defined). Purchaser may obtain extended coverage owner's title insurance policy and any endorsements that Purchaser may request at its sole cost and expense, provided the same shall not be a condition precedent to Closing hereunder. Notwithstanding anything contained herein to the contrary, the Property shall be conveyed subject to the following matters (collectively, "Permitted Exceptions"):

(a) the rights of tenants under the Leases;

(b) the lien of all ad valorem real estate taxes and assessments not yet delinquent as of the date of Closing, subject to adjustment and prorations as herein provided;

(c) the lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5, commencing with Section 75, of the California Revenue and Taxation Code;

(d) liens, encumbrances or other items caused or created by Purchaser;

(e) local, state and federal laws, ordinances or governmental regulations, including, but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property; and

(f) items appearing of record or shown on the Survey (or any matters which could be ascertained by a proper visual inspection or updated survey of the Real Property) and, in either case, not objected to by Purchaser or waived or deemed waived by Purchaser in accordance with Sections 2.3 or 2.5 hereof.

2.5 Pre-Closing "Gap" Title Defects. Whether or not Purchaser shall have furnished to Seller any notice of title objections pursuant to the foregoing provisions of this Agreement, Purchaser may, at or prior to Closing, notify Seller in writing of Purchaser's objections to any new title exceptions that would have an adverse effect on the Property (the "New Objections") and were first raised between (a) the expiration of the Inspection Period, and (b) the date on which the transaction contemplated herein is scheduled to close, or as extended pursuant to Section 2.3 hereof. With respect to any New Objections set forth in such notice under this Section 2.5, Seller and Purchaser shall be subject to the same terms, rights and obligations under Section 2.3(b), as if such New Objections appeared on title prior to the expiration of the Title Exam Deadline.

ARTICLE III

INSPECTION PERIOD

3.1 Right of Inspection. During the period beginning on the Effective Date and ending at 5:00 p.m. (local time at the Property) thirty (30) days thereafter (the "Inspection Period"), Purchaser and its respective representatives, agents and consultants (collectively the "Purchaser's Representatives") shall have the right to make a physical inspection of the Property, subject to the terms herein. Any on-site inspections of the Property by Purchaser or Purchaser's Representatives shall be conducted in the presence of Seller or its representative upon at least one (1) business day's prior written notice to Seller (which may be provided by email to Kimberly Kanen (kkanen@buchananstreet.com)). Such physical inspection shall not unreasonably interfere with the use of the Property by Seller or its tenants nor shall Purchaser's inspection damage the Property in any respect. Such physical inspection shall not be invasive in any respect (unless Purchaser obtains Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion), and in any event shall be conducted in accordance with all governmental laws, rules and regulations. Following each entry by Purchaser with respect to inspections and/or tests on the Property, Purchaser shall restore the Property at its sole cost and expense to a condition which is as near as possible to its original condition as existed prior to any such inspections and/or tests. Seller shall reasonably cooperate with Purchaser in its due diligence, including but not limited to, access to the Property for physical inspection, but shall not be obligated to incur any liability or expense in connection therewith. Purchaser shall not contact any tenants, guests or other occupants of the Property without obtaining Seller's prior written consent, in Seller's sole and absolute discretion, or with respect to tenants after the expiration of the Inspection Period, in Seller's reasonable discretion. Purchaser agrees to indemnify against and hold Seller harmless from any claim for liabilities, actual, out-of-pocket costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries arising out of or resulting from the inspection of the Property by Purchaser or Purchaser's Representatives; provided that the foregoing indemnity shall not relate to any liability, cost, loss, damage or expense to the extent attributable to (i) Purchaser's mere discovery of conditions in existence on or about the Property on the Effective Date provided Purchaser or Purchaser's Representatives do not exacerbate such conditions or (ii) any gross negligence or willful misconduct of Seller or any of Seller's agents, contractors, or employees. Notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless Seller shall survive for one (1) year from the earlier of (x) Closing or (y) any termination of this Agreement. All inspections shall occur at reasonable times agreed upon by Seller and Purchaser. Prior to Purchaser or any of Purchaser's Representatives entering the Property, Purchaser shall obtain and maintain (and shall cause any of Purchaser's Representatives to obtain and maintain), at Purchaser's sole cost and expense, and shall deliver to Seller evidence of, the Insurance Requirements (as defined herein). The term "Insurance Requirements" shall mean the following insurance coverage: general liability insurance, from an insurer reasonably acceptable to Seller and Seller hereby approves AIG, in the amount of Two Million and No/100 Dollars ($2,000,000.00) combined single limit for personal injury and property damage per occurrence, such policy to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by the insured in connection with such inspections and/or tests.

3.2 Seller Deliveries. To the extent not provided to Purchaser prior to the execution of this Agreement, within five (5) business days of the execution of this Agreement, Seller, or Seller's property manager, shall provide to Purchaser, for Purchaser's review, copies of the documents and information set forth on **Exhibit H** attached hereto and incorporated herein by this reference (together with all other written information delivered by Seller to Purchaser not later than two (2) business days prior to the expiration of the Inspection Period, collectively, the "Due Diligence Items"), if and to the extent within Seller's possession. Except as expressly set forth in Section 5.1 hereof, Seller makes no representations or warranties of any kind regarding the accuracy, thoroughness or completeness of or conclusions drawn in the information contained in such documents, if any, relating to the Property. Except as otherwise expressly set forth in Section 5.1 hereof, Purchaser hereby waives any and all claims against Seller arising out of the accuracy, completeness, conclusions or statements expressed in materials so furnished and any and all claims arising out of any duty of Seller to acquire, seek or obtain such materials. Notwithstanding anything contained in the first sentence of this paragraph, Seller shall not deliver or make available to Purchaser any Excluded Documents (as defined in **Exhibit H**). Purchaser acknowledges that any and all of the Due Diligence Items that are not otherwise known by or available to the public are proprietary and confidential in nature and will be delivered to Purchaser solely to assist Purchaser in determining the feasibility of purchasing the Property. The terms and provisions of this Section shall survive the Closing for a period of one (1) year.

3.3 Right of Termination. If Purchaser determines (such determination to be made in Purchaser's sole and absolute discretion for any reason or no reason) that the Property is not suitable for its purposes, then Purchaser shall have the right to terminate this Agreement by giving written notice thereof to Seller prior to the expiration of the Inspection Period. If Purchaser gives such notice of termination to Seller prior to the expiration of the Inspection Period, then this Agreement shall terminate, the Initial Deposit shall be returned to Purchaser and no party shall have any further obligations under this Agreement except for obligations hereunder which are expressly stated to survive a termination of this Agreement. Time is of the essence with respect to the provisions of this Section 3.3. Except as otherwise specifically provided to the contrary in Sections 2.3 or 2.5, if Purchaser fails to give Seller a notice of termination prior to the expiration of the Inspection Period, Purchaser shall no longer have any right to terminate this Agreement under this Section 3.3, and except as expressly provided herein to the contrary herein, Purchaser shall be bound to proceed to Closing and consummate the transaction contemplated hereby pursuant to the terms of this Agreement.

3.4 Marketing. From and after the Effective Date through the Closing or earlier termination of this Agreement, Seller and its affiliates shall not (and Seller shall instruct its broker not to) accept or entertain offers, or negotiate, solicit interest in or otherwise enter into discussions involving the sale or disposition of all or any part of the Property, provided, that any unsolicited offer or offers in response to prior marketing activity by CBRE shall not violate this clause so long as Seller does not actively negotiate or accept any such offers.

ARTICLE IV

CLOSING

4.1 Time and Place. The parties shall conduct an escrow closing (the "Closing") on the date which is fifteen (15) days after the expiration of the Inspection Period, or such other date as may be mutually agreed upon between the parties, or such later date as the same may be extended to pursuant to the terms of this Agreement, including, without limitation, pursuant to a Condition Precedent Extension Notice (the "Closing Date"). Seller may elect to extend the Closing Date to satisfy Purchaser's Conditions Precedent by delivering a Condition Precedent Extension Notice as set forth in Section 4.7 below. In addition, Purchaser may elect to extend the Closing Date by up to fifteen (15) days (the "First Closing Extension"), by delivering written notice to Seller no later than five (5) business days prior to the then-scheduled Closing Date (the "First Closing Extension Notice"), and depositing the First Closing Extension Deposit with the Title Company within one (1) business day of delivering the First Closing Extension Notice. In addition, if Purchaser properly exercises the First Closing Extension, Purchaser may elect to further extend the Closing Date by up to fifteen (15) days (the "Second Closing Extension"), by delivering written notice to Seller no later than five (5) business days prior to the then-scheduled Closing Date (the "Second Closing Extension Notice"), and depositing the Second Closing Extension Deposit with the Title Company within one (1) business day of delivering the Second Closing Extension Notice. In the event the Closing does not occur on or before the Closing Date, the Title Company shall, unless it is notified by both Seller and Purchaser to the contrary within three (3) days after the Closing Date, or as may be provided elsewhere in this Agreement, return to the depositor thereof items (other than the Initial Deposit and the Extension Deposits (if applicable), which shall be disbursed in accordance with the terms herein) which were deposited thereunder; any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to close. At Closing, Seller and Purchaser shall perform their respective obligations set forth in Sections 4.2 and 4.3 hereof, the performance of which obligations shall be concurrent conditions.

4.2 Seller's Obligations at Closing. Not later than one (1) business day prior to the Closing Date, Seller shall deliver to the Title Company:

(a) a duly executed deed (the "Deed") to the Real Property substantially in the same form as **Exhibit J** attached hereto, conveying to Purchaser title to the Real Property, subject only to the Permitted Exceptions;

(b) one (1) duly executed counterpart (which may be by .pdf) of a bill of sale in the form of **Exhibit C** attached hereto, conveying the Personal Property to Purchaser;

(c) one (1) duly executed counterpart (which may be by .pdf) of an assignment and assumption agreement as to the Leases in the form of **Exhibit D** attached hereto;

(d) one (1) duly executed counterpart (which may be by .pdf) of an assignment and assumption agreement as to the Intangibles in the form of **Exhibit E** attached hereto;

(e) a duly executed notice to tenants (which may be by .pdf) in the form of **Exhibit F** attached hereto (a "Tenant Notice Letter"), which Purchaser shall countersign and Seller shall send to each of the tenants under the Leases in accordance with Section 10.20 herein informing such tenants of the sale of the Property and directing that all rent and other sums payable under the Leases after the Closing shall be paid as set forth in the notice;

(f) one (1) duly executed affidavit (which may be by .pdf) by Seller stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act in the form of **Exhibit G** attached hereto, and, if required, a duly executed original California state Form 593 certificate sufficient to exempt Seller from any California state withholding requirement with respect to the sale contemplated by this Agreement;

(g) an updated "Rent Roll" (as hereinafter defined) dated no earlier than three (3) Business Days prior to the Closing, certified by Seller to be the rent roll used in the ordinary course of Seller's ownership of the Property;

(h) an owner's affidavit (and gap indemnity in favor of Title Company in form and substance approved by Title Company if the recording date of the Deed is not the Closing Date) in the form of **Exhibit K** attached hereto; and

(i) such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller.

At the Closing, Seller shall deliver to Purchaser possession and occupancy of the Property, subject to the Leases and Permitted Exceptions and the parties will make mutually satisfactory arrangements for the delivery to Purchaser (to the extent they are then in Seller's or its agents' possession) of (a) the lease files, drawings, plans, maintenance records, invoices, reports, keys to all locks, access codes and/or passwords, and control devices to all building equipment and systems, if any, (b) all transferrable unexpired warranties and guarantees received in connection with any work or services performed exclusively with respect to, or equipment installed in, the Improvements on the Property, and (c) all Due Diligence Items. Purchaser shall reasonably cooperate with Seller, at no out of pocket cost to Purchaser, for a period of five (5) years after the Closing in case of Seller's need in response to any legal requirements, tax audits, tax return preparation or litigation threatened or brought against Seller, by allowing Seller and its agents or representatives access, upon reasonable advance notice (which notice shall identify the nature of the information sought by Seller), at all reasonable times during normal business hours to examine and make copies of any and all instruments, files and records turned over by Seller to Purchaser at Closing, which right shall survive the Closing; provided, that Seller shall not permitted to exercise such right more than two (2) times in twelve (12) month period.

4.3 Purchaser's Obligations at Closing. Not later than one (1) business day prior to Closing (except as to the "Closing Payment" (as hereinafter defined), which shall be delivered no later than 12:00 noon (Pacific time) on the Closing Date), Purchaser shall deliver to Title Company:

(a) the full amount of the Purchase Price, subject to prorations and adjustments as herein provided, in immediately available wire transferred US funds, it being agreed that at Closing, the Initial Deposit and the Additional Deposit (and the Extension Deposits, if applicable) shall be applied towards payment of the Purchase Price and delivered to Seller (the amount to be paid under this Section 4.3(a) being herein called the "**Closing Payment**");

(b) one (1) duly executed counterpart of the instruments described in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) hereof (which may be by .pdf); and

(c) such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser.

4.4 Title Company's Obligations at Closing. At Closing, Title Company shall:

(a) record the Deed and deliver the Title Policy to Purchaser;

(b) pay the Purchase Price (as adjusted in accordance with this Agreement) to Seller or as Seller directs in writing, by wire transfer of immediately available federal funds;

(c) deliver to Seller and Purchaser one (1) fully executed counterpart of the instruments described in Sections 4.2(b), 4.2(c), 4.2(d) and 4.2(e) hereof; and

(d) deliver to Seller and Purchaser their respective settlement statements prepared by Title Company and approved by Seller and Purchaser, as applicable, not less than one (1) business day prior to the Closing.

4.5 Credits and Prorations.

(a) The following shall be apportioned with respect to the Property as of 12:01 a.m., on the day of Closing, as if Purchaser were vested with title to the Property during the entire day upon which Closing occurs:

(i) rents, if any, as and when collected (the term "rents" as used in this Agreement includes all payments (e.g. CAM, NNN, etc.) due and payable by tenants under the Leases);

(ii) taxes (including personal property taxes on the Personal Property) and assessments levied against the Property;

(iii) intentionally omitted;

(iv) gas, electricity and other utility charges for which Seller is liable, if any, such charges to be apportioned at Closing of the basis of the most recent meter readings occurring prior to Closing; and

(v) any other accrued or prepaid operating expenses for the Property and, to the extent customarily prorated between a purchaser and a seller in the area in which the Property is located, any other items pertaining to the Property.

(b) Notwithstanding anything contained in the foregoing provisions:

(i) At Closing, (A) Seller shall, at Seller's option, either deliver to Purchaser any and all security deposits actually held by Seller pursuant to the Leases or credit to the account of Purchaser the unapplied amount of such security deposits, and (B) at Purchaser's option, Purchaser shall either credit to the account of Seller all refundable cash or other deposits posted with utility companies serving the Property, in which case Purchaser shall be entitled to receive and retain such refundable cash or other deposits, or Purchaser may deposit cash or other deposits with the utility companies which Purchaser is using at the Property, in which case Seller shall be entitled to receive and retain its refundable cash and other deposits.

(ii) Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments for the current year have not been paid before Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and, if any, 100% of penalties, late charges and interest due; and Purchaser shall pay the taxes and assessments which relates to the period after Closing, but prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the most recent ascertainable numbers, subject to adjustments upon the availability of exact amount of taxes and assessment after Closing.

(iii) Charges referred to in Section 4.5(a) hereof which are payable by any tenant to a third party (whether pursuant to the terms of the applicable Lease or otherwise) shall not be apportioned hereunder, and Purchaser shall accept title subject to any of such charges unpaid and Purchaser shall look solely to the tenant responsible therefor for the payment of the same. If Seller shall have paid any of such charges on behalf of any tenant, and shall not have been reimbursed therefor by the time of Closing, Purchaser shall credit to Seller an amount equal to all such charges so paid by Seller.

(iv) Seller shall receive the entire advantage of any discounts for the prepayment by it of any taxes, water rates or sewer rents.

(v) As to gas, electricity and other utility charges referred to in Section 4.5(a)(iv) hereof, Seller may on written notice to Purchaser elect to pay one or more of all of said items accrued to the Closing Date directly to the person or entity entitled thereto, and to the extent Seller so elects, such items shall not be apportioned hereunder, and Seller's obligation to pay such item directly in such case shall survive the Closing.

(vi) Intentionally omitted.

(vii) Purchaser shall be responsible for the payment of (A) all Tenant Inducement Costs (as hereinafter defined) and leasing commissions which become due and payable after Closing as a result of any renewals or modifications of the Leases, or any new Leases, approved or deemed approved in accordance with Section 5.4(b) hereof, between the Effective Date and the date of Closing, and (B) all Tenant Inducement Costs and leasing commissions which become due and payable from and after the date of Closing. If, as of the date of Closing, Seller shall have paid any Tenant Inducement Costs or leasing commissions for which Purchaser is responsible pursuant to the foregoing provisions, Purchaser shall reimburse Seller therefor at Closing. For purposes hereof, the term "Tenant Inducement Costs" shall mean any out-of-pocket payments required under any Leases to be paid by the landlord thereunder to or for the benefit of the tenant thereunder which is in the nature of a tenant inducement, including specifically, without limitation, tenant improvement costs, lease buyout costs, and moving, design, refurbishment and club membership allowances.

(viii) Unpaid and delinquent rent collected by Seller and Purchaser after the date of Closing shall be delivered as follows: (a) if Seller collects any unpaid or delinquent rent for the Property, Seller shall, within fifteen (15) days after the receipt thereof, deliver to Purchaser any such rent which Purchaser is entitled to hereunder relating to the date of Closing and any period thereafter, and (b) if Purchaser collects any unpaid or delinquent rent from the Property, Purchaser shall, within fifteen (15) days after the receipt thereof, deliver to Seller any such rent which Seller is entitled to hereunder relating to the period prior to the date of Closing. Rents and other charges and revenues that are delinquent (or payable but unpaid) as of the Closing Date shall not be prorated on the Closing Date. All rent received by Seller or Purchaser after the date of Closing shall be applied first to current rentals and then to delinquent rentals, if any, in inverse order of maturity. If any rents are delinquent as of the Closing then Purchaser will make a good faith effort for a period of ninety (90) days after Closing to collect such delinquent rents, but Purchaser will not be obligated to institute any lawsuit or other formal collection procedures to collect delinquent rents. Seller shall have the right, after Closing, to proceed against tenants for all rental amounts allocable to the period of Seller's ownership of the Property (provided that in no event shall Seller have any right to seek to evict the applicable tenant, terminate the applicable Lease or otherwise disturb such tenant's occupancy). In the event that there shall be any rents or other charges under the Leases which, although relating to a period prior to Closing, do not become due and payable until after Closing or are paid prior to Closing but are subject to adjustment after Closing (such as year end common area expense reimbursements and the like), then any rents or charges of such type received by Purchaser or its agents or Seller or its agents subsequent to Closing shall, to the extent applicable to a period extending through the Closing, be prorated between Seller and Purchaser as of Closing and Seller's portion thereof shall be remitted promptly to Seller by Purchaser.

(c) The provisions of this Section 4.5 shall survive Closing for a period of six (6) months.

4.6 Closing Costs. Seller shall pay (i) the fees of any counsel representing it in connection with this transaction; (ii) the transfer fees, documentary taxes, and related, similar transfer taxes; (iii) one-half (1/2) of any escrow fee which may be charged by Title Company; (iv) the fees for recording the Deed; and (v) the premium for the ALTA standard portion of the Title Policy in the amount of the Purchase Price (but excluding the cost of any extended coverage, any endorsements, and lender's policy requested by Purchaser). Purchaser shall pay (i) the fees of any counsel representing Purchaser in connection with this transaction; (ii) for the cost of the any update or recertification of the Survey; (iii) the cost of any extended coverage to the Title Policy and any endorsements to the Title Policy; (iv) one-half (1/2) of any escrow fees charged by Title Company; and (v) all costs relating to obtaining any of Purchaser's financing and any fees associated with obtaining the lender's title policy in connection therewith. All other costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring same.

4.7 Conditions Precedent to Obligation of Purchaser. The obligations of Purchaser to consummate the transaction hereunder shall be subject to the following conditions, any or all of which may be waived by Purchaser in its sole and absolute discretion (individually and collectively, as the context may require "Purchaser's Conditions Precedent"):

(a) Subject to Section 5.3, all of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

(b) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the Closing Date.

(c) On or before that date which is two (2) business days prior to the Closing Date, Seller shall have delivered to Purchaser an estoppel certificate, dated within thirty (30) days of the Closing Date, in the form as required under a tenant's Lease, or if no such form is required under the tenant's Lease, in substantially the form attached hereto as Exhibit B and incorporated herein, completed and duly executed by each tenant under a Lease at the Property (each, a "Tenant Estoppel Certificate" and collectively, the "Tenant Estoppel Certificates"). Purchaser shall have no right to object to a Tenant Estoppel Certificate solely because it limits one or more statements to the tenant's knowledge or contains a general conditional statement such as "we reserve all rights" or "subject to our audit rights as set forth in the Lease." Further, any Tenant Estoppel Certificates meeting the requirements of this Section 4.7(c) shall count towards the Tenant Estoppel Certificate requirement, unless it discloses any default beyond applicable notice or cure periods, by Seller not within Purchaser's knowledge as of the end of the Inspection Period. Purchaser shall have right to approve completed Tenant Estoppel Certificates prior to delivery to tenants (provided that Purchaser shall review and approve or disapprove such Tenant Estoppel Certificates within three (3) business days of delivery (and failing to respond shall be deemed approved)). Seller will use commercially reasonable efforts to procure from each of the tenants under the Leases a completed and signed Tenant Estoppel Certificate, for delivery in accordance with this Section; provided, Seller's obligation to use reasonable efforts to obtain the Tenant Estoppel Certificates as required above shall be limited to making requests therefor and reasonable follow-up, but shall not include the payment of any money, issuance of any default notices or any other extraordinary action by Seller.

(d) Purchaser shall have received or the Title Company shall be irrevocably and unconditionally committed to issuing the Title Policy.

Notwithstanding anything to the contrary herein, if Seller is unable to timely satisfy Purchaser's Condition Precedents set forth above prior to the Closing Date, then, (i) Seller may, if it so elects and without any abatement in the Purchase Price, adjourn the Closing by delivering written notice(s) to Purchaser (a "Condition Precedent Extension Notice") specifying such new Closing Date for such longer period as may be necessary to satisfy such Purchaser's Condition Precedent (but in no event more than ten (10) business days), during which Seller shall use commercially reasonable efforts to satisfy Purchaser's Conditions Precedent, (ii) with respect to the condition precedent for Tenant Estoppel Certificates in Section 4.7(c), Seller or Purchaser may, if it so elects and without any abatement in the Purchase Price, adjourn the Closing by delivering a Condition Precedent Extension Notice specifying such new Closing Date for such longer period as may be necessary to satisfy such Purchaser's Condition Precedent (but in no event more than ten (10) business days, which may be extended an additional five (5) business days if not satisfied within such ten (10) business day period), and (iii) if, after any such extension, the Purchaser's Conditions Precedent continue not to be satisfied (and Purchaser has not waived the same) or Seller does not elect such extension and, in either case, such failure of Purchaser's Condition Precedent is not the result of Seller's default hereunder, then Purchaser shall be entitled to either (a) terminate this Agreement by notice thereof to Seller (in which event the Purchaser shall be entitled to receive the Initial Deposit and the Additional Deposit (and Seller shall promptly deliver the Additional Deposit to Purchaser) and neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof) or, (b) consummate the transaction contemplated by this Agreement.

4.8 Conditions Precedent to Obligation of Seller. The obligation of Seller to consummate the transaction hereunder shall be subject to the following conditions, any or all of which may be waived by Seller in its sole and absolute discretion:

(a) Seller shall have received or the Title Company shall be irrevocably committed to disbursing to Seller the Purchase Price as adjusted pursuant to and payable in the manner provided for in this Agreement.

(b) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of Closing.

(c) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Purchaser as of the Effective Date and, subject to Section 5.3, as of the Closing Date:

(a) Organization and Authority. Seller has been duly organized and is validly existing under the laws of Delaware. Seller has the full right, power and authority to enter into this Agreement and, to transfer all of the Property to be conveyed by Seller pursuant to this Agreement and to consummate or cause to be consummated the transactions contemplated herein to be made by Seller. The person signing this Agreement on behalf of Seller is authorized to do so.

(b) Pending Actions. Seller has not received any written notices of any action, suit, or proceeding pending or threatened against Seller or the Property relating to or arising out of the ownership, management or operation of the Property, in any court judicial/quasi-judicial body or administrative body or before or by any federal, state, or municipal department, commission, board, bureau, or agency or other governmental instrumentality other than personal injury claims covered (except for the deductible or self-insured retention) by Seller's insurance.

(c) Leases. Seller shall or has, (a) provided to Purchaser a true and materially complete copy of all documents constituting Leases; and (b) other than the Leases or as set forth in the Due Diligence Items, Seller has not, entered into any leases or other agreements that remain in effect granting third parties the right to occupy or an option to purchase all or any portion of the Property. There are no leases (or other agreements regarding occupancy) of space in the Property which will be in force on the Closing Date other than the Leases disclosed on the rent roll for the Property attached as Exhibit "I" (the "Rent Roll"); provided, for the avoidance of doubt, Seller does not represent that all amendments or modifications to such Leases are disclosed on the Rent Roll. The Rent Roll delivered or made available to Purchaser pursuant to the terms of this Agreement is that prepared in the ordinary course of Seller's ownership of the Property. No rent is past due or delinquent as of the Effective Date except as identified in the Rent Roll or any aged receivables report included in the Due Diligence Items. To Seller's knowledge, (a) all of the Leases are in full force and effect, (b) neither Seller nor any tenant is in monetary default or material non-monetary default under any of the Leases, except as set forth on the Rent Roll or any aged receivables report included in the Due Diligence Items, and (c) no tenant under any Lease has filed for bankruptcy. Prior to Closing, all common area maintenance and other reimbursable operating expenses for periods prior to the calendar year in which the Closing occurs have been finalized and settled with each respective tenant.

(d) Condemnation. Seller has not received any written notices of any pending condemnation proceedings relating to the Property and, to Seller's knowledge, no condemnation proceedings relating to the Property are currently threatened in writing by any governmental agency having the power of eminent domain with respect to the Property.

(e) OFAC. Seller is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an Embargoed Person (as hereinafter defined); to Seller's knowledge, none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; and to Seller's knowledge, no Embargoed Person has any interest of any nature whatsoever in Seller (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder.

(f) Compliance. Except as disclosed in the Due Diligence Items, Seller has received no written notice from any governmental authority of any violation or noncompliance of applicable laws at the Property which remains uncured.

(g) Service Contracts. Seller has not entered into any service contracts, equipment leasing contracts or other contracts relating to the ownership, operation or maintenance of the Property that will be binding on the Purchaser after the Closing.

(h) Consents; No Conflict. To Seller's knowledge, Seller has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance or applicable laws. The execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not: (i) violate any judgment, order, injunction, or decree to which Seller or the Property is subject, or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller.

(i) Bankruptcy. Seller has not (i) filed a voluntary petition, or suffered the filing of any involuntary petition by Seller's creditors, under the Federal Bankruptcy Code or any similar state or federal laws, (ii) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets thereunder, or (iii) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets thereunder.

(j) Environmental Matters. The Due Diligence Items include the most recent third party final report in Seller's possession or reasonable control relating to Hazardous Materials at or near the Property. Except as set forth in the Due Diligence Items, Seller has not received written notice from any governmental or quasi-governmental authority or agency having jurisdiction over the Property, and Seller has no knowledge, that the Property is in violation of any applicable environmental laws regarding Hazardous Materials at, under, in or on the Property that has not been cured and remediated. The term "Hazardous Materials" shall mean petroleum products, and any other hazardous waste or substance that has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any instrumentality authorized to regulate substances in the environment that has jurisdiction over the Property.

(k) Personal Property. Except as disclosed in the Due Diligence Items or as shown in the UCC filing records in the State of Delaware, Seller owns its Personal Property free and clear of all liens (other than liens that Seller shall cause to be satisfied or released at or prior to the Closing).

(l) Purchase Option. Neither Seller nor any of its affiliates has entered into any agreements currently in effect pursuant to which any party has any right of first refusal, option or other right to purchase all or any part of the Property (other than this Agreement).

(m) REA. With respect to that certain Amended and Restated Reciprocal Easement Agreement for Parking, Access, Landscaping and Drainage, recorded on June 21, 2019 as Instrument No. 20190593922 in the Official Records of Los Angeles County, California (the "REA"), there are no unrecorded amendments or modifications to the REA, and the REA is in full force and effect.

5.2 Knowledge Defined. References to the "knowledge" of Seller shall mean and be limited to the current actual knowledge of Kimberly Kanen ("Designated Employee") of Seller, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any property manager, or to any other officer, agent, manager, representative or employee of Seller or any affiliate thereof or to impose upon such Designated Employee any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. Seller hereby represents and warrants to Purchaser that the Designated Representative is a representative of Seller that is knowledgeable about the representations and warranties made herein (and that, to Seller's knowledge, there is no other representative of Seller that has materially more knowledge about the representations or warranties made herein), but such Designated Employee shall have no personal liability with respect to the representations or any other matters under this Agreement.

5.3 Survival of Seller's Representations and Warranties.

(a) If Seller becomes aware prior to the Closing that any of its representations and warranties are untrue or has materially changed that would have a material and adverse effect on the Property necessitating update and disclosure to Purchaser, then upon written notice to Purchaser ("Seller's Update Notice") Seller shall have the right and obligation to promptly update its representations and warranties to reflect the then current actual facts, status, conditions, or and circumstances. If Purchaser obtains actual knowledge (or is deemed to know in accordance with the last sentence of this paragraph) prior to Closing of any material breach or inaccuracy in Seller's representations or warranties under this Agreement that would have a material and adverse effect on the Property, through Seller's Update Notice, or through Purchaser's own investigations, then as Purchaser's sole remedy, Purchaser shall have the right to terminate this Agreement and receive a full refund of the Initial Deposit and the Additional Deposit and the Extension Deposits (if applicable) by written notice to Seller not later than five (5) business days after receiving Seller's Update Notice or otherwise becoming aware of such breached or inaccurate representation or warranty. If Purchaser does not timely notify Seller of Purchaser's election to terminate this Agreement as a consequence of Seller's Update Notice or upon becoming aware that Seller's representation or warranty is untrue or materially inaccurate, then Purchaser shall be deemed to have waived any right or remedy that it otherwise might have as a consequence thereof and the applicable representation or warranty shall be deemed modified accordingly. For the avoidance of doubt, (i) Seller shall have no liability, except as specifically stated to the contrary in this Section 5.3(a), for any misrepresentation or breach of warranty of which Purchaser becomes aware prior to Closing through Seller's Update Notice or through Purchaser's own investigations and (ii) all of Seller's representations and warranties shall automatically be deemed modified to reflect any matters set forth in the Due Diligence Items or any other matters or information disclosed in writing to Purchaser or its agents, attorneys or representatives (including in any third party reports obtained by such persons) prior to the Closing.

(b) Except for matters that Purchaser obtains actual knowledge (or is deemed to know) of prior to Closing (which shall not survive the Closing), the representations and warranties of Seller set forth in Section 5.1 hereof shall survive Closing for a period of nine (9) months only (the "Survival Period"). No claim for a breach of any representation or warranty of Seller set forth in Section 5.1 hereof shall be actionable or payable unless the amount of such claim or claims, individually or in the aggregate, exceeds $75,000, written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of the Survival Period and an action shall have been commenced by Purchaser against Seller within thirty (30) days after the expiration of the Survival Period. In no event shall Seller's aggregate liability to Purchaser under this Agreement or any of the documents to be delivered by Seller to Purchaser pursuant to the terms hereof, including, without limitation, any breach of the representations and warranties of Seller in this Agreement, exceed an amount equal to two and one-half percent (2.5%) of the Purchase Price (the "Cap"); provided that, the Cap shall not include amounts payable pursuant to Section 8.1 or Section 10.24 or if it is determined by a court of competent jurisdiction that Seller committed fraud with respect to the transaction contemplated under this Agreement.

5.4 Covenants of Seller. Seller hereby covenants to Purchaser as follows:

(a) From the Effective Date hereof until the Closing or earlier termination of this Agreement, Seller shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the Closing Date hereof and Seller shall maintain its existing insurance coverage covering Property casualty and liability; provided, Seller shall not be obligated in any instance to make any capital repairs.

(b) A copy of any renewal or modification of any Leases or any new Lease which Seller wishes to execute between the Effective Date and the date of Closing, including a statement of all Tenant Inducement Costs and leasing commissions to be incurred in connection therewith, will be submitted to Purchaser prior to execution by Seller. Seller shall not, without prior written consent of Purchaser, which consent may be granted or withheld (i) in Purchaser's reasonable discretion prior to the expiration of the Inspection Period (it being agreed that Purchaser is under no obligation to approve any renewal or modification of any Lease that would provide for any extension of the existing term under such Lease or any new Lease, and that such disapproval shall be deemed to be reasonable under this clause (i)) and (ii) in Purchaser's sole and absolute discretion after expiration of the Inspection Period, enter into any new tenant lease agreements, lease extensions or other similar use agreements (including, without limitation, any amendment, renewal, expansion or modification to, or termination of, any existing Lease); provided, however, that the foregoing shall not apply to any right exercised by a tenant pursuant to the terms of its lease which Seller does not have approval or consent rights over. At Closing, Purchaser shall reimburse Seller for any Tenant Inducement Costs, leasing commissions or other expenses, including legal fees, incurred by Seller pursuant to a renewal or a modification or a new Lease approved by Purchaser. Seller shall use commercially reasonable efforts to timely comply with all of its obligations in all material respects under the Leases.

(c) Seller shall not, without prior written consent of Purchaser, which consent may be granted or withheld in Purchaser's sole and absolute discretion, enter into any service contract that will be binding on Purchaser after Closing.

(d) Seller shall promptly deliver to Purchaser copies of any material written notices or correspondence received by Seller relating to (i) new taxes, assessments or changes in a tax rate at the Property, (ii) claims of violations at the Property from any governmental authority, (iii) any takings at the Property and (iv) any violations of any reciprocal easement or use agreements affecting the Property, in each case, other than any Excluded Documents.

(e) Seller shall not intentionally record or permit to be recorded any liens or other encumbrances to be placed on the title of the Property.

(f) Seller agrees not to transfer or remove any Personal Property from the Property after the Effective Date except for repair or replacement thereof or disregarding obsolete items in the ordinary course. Any items of Personal Property replaced after the Effective Date shall be promptly installed prior to Closing and shall be of substantially similar quality to the item of Personal Property being replaced.

(g) If requested by Purchaser, Seller shall use commercially reasonable efforts (without the obligation to expend any funds) to (i) obtain estoppel certificates from any owners' associations (including the Gateway Corporate Center Association) in a form reasonably acceptable to Purchaser, and (ii) obtain a subordination non-disturbance and attornment agreement from any tenants under Leases prior to the Closing Date in the form requested by Purchaser; provided, however, that in no event shall the failure to obtain any such estoppel or subordination non-disturbance and attornment agreement be a default or breach by Seller hereunder, be a condition precedent to Purchaser's obligations to close hereunder, extend the Closing Date, or otherwise be a reason for Purchaser to terminate this Agreement.

5.5 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller:

(a) ERISA. Purchaser is not (and, throughout the period transactions are occurring pursuant to this Agreement, Purchaser will not be) and Purchaser is not acting on behalf of (and throughout the period transactions are occurring pursuant to this Agreement, Purchaser will not be acting on behalf of) an "employee benefit plan" as defined in Section 3(3) of the US Employee Retirement Income Security Act ("ERISA"), that is subject to Title I of ERISA, a "plan" as defined in and subject to Section 4975 of the Code, or an entity deemed to hold the plan assets of any of the foregoing pursuant to 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA.

(b) Organization and Authority. Purchaser has been duly organized and is validly existing under the laws of Delaware. Purchaser has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Purchaser's obligations hereunder, and all requisite action necessary to authorize Purchaser to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, effected. The person signing this Agreement on behalf of Purchaser is authorized to do so.

(c) Pending Actions. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, could interfere with the consummation of the transaction contemplated by this Agreement.

(d) OFAC. Purchaser and each person or entity owning an interest in Purchaser is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the OFAC and/or on any other similar List, (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an "Embargoed Person", to Purchaser's actual knowledge, none of the funds or other assets of Purchaser constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and to Purchaser's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Purchaser (whether directly or indirectly).

(e) Consents; No Conflict. To Purchaser's knowledge, Purchaser has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance or applicable laws. The execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated hereby will not: (i) violate any judgment, order, injunction, or decree to which Purchaser is subject, or (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Purchaser.

(f) Bankruptcy. Purchaser has not (i) filed a voluntary petition, or suffered the filing of any involuntary petition by Seller's creditors, under the Federal Bankruptcy Code or any similar state or federal laws, (ii) suffered the appointment of a receiver to take possession of all, or substantially all, of Purchaser's assets thereunder, or (iii) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser's assets thereunder.

5.6 Survival of Purchaser's Representations and Warranties. The representations and warranties of Purchaser in this Agreement shall survive the Closing for a period of nine (9) months.

ARTICLE VI

DEFAULT

6.1 **Default by Purchaser. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED DUE TO ANY MATERIAL DEFAULT BY PURCHASER HEREUNDER, THEN SELLER SHALL RETAIN AN AMOUNT EQUAL TO THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT (AND THE EXTENSION DEPOSITS, IF APPLICABLE) AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO PURCHASER'S DEFAULT HEREUNDER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT (AND THE EXTENSION DEPOSITS, IF APPLICABLE) IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. BY PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE FOREGOING IS NOT INTENDED TO LIMIT PURCHASER'S INDEMNITY OBLIGATIONS UNDER OTHER SECTIONS HEREOF.**

SELLER: TB PURCHASER:

6.2 Default by Seller. In the event that Seller fails to consummate this Agreement due to any material default by Seller, Purchaser may, as Purchaser's sole and exclusive remedy, (a) terminate this Agreement, in which case (i) the Initial Deposit and the Additional Deposit (and the Extension Deposits, if applicable) shall be returned to Purchaser, and (ii) Seller shall reimburse Purchaser for its "Out of Pocket Costs" (as hereinafter defined) in an amount not to exceed $75,000, or (b) enforce specific performance of this Agreement against Seller, provided that any action for specific performance must be brought no later than forty-five (45) days after the scheduled Closing Date. Whether or not this Agreement is terminated, Seller shall not be responsible for the payment of any damages prior to, upon, or following the Closing. As used herein, the term "Out of Pocket Costs" shall mean the documented costs and expenses incurred by Purchaser and charged by third parties in connection with Purchaser's negotiations with Seller and Purchaser's due diligence investigations relating to the proposed acquisition of the Property.

ARTICLE VII

RISK OF LOSS

7.1 Minor Damage. In the event of condemnation, loss or damage to the Property or any portion thereof which is not "major" (as hereinafter defined), this Agreement shall remain in full force and effect provided Seller performs any necessary repairs, or, at Seller's option, assigns to Purchaser all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs (but in no event more than sixty (60) days). If Seller elects to assign a casualty claim to Purchaser, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy. Upon Closing, full risk of loss with respect to the Property shall pass to Purchaser.

7.2 Major Damage. In the event of a "major" condemnation, loss or damage, either Seller or Purchaser may terminate this Agreement by written notice to the other party, in which event the Initial Deposit and the Additional Deposit and the Extension Deposits (if applicable) shall be returned to Purchaser. If neither Seller nor Purchaser elects to terminate this Agreement within ten (10) business days after Seller sends Purchaser written notice of the occurrence of major loss or damage, then Seller and Purchaser shall be deemed to have elected to proceed with Closing, in which event Seller shall, at Seller's option, either (a) perform any necessary repairs, or (b) assign to Purchaser all of Seller's right, title and interest to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. In the event that Seller elects to perform repairs upon the Property, Seller shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs (but in no event more than sixty (60) days). If Seller elects to assign a casualty claim to Purchaser, the Purchase Price shall be reduced by an amount equal to the deductible amount under Seller's insurance policy. Upon Closing, full risk of loss with respect to the Property shall pass to Purchaser.

7.3 Definition of "Major" Loss or Damage. For purposes of Sections 7.1 and 7.2 hereof, "major" condemnation, loss or damage refers to the following: (i) loss or damage to the Property or any portion thereof occurring after the Effective Date and prior to Closing such that the cost of repairing or restoring the Property to a condition substantially identical to that of the Property prior to the event of damage would be, in the opinion of an architect selected by Seller and reasonably approved by Purchaser, equal to or greater than One Million and No/100 Dollars ($1,000,000.00), and (ii) any loss due to a condemnation which (x) materially impairs the current use of the Property, or (y) causes a zoning violation (that is not grandfathered or waived). If Purchaser does not give notice to Seller of Purchaser's reasons for disapproving an architect within ten (10) business days after receipt of notice of the proposed architect, Purchaser shall be deemed to have approved the architect selected by Seller.

ARTICLE VIII

COMMISSIONS

8.1 Brokerage Commissions. Pursuant to a separate agreement if, and only if, Closing occurs hereunder, Seller shall pay Jones Lang LaSalle Brokerage, Inc. for its service as Purchaser's broker in this transaction. Except as provided in this Section 8.1, neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any other licensed real estate broker or other person who can claim a commission or finder's fee as a procuring cause of the sale contemplated herein. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any contract, dealings or communication with either Seller or Purchaser, then such party shall indemnify, defend and hold the other harmless from all costs and expenses (including reasonable attorneys' fees and costs of defense) incurred in connection with such claim. The provisions of this Section 8.1 shall survive Closing or earlier termination of this Agreement.

ARTICLE IX

DISCLAIMERS AND WAIVERS

9.1 No Reliance on Documents. Except as expressly set forth in Section 5.1 herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated hereby are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, Purchaser acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Purchaser shall be for general informational purposes only, (b) Purchaser shall not have any right to rely on any such report delivered by Seller to Purchaser, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Purchaser with respect thereto, and (c) neither Seller, any affiliate of Seller nor the person or entity which prepared any such report delivered by Seller to Purchaser shall have any liability to Purchaser for any inaccuracy in or omission from any such report or in verbal communication.

9.2 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 OF THIS AGREEMENT AND THE DOCUMENTS DELIVERED BY SELLER TO PURCHASER AT CLOSING, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S LIMITED WARRANTY OF TITLE TO BE SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR THE DOCUMENTS DELIVERED BY SELLER TO PURCHASER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESSED OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY OR ANY SELLER'S PROPERTY DISCLOSURE STATEMENT (SPDS)) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT OR THE DOCUMENTS DELIVERED BY SELLER TO PURCHASER AT CLOSING. PURCHASER REPRESENTS TO SELLER THAT PURCHASER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. PURCHASER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE CLOSING DATE, SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF PURCHASER AND SELLER SHALL NOT BE LIABLE TO PURCHASER FOR SUCH CLEAN-UP, REMOVAL OR REMEDIATION. AS PART OF THE PROVISIONS OF THIS SECTION, BUT NOT AS A LIMITATION THEREON, PURCHASER HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND PURCHASER HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, RULES OR REGULATIONS.

PURCHASER HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHT OR BENEFIT WHICH PURCHASER HAS OR SHALL HAVE UNDER ANY COMMON LAW PRINCIPLE AS IT RELATES TO ANY RELEASED MATTERS, AND IN THIS CONNECTION PURCHASER ACKNOWLEDGES AND HEREBY EXPRESSLY AGREES THAT THIS AGREEMENT SHALL EXTEND TO ALL UNKNOWN, UNSUSPECTED AND UNANTICIPATED CLAIMS OR DAMAGES, AS WELL AS THOSE WHICH ARE NOW DISCLOSED, WITH RESPECT TO ANY RELEASED MATTERS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATIONS TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. IT IS NOT CONTEMPLATED THAT THE PURCHASE PRICE WILL BE INCREASED IF COSTS TO PURCHASER ASSOCIATED WITH THE PROPERTY PROVE TO BE LESS THAN EXPECTED NOR WILL THE PURCHASE PRICE BE REDUCED IF THE PURCHASER'S PLAN FOR THE PROPERTY LEADS TO HIGHER COST PROJECTIONS.

THE FOREGOING WAIVER AND RELEASE IS INTENDED TO BE A FULL RELEASE OF ALL CLAIMS KNOWN AND UNKNOWN THAT PURCHASER HAS, MAY HAVE OR MAY EVER HAVE IN CONNECTION WITH THE PROPERTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

PURCHASER ACKNOWLEDGES THAT THIS WAIVER AND RELEASE IS VOLUNTARY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE, AND IS GIVEN AS PART OF THE CONSIDERATION FOR THE AGREEMENTS SET FORTH HEREIN. PURCHASER EXPRESSLY ACKNOWLEDGES THAT IT MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE, WHICH IT NOW BELIEVES TO BE TRUE WITH RESPECT TO THE RELEASE OF CLAIMS. PURCHASER AGREES THAT THE FOREGOING RELEASE SHALL BE AND REMAIN EFFECTIVE IN ALL RESPECTS NOTWITHSTANDING SUCH DIFFERENT OR ADDITIONAL FACTS.

PURCHASER HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFICANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS, AND PURCHASER HEREBY SPECIFICALLY ACKNOWLEDGES THAT PURCHASER HAS CAREFULLY REVIEWED THIS SUBSECTION AND DISCUSSED ITS IMPORT WITH LEGAL COUNSEL AND THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL PART OF THIS AGREEMENT. BY ITS INITIALS BELOW, PURCHASER ACKNOWLEDGES THAT IT FULLY UNDERSTANDS, APPRECIATES AND ACCEPTS ALL OF THE TERMS OF THIS SUBSECTION AND RELEASE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL SELLER BE RELEASED FROM ANY CLAIMS WITH RESPECT TO SELLER'S OBLIGATIONS UNDER THIS AGREEMENT THAT EXPRESSLY SURVIVE THE CLOSING HEREUNDER OR SELLER'S EXPRESS OBLIGATIONS, IF ANY, UNDER THE CLOSING DOCUMENTS THAT SURVIVE THE CLOSING HEREUNDER, INCLUDING, WITHOUT LIMITATION, SELLER'S EXPRESS REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES SET FORTH IN THIS AGREEMENT AND THE CLOSING DOCUMENTS THAT SURVIVE THE CLOSING HEREUNDER, IN EACH CASE, SUBJECT TO ANY LIMITATIONS SET FORTH IN THIS AGREEMENT.

PURCHASER: 

9.3 Effect and Survival of Disclaimers. Seller and Purchaser acknowledge that the Property being sold subject to the provisions of this Article IX is a material condition of the transaction contemplated by this Agreement. Seller and Purchaser agree that the provisions of this Article IX shall survive Closing.

ARTICLE X

MISCELLANEOUS

10.1 Confidentiality. Purchaser and its representatives shall hold in confidence all data and information obtained with respect to Seller or its business, whether obtained before or after the execution and delivery of this Agreement, and shall not disclose the same to others; provided, however, that Purchaser may disclose such data and information to the employees, consultants, accountants and attorneys of Purchaser provided that Purchaser notifies such persons of this provision. In the event this Agreement is terminated or Purchaser materially defaults under this Agreement, Purchaser shall, at Seller's written request, at no additional cost and expense to Purchaser (a) return to Seller any statements, documents, schedules, exhibits or other written information obtained from Seller in connection with this Agreement or the transaction contemplated herein, and (b) deliver, without representation or warranty of any kind or nature, copies of the results of and any reports for any and all third-party tests and studies of the Property in Purchaser's possession or control (whether obtained from Seller or otherwise). In the event of a breach or threatened breach by Purchaser or its agents or representatives of this Section, Seller shall be entitled to an injunction restraining Purchaser or its agents or representatives from disclosing, in whole or in part, such confidential information. The provisions of this Section shall survive Closing.

10.2 Public Disclosure. Prior to Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved by Purchaser and Seller and their respective counsel.

10.3 Discharge of Obligations. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

10.4 Assignment. Purchaser may not assign its rights under this Agreement (which shall be deemed to include any change of control of Purchaser or any transfer of a 50% or greater interest in Purchaser) without first obtaining Seller's written approval, which approval may be given or withheld in Seller's sole discretion; provided, however, that Purchaser shall have the right at Closing, without Seller's prior consent but with no less than five (5) business days prior written notice to Seller, to assign its rights under this Agreement to an entity controlled by or under common control with Purchaser (a "Permitted Assignee"); provided that (i) such assignment shall be made without payment or consideration, (ii) the Permitted Assignee shall assume in writing all of Purchaser's obligations hereunder pursuant to an assignment and assumption agreement between Purchaser and the Permitted Assignee (and Seller shall receive a copy of such assignment and assumption agreement) and (iii) no assignment by Purchaser shall relieve Purchaser of any of its obligations, indemnifications or liabilities pursuant to this Agreement.

10.5 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (d) e-mail transmission in each case sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith (provided, any notice given by (a), (b) or (c) shall also be sent by electronic mail). Notices given in accordance with this Section shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of e-mail transmission, upon electronic confirmation of receipt (provided that e-mail notices received after 5:00 p.m. local time in the location of the recipient shall be deemed received on the next following business day). Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Seller:	BSP Senita Gateway Center, LLC c/o Buchanan Street Partners 3501 Jamboree Road, Suite 4200 Newport Beach, California 92660 Attention: Timothy J. Ballard and Kimberly Kanen Telephone: 949.717.3176 E-mail: tballard@buchananstreet.com; kkanen@buchananstreet.com
with a copy to:	DLA Piper LLP (US) 4365 Executive Drive, Suite 1100 San Diego, California 92121 Attention: Skyler Anderson, Esq. Telephone: 619.699.2791 E-mail: skyler.anderson@us.dlapiper.com
If to Purchaser:	NEWEGG INC. 17560 Rowland Street City of Industry, CA 91748 Attn: Legal Department Telephone: _____ E-mail: legal@newegg.com
with a copy to:	Holland & Knight LLP 1901 Avenue of the Stars, Suite 1200 Los Angeles, California 90067 Attention: Eric B. Shortz, Esq. and Doug Merkel, Esq. Telephone: (310) 201-8978 E-mail: eric.shortz@hklaw.com; doug.merkel@hklaw.com

10.6 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

10.7 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific Time. Time is of the essence of each and every provision of this Agreement.

10.8 Successors and Assigns. Subject to Section 10.4, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

10.9 Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

10.10 Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior to Closing or following the Closing Date, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement (but without expanding the obligations or liability of either party hereunder in any material manner). The provisions of this Section shall survive Closing.

10.11 Counterparts. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement. This Agreement may be executed by exchange of faxed signatures or signatures delivered via emailed PDF file. Signatures delivered via either such method shall be treated as original signatures.

10.12 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.13 Applicable Law. THIS AGREEMENT IS PERFORMABLE IN THE STATE IN WHICH THE PROPERTY IS LOCATED AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF SUCH STATE, PROVIDED, HOWEVER, UNDER APPLICABLE CHOICE OF LAW PRINCIPLES SUBSTANTIVE STATE LAW IS INTENDED TO SUPERSEDE AND CONTROL OVER SUBSTANTIVE FEDERAL LAWS. SELLER AND PURCHASER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE IN WHICH THE PROPERTY IS LOCATED IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN THE STATE IN WHICH THE PROPERTY IS LOCATED. PURCHASER AND SELLER AGREE THAT THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. VENUE FOR ANY SUCH PROCEEDINGS BETWEEN SELLER AND PURCHASER SHALL BE IN LOS ANGELES COUNTY, STATE OF CALIFORNIA.

10.14 No Third-Party Beneficiary. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party (including, without limitation, the Title Company and any broker), and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing. The provisions of this Section shall survive the closing of the transaction contemplated by this Agreement.

10.15 Exhibits and Schedules. The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

(a) **Exhibit A** – Legal Description of the Land

(b) **Exhibit B** – Form of Tenant Estoppel Certificate

(c) **Exhibit C** – Bill of Sale

(d) **Exhibit D** – Assignment and Assumption of Leases

(e) **Exhibit E** – Assignment of Warranties and Intangibles

(f) **Exhibit F** – Notice to Tenants

(g) **Exhibit G** – Certificate of Non-Foreign Status

(h) **Exhibit H** – Due Diligence Items

(i) **Exhibit I** – Rent Roll

(j) **Exhibit J** – Form of Deed

(k) **Exhibit K** – Owner's Affidavit

10.16 Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

10.17 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.18 Termination of Agreement. It is understood and agreed that if either Purchaser or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

10.19 Survival. Except as expressly provided herein to the contrary, the representations, warranties, covenants, terms and provisions of this Agreement shall be merged into the execution and delivery of the Deed and shall not survive the Closing.

10.20 Tenant Notification Letter. Within two (2) calendar days after the Closing, Seller shall deliver to each of the tenants under the Leases a Tenant Notice Letter. The provisions of this Section 10.20 shall survive Closing.

10.21 Title Company's Agreement. Title Company, as escrow agent, is executing this Agreement to confirm its agreement to serve as escrow agent hereunder in accordance with the terms set forth in this Agreement and the supplementary instructions referenced in Section 1.7 hereof.

10.22 Jury Waiver. TO THE FULLEST EXTENT PERMITTED BY LAW, PURCHASER AND SELLER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) OF ANY KIND WHATSOEVER BETWEEN PURCHASER AND SELLER ARISING OUT OF OR IN ANY WAY RELATED TO THE PROPERTY OR THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO SELLER ENTERING INTO AND PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

SELLER: TB PURCHASER:

10.23 Exculpation. No member or manager of Seller nor any officer, director or shareholder of any member or manager thereof, nor any principal, agent, officer, director or employee of Seller's manager or of the property manager of the Property shall have any personal liability directly or indirectly, under this Agreement or any closing documents, and Purchaser and Purchaser's successors and assigns shall look solely to the assets of Seller for the payment of any claim or for any performance hereunder, and Purchaser hereby waives any and all claims for personal liability against any and all members, managers, officers, directors, shareholders and principals of each of Purchaser, Purchaser's manager and the property manager of the Property and any employee or agent of the foregoing.

10.24 Attorney's Fees. In the event of any litigation arising out of this Agreement, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonably attorneys' fees.

10.25 1031 Exchange. Purchaser and Seller agree that either of them may elect to attempt to cause the transaction contemplated by this Agreement to be structured as an exchange of like-kind properties under Section 1031 of the Code and the regulations and proposed regulations thereunder (a "1031 Exchange"). If either party (the "Exchanging Party") wishes to make such election, it must provide the other party (the "Cooperating Party") with written notice of the same not less than twenty (20) days before the Closing Date. If either Purchaser or Seller timely gives such notice, the Cooperating Party shall cooperate as reasonably requested with the Exchanging Party to execute reasonable and customary documents to consummate the purchase and sale of the Property by means of a 1031 Exchange as described below; provided, however, that (i) the Exchanging Party shall bear all cost and expense thereof, (ii) the exchange transaction shall be structured to occur between the Exchanging Party and a third party acting as the qualified intermediary (as such phrase is defined in applicable regulations issued under the Code) engaged by the Exchanging Party (the "Intermediary"), (iii) the Cooperating Party's cooperation shall be limited to its consent to the assignment by Exchanging Party of all of Exchanging Party's rights (but not its obligations) under this Agreement to the Intermediary and other actions incident to the form of such an exchange transaction that are reasonably requested by the Exchanging Party, and (iv) in no event shall the obligation of Purchaser or Seller to complete the Closing as otherwise provided for in this Agreement be subject to the structuring of the transaction as a 1031 Exchange. The Exchanging Party shall: (1) promptly reimburse the Cooperating Party for any reasonable third party expenses incurred by the Cooperating Party in connection with the proposed exchange and (2) indemnify, defend and hold harmless the Cooperating Party from any liability to third parties (including, but not limited to, the Intermediary) arising out of its cooperation with the proposed exchange, and such reimbursement and indemnification obligations shall survive Closing or the termination of this Agreement.

10.26 California Provisions. In the event of any inconsistency between the provisions of this Section 10.26 and the remainder of this Agreement, the provisions of this Section 10.26 shall control:

(a) Seller and Purchaser acknowledge that the Disclosure Statutes (as defined below) provide that a seller of real property must make certain disclosures regarding certain natural hazards potentially affecting the property, as more particularly provided therein. As used in this Agreement, "Disclosure Statutes" means, collectively, California Government Code Sections 8589.3, 8589.4 and 51183.5, California Public Resources Code Sections 2621.9, 2694 and 4136 and any other statutes that require Seller to make disclosures concerning the Property. By execution of this Agreement, Seller instructs Title Company to deliver to Purchaser (and if Title Company fails to deliver, Purchaser shall request from Title Company) a Natural Hazard Disclosure Report for the Property (the "Report"). Purchaser hereby agrees as follows with respect to the Disclosure Statutes and the Report: (i) the delivery of the Report to Purchaser shall be deemed to satisfy all obligations and requirements of Seller under the Disclosure Statutes; (ii) Seller shall not be liable for any error or inaccuracy in, or omission from, the information in the Report; and (iii) the Report is being furnished by Seller for purposes of complying with the Disclosure Statutes and shall not be deemed to constitute a representation or warranty by Seller as to the presence or absence in, at or around of the Property of the conditions that are the subject of the Disclosure Statutes. Purchaser acknowledges and agrees that nothing contained in the Report releases Purchaser from its obligation to fully investigate and satisfy itself with the condition of the Property prior to the expiration of the Inspection Period, including, without limitation, whether the Property is located in any Natural Hazard Area. Purchaser further acknowledges and agrees that the matters set forth in the Report may change on or prior to the Closing and that Seller has no obligation to update, modify or supplement the Report. Purchaser is solely responsible for preparing and delivering its own Report to subsequent prospective purchasers of the Property.

(b) In accordance with the requirements of California Civil Code Section 1101.5(e), Seller hereby discloses to Purchaser the following: (1) California Civil Code Section 1101.5(a) provides as follows: "On or before January 1, 2019, all noncompliant plumbing fixtures in any multifamily residential real property and in any commercial real property shall be replaced with water-conserving plumbing fixtures"; and (2) to Seller's knowledge, the Property does not have any such noncompliant plumbing fixtures.

(c) Seller and Purchaser each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of Article VII shall govern the parties' obligations in the event of any damage or destruction to the Property or the taking of all or any part of the Property, as applicable.

(d) IF THIS AGREEMENT IS TERMINATED PURSUANT TO SECTION 6.1, THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY PURCHASER UNDER THIS AGREEMENT WILL BE DIFFICULT TO ASCERTAIN, AND THAT SUCH LIQUIDATED DAMAGES REPRESENT THE PARTIES' BEST ESTIMATE OF SUCH DAMAGES. SUCH RETENTION OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT (AND THE EXTENSION DEPOSITS, IF APPLICABLE) BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION.

SELLER: TB PURCHASER: AV

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

SELLER:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: /s/ Timothy J. Ballard
Name: Timothy J. Ballard
Its: President

NOTE: Seller must initial Sections 6.1, 10.22 and 10.26

[*Signature Pages Continue*]

PURCHASER:

NEWEGG INC.,
a Delaware corporation

By: /s/ Anthony Chow
Name: Anthony Chow
Title: Chief Executive Officer

NOTE: Purchaser must initial Sections 1.5, 6.1, 9.2, 10.22 and 10.26

[*Signature Pages Continue*]

JOINDER BY TITLE COMPANY

FIDELITY NATIONAL TITLE INSURANCE COMPANY, referred to in this Agreement as the "Title Company", hereby acknowledges that it received this Agreement executed by Seller and Purchaser as of April 21, 2023, and accepts the obligations of the Title Company as set forth herein.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

Exhibit A

LEGAL DESCRIPTION OF THE LAND

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF DIAMOND BAR IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 AND A FIFTY PERCENT (50%) TENANT-IN-COMMON OWNERSHIP INTEREST IN PARCEL A OF PARCEL MAP NO. 74368, FILED ON JULY 18, 2018 IN BOOK 398, PAGES 53 AND 54 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, TOGETHER WITH THE EXCLUSIVE RIGHT TO DRILL FOR, PRODUCE, EXTRACT, TAKE AND MINE THEREFROM, SUCH OIL, GAS AND OTHER HYDROCARBONS AND MINERALS, AND TO STORE THE SAME UPON THE SURFACE OF SAID LAND, OR BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT TO STORE UPON THE SURFACE OF SAID LAND, OIL, GAS AND OTHER HYDROCARBONS AND MINERALS WHICH MAY BE PRODUCED FROM OTHER LAND, WITH THE RIGHT OF ENTRY THEREON FOR SAID PURPOSES AND WITH THE RIGHT TO CONSTRUCT, USE, MAINTAIN, ERECT, REPAIR, REPLACE AND REMOVE THEREON AND THEREFROM ALL PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TANKS, MACHINERY, BUILDINGS AND OTHER STRUCTURES, WHICH MAY BE NECESSARY AND REQUISITE TO CARRY ON OPERATION ON SAID LAND, WITH THE FURTHER RIGHT TO ERECT, MAINTAIN, OPERATE AND REMOVE A PLANT WITH ALL NECESSARY APPURTENANCES FOR THE EXTRACTION OF GASOLINE FROM GAS, INCLUDING ALL RIGHT NECESSARY OR CONVENIENT THERETO, AS RESERVED IN DEED, FROM TRANSAMERICA DEVELOPMENT COMPANY, A CORPORATION RECORDED MARCH 29, 1968 IN BOOK D3955, PAGE 185, OFFICIAL RECORDS, AND RE-RECORDED JUNE 19, 1969 IN BOOK D4407, PAGE 591, OFFICIAL RECORDS.

BY QUITCLAIM DEED RECORDED OCTOBER 9, 1981 AS INSTRUMENT NO. 81-1004553, TRANSAMERICA DEVELOPMENT COMPANY, A CORPORATION FORMERLY CAPITAL COMPANY, A CORPORATION RELEASED AND SURRENDERED TO THE DIAMOND BAR DEVELOPMENT CORPORATION, A CORPORATION, THE SURFACE RIGHT TO SAID LAND FOR A DISTANCE OF NOT MORE THAN 500 FEET IN DEPTH AND NOTHING THEREIN CONTAINED SHALL IN ANY WAY BE CONSTRUED TO PREVENT, HINDER OR DELAY THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND OR LANDS, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF ALL OIL, GAS, MINERALS AND OTHER HYDROCARBONS SITUATED THEREIN OR THEREUNDER, OR PRODUCIBLE THEREFROM, TOGETHER WITH ALL WATER NECESSARY IN CONNECTION PRODUCIBLE THEREFROM TOGETHER WITH ALL WATER NECESSARY IN CONNECTION WITH ITS DRILLING OR MINING OPERATING THEREUNDER.

ALSO EXCEPT FROM THAT PORTION OF SAID LAND INCLUDING WITHIN THE BOUNDARIES OF THE LAND DESCRIBED IN THE DEED FROM UNIVERSITY OF REDLANDS, ET AL., RECORDED DECEMBER 28, 1950, IN BOOK 35179, PAGE 74, OFFICIAL RECORDS, AN AGGREGATE OF ONE-FOURTH OF ALL OIL, GAS AND CASINGHEAD GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS IN, ON OR UNDER THE SURFACE OF SAID PREMISES, IT BEING THE INTENTION THAT EACH GRANTOR THEREBY RESERVES IN SEVERALTY, A FRACTIONAL PART OF SAID ONE-FOURTH CORRESPONDING EXACTLY WITH THE RESPECTIVE INTERESTS OF THE GRANTORS SET FORTH FOLLOWING THEIR NAMES IN THE DEED, AS RESERVED IN THE DEED FROM UNIVERSITY OF REDLANDS, A CORPORATION, ET AL., TO BARTHOLOMAE CORPORATION, A CORPORATION, RECORDED DECEMBER 28, 1950 IN BOOK 35179, PAGE 74, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED IN SAID LAND OR THEREUNDER OR PRODUCIBLE THEREFROM, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, STORE, DRILL AND BORE BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS FIVE HUNDRED (500) FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPING OR REMOVAL OF SUCH SUBSTANCES, PROVIDED THAT THE SURFACE OPENING OF SUCH WELL AND ALL OTHER SURFACE FACILITIES SHALL BE LOCATED ON LAND OTHER THAN THAT DESCRIBED HEREIN AND SHALL NOT PENETRATE ANY PART OR PORTION OF THE ABOVE DESCRIBED REAL PROPERTY WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE THEREOF AND ALL OF THE RIGHTS SO TO REMOVE SUCH SUBSTANCES ARE HEREBY SPECIFICALLY RESERVED, INCLUDING THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID REAL PROPERTY IN CONNECTION WITH SUCH OPERATIONS, AS EXCEPTED AND RESERVED BY TRANSAMERICA DEVELOPMENT COMPANY, A CORPORATION, FORMERLY CAPITAL COMPANY, A CORPORATION, DEED RECORDED JUNE 30, 1965 AS INSTRUMENT NO. 1027 IN BOOK D2959, PAGE 114, OFFICIAL RECORDS.

PARCEL 2:

THE EASEMENT APPURTENANT TO PARCEL 1 DESCRIBED ABOVE AS CONTAINED IN THE INSTRUMENT RECORDED APRIL 13, 1987 AS INSTRUMENT NO. 87-567650, SUBJECT TO AND UPON THE TERMS, COVENANTS AND CONDITIONS CONTAINED THEREIN.

Exhibit B

FORM OF TENANT ESTOPPEL CERTIFICATE

LANDLORD NAME HERE

Re: Tenant Lease for _____ ("**Tenant**")

21688 Gateway Center Drive
Diamond Bar, California 91765
Suite _____

Ladies and Gentlemen:

The undersigned hereby warrants and represents that with respect to our lease (the "**Lease**") for certain premises located at 21688 Gateway Center Drive, Diamond Bar, California 91765 (the "**Property**") and more particularly described in Schedule "A" attached hereto (the "**Schedule**") the following is true and correct:

The Lease constitutes the entire agreement between the undersigned and the landlord thereunder with respect to the subject matter thereof and the Lease has not been modified, amended or supplemented in any way except by the amendments or other agreements described in the Schedule.

The summary of the basic terms of the Lease contained in the Schedule is true and correct.

Except as provided in the Schedule, the undersigned has not assigned, transferred or hypothecated the Lease or any interest therein or entered into a sublease for any portion of the premises covered by the Lease and no person or firm other than the undersigned or its employees is in possession of such premises or any portion thereof.

The undersigned is not in default (or with the giving of notice or the passage of time or both will not be in default) under the Lease and the undersigned has no claim against, off-set, credit, defense, counterclaim or deductions against the landlord thereunder or, any rent or other sums due or payable under the Lease and, to our actual knowledge, the landlord thereunder is not in default (or with the giving of notice or the passage of time or both will not be in default) under the Lease.

The undersigned has no option, right of first refusal or otherwise to purchase the Property or any portion thereof or any interest therein and the only interest of the undersigned in the Property is that of a tenant pursuant to the terms of the Lease.

The undersigned does not engage in the generation, storage or disposal of "Hazardous Materials" on the Property and to the undersigned's actual knowledge, there are no Hazardous Materials located in, on, under or in the vicinity of its leased premises demised by the Lease except for normal office supplies. The term "Hazardous Material" means any toxic or hazardous substance, material or wastes which if or becomes regulated by any local government, the State of California, the United States government or any agency or division thereof.

There are no rent abatements or free rent periods under the Lease now or in the future other than as may be set forth on the Schedule, and any payments by the landlord to Tenant for tenant improvements that are required under the Lease have been made, other than as may be set forth on the Schedule.

No rental (including expense reimbursements), other than for the current month, has been paid in advance, except as may be indicated on the Schedule.

Tenant has no right to terminate the Lease except as set forth in the Lease.

The person executing this Certificate hereby warrants and represents that he or she has the power and authority to execute and deliver this Certificate on behalf of the tenant named herein.

[Signature Page Follows]

We understand that the current owner, BSP Senita Gateway Center, LLC, any purchaser(s) of the Property and their respective lenders and servicers will rely on this Certificate, and such certifications will be binding upon Tenant and its successors and assigns, and inure to the benefit of such parties.

Very truly yours,

_____

Name of Tenant

_____

Signature

_____

Date

SCHEDULE "A"

Summary of Lease Terms

(1) Name of Tenant: _____

(2) Lease Date: _____

(3) Amendment Dates, Separate Agreements, if any: _____

(4) Suite No. _____; Rentable Square Footage: _____

(5) Lease Commencement Date: _____; Lease Expiration: _____

(6) Option(s) to Extend: _____

(7) Option(s) for Additional Space: _____

(8) Monthly Base Rent: $_____;
Operating Costs/Real Property Taxes: $_____;
Total Monthly Rent: $_____

(9) Tenant's Percentage Share: _____%;

(10) Security Deposit: $_____; Prepaid Rent: $_____

(11) Assignees/Subtenants: _____

(12) Parking Spaces: _____

(13) Lease Guarantor(s): _____

(14) Tenant Improvements or other allowances due Tenant:
$_____

(15) Rent has been paid through:
_____

(16) Remaining Free Rent Period:
_____

Exhibit C

BILL OF SALE

For good and valuable consideration, the receipt of which is hereby acknowledged, BSP Senita Gateway Center, LLC, a Delaware limited liability company ("Seller"), does hereby, as of this __ day of _____, 2023, sell, transfer and convey to _____, a _____ ("Purchaser"), without recourse or warranty, any and all personal property (the "Personal Property") owned by Seller and located on and used exclusively in connection with the operation of that certain real property commonly known as _____, _____, more particularly described in Exhibit A attached hereto (the "Property").

Purchaser acknowledges that the sale of the personal property is specifically made "as-is" and "where-is," without any representations or warranties express or implied, including, without limitation, implied warranties of fitness for any particular purpose or merchantability or any other warranties whatsoever. Purchaser has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the personal property or relating thereto (including specifically, without limitation, information packages distributed with respect to the Property) made or furnished by Seller, the property manager, or any agent or real estate broker representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing.

This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[Next page is signature page]

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale as of the date first set forth above.

SELLER:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

PURCHASER:

[_____
a _____]

By: _____
Name: _____
Title: _____

Exhibit D

ASSIGNMENT AND ASSUMPTION OF LEASES

This Assignment and Assumption of Leases (this "Assignment") dated as of _____, 2023 (the "Effective Date") is entered into by and between BSP Senita Gateway Center, LLC, a Delaware limited liability company ("Assignor"), and _____, a _____ ("Assignee").

W I T N E S S E T H

WHEREAS, Assignor, as Seller, and _____, as Purchaser, have entered into that certain Purchase and Sale Agreement dated as of _____, _____ (the "Agreement") conveying that certain real property commonly known as _____, _____, as more fully described in Exhibit A attached hereto (the "Property");

WHEREAS, Assignor is the lessor under the Leases (as such term is defined in the Agreement) in effect as of the Effective Date (the "Leases") as described and identified in exhibit B attached hereto and made a part hereof by this reference; and

WHEREAS, Assignor desires to assign its interest as lessor in the Leases to Assignee, and Assignee desires to accept the assignment thereof;

Now, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. Effective as of the Effective Date, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Leases.

2. Effective as of the Effective Date, Assignee hereby assumes all of the Assignor's obligations under the Leases. Assignee agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, accruing on or to be performed on and/or subsequent to the Effective Date and arising out of the Assignor's obligations under the Leases. Assignor agrees to indemnify Assignee against and hold Assignee harmless under the Leases from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, accruing prior to the Effective Date.

3. Any rental, monetary, and other payments due under the Leases shall be prorated as of the Effective Date between the parties as provided in the Agreement.

4. In the event of any litigation arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees.

5. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

6. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

7. Assignee acknowledges that, except as provided in the Agreement, the assignment of the Leases herein is specifically made "as-is" and "where-is," without any representations or warranties express or implied, including, without limitation, implied warranties of fitness for any particular purpose or merchantability or any other warranties whatsoever. Assignee has not relied and will not rely on, and Assignor is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the leases or relating thereto (including specifically, without limitation, information packages distributed with respect to the Property) made or furnished by Assignor, the property manager, or any agent or real estate broker representing or purporting to represent Assignor, to whomever made or given, directly or indirectly, orally or in writing.

8. This Assignment is delivered pursuant to the Agreement.

9. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when fully executed and taken together, shall constitute one and the same document.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

ASSIGNEE:

[_____
a _____]

By: _____
Name: _____
Title: _____

Exhibit E

ASSIGNMENT AND ASSUMPTION OF WARRANTIES AND INTANGIBLES

THIS ASSIGNMENT AND ASSUMPTION OF WARRANTIES AND INTANGIBLES (this "Assignment") is made and entered into as of this ____ day of _____, 2023 (the "Effective Date"), by BSP Senita Gateway Center, LLC, a Delaware limited liability company ("Assignor"), and _____, a _____ ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), and in connection with the sale of that certain real property described in Exhibit A attached hereto (the "Property"), Assignor hereby assigns and transfers unto Assignee all of its right, title, claim and interest in and under:

(A) all warranties and guaranties (express or implied) made by or received from any third party with respect to any building, building component, structure, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of the Property including, without limitation, those warranties and guaranties listed in Exhibit B attached hereto (collectively, "Warranties"); and

(B) any Intangibles (as defined in that certain Purchase and Sale Agreement dated as of _____, 2023 between Assignor and Assignee (the "Agreement")).

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Effective as of the Effective Date, Assignee hereby accepts the assignment from Assignor of all of Assignor's right, title and interest in and to the Warranties and Intangibles.

2. Effective as of the Effective Date, Assignee hereby assumes all of the owner's obligations under the Warranties and Intangibles. Assignee agrees to indemnify Assignor against and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorneys' fees, accruing on or to be performed on and/or subsequent or to the Effective Date and arising out of the Assignor's obligations under the Warranties and Intangibles. Assignor agrees to indemnify Assignee against and hold Assignee harmless under the Warranties and Intangibles from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys' fees, accruing prior to the Effective Date.

3. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees.

4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

6. This Assignment is delivered pursuant to the Agreement.

7. Assignee acknowledges and agrees that the assignment of the Warranties and Intangibles is specifically made "as-is" and "where-is," without any representations or warranties express or implied, including, without limitation, implied warranties of fitness for any particular purpose or merchantability or any other warranties whatsoever. Assignee has not relied and will not rely on, and Assignor is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Warranties or Intangibles or relating thereto (including specifically, without limitation, information packages distributed with respect to the property) made or furnished by Assignor, the property manager, or any agent or real estate broker representing or purporting to represent Assignor, to whomever made or given, directly or indirectly, orally or in writing.

8. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when fully executed and taken together, shall constitute one and the same document.

[Next page is signature page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

ASSIGNEE:

[_____
a _____]

By: _____
Name: _____
Title: _____

Exhibit F

NOTICE TO TENANTS

_____, ____

To: _____
_____
_____

Re: Notice of Lease Assignment

Premises: _____
_____

Ladies and Gentlemen:

Please be advised that the Premises have been acquired by, and the Lessor's interest in your lease and your security deposit (if any) have been assigned, to _____ ("New Owner").

All future rental and other payments under your lease shall be paid to New Owner, in accordance with the terms of your lease, to the following address:

_____
_____
_____
_____
_____

[Signature Page Follows]

Very truly yours,

Prior Owner:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

New Owner:

[_____
a _____]

By: _____
Name: _____
Title: _____

Exhibit G

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. [To inform the transferee (buyer) that withholding of tax is not required upon the disposition of a U.S. real property interest by BSP Senita Gateway Center LLC, a Delaware limited liability company ("Seller"), the undersigned hereby certifies the following on behalf of Seller:]

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations;

3. Seller's U. S. employer identification number is _____; and

4. Seller's office address is:

c/o _____
_____
_____

Seller understands that this certification may be disclosed to the Internal Revenue Service by the transferee (buyer) and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declares that he has examined this certification and to the best of his knowledge and belief it is true, correct and complete, and he further declares that he has the authority to sign this document on behalf of Seller.

[Next page is signature page]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the ____ day of _____, 2023.

SELLER:

[_____]
[_____]

By: _____
Name: _____
Title: _____

Exhibit H

DUE DILIGENCE ITEMS

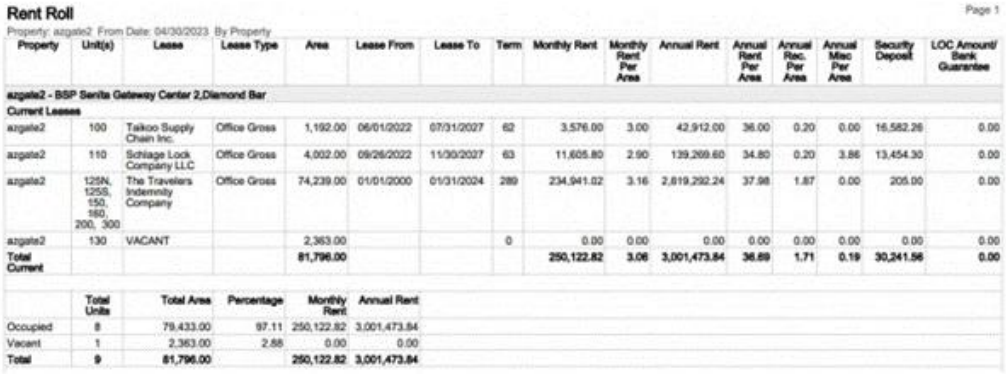
Seller or Seller's property manager shall deliver to Purchaser all Due Diligence Items identified below, to the extent in the possession and control of Seller or Seller's property manager and to the extent such Due Diligence Items are prepared in the ordinary course of business of Seller or Seller's property manager, except for "Excluded Documents" (as defined below):

1. Copies of all building plans (if any);
2. Copies of any agreements with adjoining owners related to the Land;
3. Copies of any service contracts related to the Land (provided, none of the service contracts will be assigned to Purchaser);
4. A copy of any surveys related to the Land;
5. A copy of the preliminary title report and the underlying documents related to the referenced exceptions therein;
6. A copy of Seller's existing Title Policy (which may be partially redacted);
7. A copy of the current property tax bill;
8. Copies of all plans, maps and CC&Rs related to the Land;
9. Year-end Property Operating Statements for Year 2021 and 2022;
10. Any soils, seismic, Phase I Environmental, engineering and other reports relating to the Property;
11. In place leases and corresponding amendments and any material written default notices that remain uncured relating to the leases; and
12. Any other documents related to the Property that Purchaser requests that are currently in the possession or reasonable control of Seller.

As used herein, "Excluded Documents" shall mean and include: any documents involving either Seller's financing or refinancing of the Property; any purchase and escrow agreements and correspondence pertaining to Seller's acquisition of the Property; any documents pertaining to the potential acquisition of the Property by any past or prospective purchasers; any third party purchase inquiries and correspondence, appraisals of the Property, any internal budgets or financial projections; any correspondence between partners or officers of Seller, and any other internal documents; internal memoranda; Seller's appraisals, accounting and tax records; any attorney work product and any correspondence or documents covered by the attorney-client privilege; and any documents or information the disclosure or delivery of which would violate any pre-existing non-disclosure or confidentiality agreement.

Exhibit I

RENT ROLL



Rent Roll

Page 1

Property: azgate2 From Date: 04/30/2023 By Property

Property	Unit(s)	Lease	Lease Type	Area	Lease From	Lease To	Term	Monthly Rent	Monthly Rent Per Area	Annual Rent	Annual Rent Per Area	Annual Rec. Per Area	Annual Misc Per Area	Security Deposit	LOC Amount/ Bank Guarantee
azgate2 - BSP Senita Gateway Center 2,Diamond Bar															
Current Leases															
azgate2	100	Taikoo Supply Chain Inc.	Office Gross	1,192.00	06/01/2022	07/31/2027	62	3,576.00	3.00	42,912.00	36.00	0.20	0.00	16,582.26	0.00
azgate2	110	Schlage Lock Company LLC	Office Gross	4,002.00	09/26/2022	11/30/2027	63	11,605.80	2.90	139,269.60	34.80	0.20	3.86	13,454.30	0.00
azgate2	125N, 125S, 150, 160, 200, 300	The Travelers Indemnity Company	Office Gross	74,239.00	01/01/2000	01/31/2024	289	234,941.02	3.16	2,819,292.24	37.98	1.87	0.00	205.00	0.00
azgate2	130	VACANT		2,363.00			0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Current				**81,796.00**				**250,122.82**	**3.06**	**3,001,473.84**	**36.69**	**1.71**	**0.19**	**30,241.56**	**0.00**

	Total Units	Total Area	Percentage	Monthly Rent	Annual Rent
Occupied	8	79,433.00	97.11	250,122.82	3,001,473.84
Vacant	1	2,363.00	2.88	0.00	0.00
Total	**9**	**81,796.00**		**250,122.82**	**3,001,473.84**

Exhibit J

FORM OF DEED

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

_____
_____
_____

MAIL TAX STATEMENTS TO:

_____
_____
_____

SPACE ABOVE THE LINE
FOR RECORDER'S USE

GRANT DEED

A.P.N. [_____]

The undersigned hereby declares:

DOCUMENTARY TRANSFER TAX: $[NUMBER] CITY TRANSFER TAX: $[NUMBER

☐ computed on the consideration or full value of the property conveyed, or

☐ computed on consideration or full value less the value of liens or encumbrances remaining at time of sale

The property conveyed is located in: ☐ the City of [NAME OF CITY] ☐ an unincorporated area of the county

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____, a _____ ("**Grantor**"), does hereby grant and convey to _____, a _____ ("**Grantee**"), all of its right, title and interest in and to the following real property situated in the County of _____, State of California, to wit:

See **Exhibit A** attached hereto and made a part hereof by this reference, together with all right, title and interest in and to all buildings, structures and other facilities and improvements located thereon, and any and all right, title and interest of Grantor in and to the rights and appurtenances pertaining to such property, including in and to adjacent streets, alleys or rights-of-way (the "**Property**").[1]

This conveyance is made subject and subordinate to all (a) matters of record; (b) real property taxes which are a lien but not yet due and payable; (c) all present and future zoning, building, environmental and other laws, ordinances, codes, restrictions and regulations of all governmental authorities having jurisdiction with respect to the Property; (d) the lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5, commencing with Section 75, of the California Revenue and Taxation Code as a result of a change in ownership or new construction after the date hereof; and (e) the rights of tenants in possession of the Property or any portion thereof.

[signatures appear on following page]

[1] NTD: To confirm if a separate deed is required for the 50% TIC ownership transfer

IN WITNESS WHEREOF, this Deed has been executed to be effective as of the date first written above.

GRANTOR:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF [_____])
COUNTY OF [_____])

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

Exhibit A to Deed

Legal Description

[To be attached]

Exhibit K

FORM OF OWNER'S AFFIDAVIT

OWNER'S DECLARATION

The Owner hereby declares as follows as of _____, 2023, except as shown in the below-referenced Preliminary Report/Commitment:

1. BSP Senita Gateway Center, LLC, a Delaware limited liability company ("Owner") is the owner of certain premises located at 21688 Gateway Center Drive, Diamond Bar, CA, further described as follows: See Preliminary Report/Commitment No. _____ for full legal description (the "Land").

2. [***To be confirmed]***

   a. [During the period of ninety-one (91) days immediately preceding the date of this declaration no work has been done by Owner, no surveys or architectural or engineering plans have been prepared by Owner, and no materials have been furnished by Owner in connection with the erection, equipment, repair, protection or removal of any building or other structure on the Land or in connection with the improvement of the Land in any manner whatsoever by Owner.]

   b. [During the period of ninety-one (91) days immediately preceding the date of this declaration certain work has been done and materials furnished in connection with_____ upon the Land in the approximate total sum of $_____ , but no work whatever remains to be done and no materials remain to be furnished to complete the construction in full compliance with the plans and specifications, nor are there any unpaid bills incurred for labor and materials used in making such improvements or repairs upon the Land, or for the services of architects, surveyors or engineers, except as follows: _____. Owner agrees to indemnify and hold harmless Fidelity National Title Insurance Company against any and all claims arising therefrom.]

3. Owner has not previously conveyed the Land; is not a debtor in bankruptcy (and if a partnership, the general partner thereof is not a debtor in bankruptcy); and has not received written notice of any pending court action affecting the title to the Land that remains unresolved.

4. Except as shown in the above-referenced Preliminary Report/Commitment, to Owner's knowledge, there are no unpaid or unsatisfied mortgages, deeds of trust, Uniform Commercial Code fixture filings, claims of lien, special assessments, or taxes that constitute a lien against the Land or that affect the Land but have not been recorded in the public records.

5. To Owner's knowledge (i) the Land is currently in use as office building; (ii) the tenants set forth on Exhibit A attached hereto occupy/occupies the Land; and (iii) the following are all of the leases or other occupancy rights affecting the land: see Exhibit A attached hereto.

6. To Owner's knowledge, there are no other persons or entities that assert an ownership interest in the Land, nor are there unrecorded easements, claims of easement, or boundary disputes that affect the Land.

7. There are no outstanding options to purchase or rights of first refusal affecting the Land that were granted by Owner.

8. To the Owner's knowledge, Owner has not received any written notice of violation of any covenants, conditions or restrictions, if any, affecting the Land and remain unresolved.

This declaration is made with the intention that Fidelity National Title Insurance Company (the "Company") and its policy issuing agents will rely upon it in issuing its title insurance policy and endorsements in favor of the buyer (the "Title Policy"). Owner agrees to indemnify the Company against loss or damage (including reasonable attorneys' fees, expenses, and costs) incurred by the Company as a result of any untrue statement made herein.

In consideration of the Company issuing the Title Policy effective as of the date of hereof without making exception therein of matters which may arise between the date hereof and the date documents creating the interest being insured pursuant to the Title Policy (the "Closing Instrument") have been filed for record and which matters may constitute an encumbrance on or affect the title, Owner hereby agrees to promptly defend, remove, bond or otherwise dispose of any encumbrance, lien or objectionable matter which may arise or be filed, as the case may be, against the Land as a result of any affirmative act of Owner during the period of time between the date hereof and the date of recording of the Closing Instrument (not to exceed five (5) business days), and to hold the Company harmless of and from all actual, out-of-pocket loss, cost, damage and expense of every kind, including reasonable out of pocket attorneys' fees, which the Company shall sustain or become liable for under the Title Policy which may arise out of Owner's failure to so remove, bond or otherwise dispose of any such liens, encumbrances or objectionable matters that result from affirmative acts of Owner.

Owner represents that the undersigned is authorized to sign and deliver this declaration on behalf of owner, and is a representative of Owner that is knowledgeable about the statements made herein, but the undersigned shall have no personal liability with respect to the representations or any other matters under this declaration.

Company agrees that it does not have, will not have, and hereby waives any claims and causes of action it has or may have against the undersigned, any officer, director, employee, agent, trustee, shareholder, partner, member, manager, principal, parent, subsidiary or other affiliate of Owner arising out of or in connection with this declaration and will look solely to Owner.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has signed this Owner's Declaration as of the date first written above.

OWNER:

BSP SENITA GATEWAY CENTER, LLC,
a Delaware limited liability company

By: BSP Senita Realty Investors, LLC,
a Delaware limited liability company
Its: Sole Member

By: BSP Senita Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Name: Timothy J. Ballard
Its: President

Exhibit A

Rent Roll

[To be attached]

Exhibit 8.1

Significant Subsidiaries	Jurisdiction
Magnell Associate, Inc.	United States
Newegg Business Inc.	United States
Newegg Canada Inc.	Canada
Newegg Inc.	United States

Exhibit 12.1

I, Anthony Chow, certify that:

1. I have reviewed this annual report on Form 20-F of Newegg Commerce, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Anthony Chow
Anthony Chow
Chief Executive Officer

Date: April 27, 2023

Exhibit 12.2

I, Robert Chang, certify that:

1. I have reviewed this annual report on Form 20-F of Newegg Commerce, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Robert Chang
Robert Chang
Chief Financial Officer

Date: April 27, 2023

Exhibit 13.1

I, Anthony Chow, certify that:

1. This annual report on Form 20-F of the Newegg Commerce, Inc. (the "Company") for the year ended December 31, 2022, (the "Annual Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Anthony Chow
Anthony Chow
Chief Executive Officer

Date: April 27, 2023

Exhibit 13.2

I, Robert Chang, certify that:

1. This annual report on Form 20-F of the Newegg Commerce, Inc. (the "Company") for the year ended December 31, 2022, (the "Annual Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert Chang
Robert Chang
Chief Financial Officer

Date: April 27, 2023

Exhibit 15.1

Consent of Independent Registered Public Accounting Firm

Newegg Commerce, Inc.
City of Industry, California

We hereby consent to the incorporation by reference in the Registration Statements on Forms S-8 (No. 333-259485 and 333-267842) and Form F-3 (No. 333-265985) of Newegg Commerce, Inc. of our report dated April 27, 2023, relating to the consolidated financial statements, which appears in this Annual Report on Form 20-F.

/s/ BDO USA, LLP
Los Angeles, California
April 27, 2023