As filed with the Securities and Exchange Commission on November 20, 2020

Registration No. 333-250184

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1 to

Form S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Affirm Holdings, Inc.

(Exact name of Registrant as specified in its charter)

Delaware	**7389**	**84-2224323**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108
Telephone: (415) 984-0490
(Address including zip code, telephone number, including area code, of Registrant's Principal Executive Offices)

Max Levchin
Chief Executive Officer
Affirm Holdings, Inc.
650 California Street
San Francisco, California 94108
Telephone: (415) 984-0490
(Name, address including zip code, telephone number, including area code, of agent for service)

Copies To:

Gregg A. Noel, Esq. **P. Michelle Gasaway, Esq.** **Skadden, Arps, Slate, Meagher & Flom LLP** **525 University Avenue** **Palo Alto, California 94301** **Telephone: (650) 470-4500**	**Sharda Caro del Castillo** **Chief Legal Officer** **Affirm Holdings, Inc.** **650 California Street** **San Francisco, California 94108** **Telephone: (415) 984-0490**	**Byron B. Rooney, Esq.** **Emily Roberts, Esq.** **Davis Polk & Wardwell LLP** **450 Lexington Avenue** **New York, New York 10017** **Telephone: (212) 450-4000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date hereof.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐
Emerging growth company ☒	

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Amendment No. 1 ("Amendment No. 1") to the Registration Statement on Form S-1 (File No. 333-250184) of Affirm Holdings, Inc. (Registration Statement) is being filed as an exhibits-only filing. Accordingly, this amendment consists only of the facing page, this explanatory note, Item 16(a) of Part II of the Registration Statement, the signature page to the Registration Statement and the filed exhibits. The remainder of the Registration Statement is unchanged and has therefore been omitted.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits. The following exhibits are filed herewith:

Exhibit Number	Description
1.1*	Form of Underwriting Agreement
3.1**	Amended and Restated Certificate of Incorporation of the Company, as currently in effect
3.2**	Amended and Restated Bylaws of the Company, as currently in effect
3.3**	Form of Amended and Restated Certificate of Incorporation of the Company, to be in effect upon the completion of this offering
3.4**	Form of Amended and Restated Bylaws of the Company, to be in effect upon the completion of this offering
4.1*	Specimen Stock Certificate for shares of Common Stock of the Company
4.2**	Amended and Restated Investors' Rights Agreement among the Company and certain holders of its capital stock, dated as of September 11, 2020
4.3**	Warrant to Purchase Shares of Common Stock, dated as of October 8, 2019, by and between Affirm, Inc. and Delta Air Lines, Inc.
4.4**	Warrant to Purchase Common Stock, dated as of May 15, 2014, by and between Affirm, Inc. and Silicon Valley Bank
4.5**	Warrant to Purchase Common Stock, dated as of August 5, 2015, by and between Affirm, Inc. and Silicon Valley Bank
4.6**	Stock Purchase Warrant, dated as of September 1, 2020, by and between Affirm Holdings, Inc. and Shopify Inc.
5.1*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP
10.1**	Form of Indemnification Agreement between the Company and its directors and officers
10.2+	Amended and Restated 2012 Stock Plan
10.3+	2020 Employee Stock Purchase Plan
10.4#	Second Amended and Restated Loan Program Agreement, dated as of November 1, 2020, by and between Affirm, Inc. and Cross River Bank
10.5#	Second Amended and Restated Loan Sale Agreement, dated as of November 1, 2020, by and between Affirm, Inc. and Cross River Bank
10.6#**	Merchant Agreement, dated as of September 3, 2020, by and between Affirm, Inc. and Peloton Interactive, Inc.
10.7#	Customer Installment Program Agreement, dated as of July 16, 2020, by and between Shopify Inc. and Affirm, Inc.
16.1**	Letter Regarding Change in Accountants
21.1**	Subsidiaries of the Company
23.1**	Consent of Ernst & Young LLP, independent registered public accountants
23.2**	Consent of Deloitte & Touche LLP, independent registered public accountants
23.3*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in Exhibit 5.1)
24.1**	Power of Attorney (see signature page of this Registration Statement)

* To be filed by amendment

** Previously filed

+ Denotes management contract or compensatory plan or arrangement

Portions of the exhibit have been omitted as the Registrant has determined that: (i) the omitted information is not material; and (ii) the omitted information would likely cause competitive harm to the Registrant if publicly disclosed.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in San Francisco, California on November 20, 2020.

AFFIRM HOLDINGS, INC.

By: /s/ Max Levchin
Max Levchin
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on November 20, 2020.

Signature	Capacity
/s/ Max Levchin Max Levchin	Chairman of the Board of Directors and Chief Executive Officer (principal executive officer)
* Michael Linford	Chief Financial Officer (principal financial officer)
* Siphelele Jiyane	VP, Controller (principal accounting officer)
* Jeremy Liew	Director
* Christa S. Quarles	Director
* Jeremy G. Philips	Director
* Keith Rabois	Director

*By: /s/ Max Levchin
Max Levchin, Attorney-In-Fact

Exhibit 10.2

AFFIRM HOLDINGS, INC.

AMENDED AND RESTATED 2012 STOCK PLAN

(Adopted by the Board on November 18, 2020; Approved by the stockholders of the Company on [•]; IPO Date on [•])

1. Purposes of the Plan. The purposes of this Amended and Restated 2012 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an Option and subject to the applicable provisions of Section 422 of the Code and the regulations promulgated thereunder. Restricted Stock, Restricted Stock Units and Other Awards may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Acquiror" means any one person (within the meaning of Section 13(d) of the Exchange Act), or more than one such person acting as a group (as defined under Treasury Regulation § 1.409A-3(i)(5)(v)(B)), in each case, other than (i) the Company, (ii) any Subsidiary, Parent or Affiliate, (iii) any employee benefit plan sponsored by the Company or by any Subsidiary, Parent or Affiliate, (iv) an entity of which at least a majority of its Voting Power is owned directly or indirectly by the Company, (v) an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of Common Stock or (vi) an entity in which the holders of at least a majority of the Voting Power of the Company outstanding immediately prior to the relevant transaction continue to hold (either by their shares remaining outstanding in the continuing entity or by their shares being converted into securities of the surviving entity or its parent entity) a majority of the total Voting Power of the Company (or the surviving entity or its parent entity) outstanding immediately after such transaction.

(b) "Administrator" means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(c) "Affiliate" of any Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first mentioned Person. A Person shall be deemed to control another Person if such first Person possesses directly or indirectly the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, by contract or otherwise.

(d) "Applicable Laws" means the legal requirements relating to the administration of Awards, including under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, other U.S. federal and state laws, the Code, any Stock Exchange rules or regulations and the applicable laws, rules and regulations of any other country or jurisdiction where Awards are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(e) "Award" means, except when referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-statutory Stock Options, Restricted Stock Awards, Restricted Stock Units or any combination of the foregoing.

(f) "Award Agreement" means a written or electronic agreement setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Agreement may contain terms and conditions in addition to those set forth in the Plan; provided, however, in the event of any conflict in the terms of the Plan and the Award Agreement, the terms of the Plan shall govern.

(g) "Board" means the Board of Directors of the Company.

(h) "Cashless Transaction" means a program approved by the Administrator in which payment of the Option exercise price and/or Tax Withholding Obligations applicable to an Award may be satisfied, in whole or in part, with Shares subject to the Award, including by delivery of an irrevocable direction to a securities broker (on a form prescribed by the Administrator) to sell Shares and to deliver all or part of the sale proceeds to the Company in payment of the aggregate exercise price and, if applicable, the amount necessary to satisfy the applicable Tax Withholding Obligations.

(i) "Cause" for termination of a Holder's Continuous Service Status will exist if the Holder is terminated by the Company for any of the following reasons: (i) Holder's willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Holder's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Holder of any proprietary information or trade secrets of the Company or any other party to whom the Holder owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Holder's willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Holder is being terminated for Cause shall be made in good faith by the Company's Board of Directors and shall be final and binding on the Holder. The foregoing definition does not in any way limit the Company's ability to terminate a Holder's employment or consulting relationship at any time as provided in Section 6(b) below, and the term "Company" will be interpreted to include any Subsidiary, Parent or Affiliate, as appropriate.

(j) "Change of Control" means (i) a majority of members of the Board is replaced during any 12-month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of each appointment or election; (ii) an Acquiror acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Acquiror) all or substantially all of the Company's assets; (iii) any merger, consolidation or other business combination transaction of the Company with or into an Acquiror; or (iv) an Acquiror acquires ownership of stock of the Company that, together with stock held by such Acquiror, constitutes more than 50% of the total fair market value or total Voting Power of the stock of the Company. Notwithstanding anything in this Plan to the contrary, (x) subsections (i) through (iv) shall be interpreted in a manner that is consistent with the Treasury Regulations promulgated pursuant to Section 409A of the Code so that all, and only, such transactions or events that could qualify as a "change in control event" within the meaning of Treasury Regulation §1.409A-3(i)(5)(i) will be deemed to be a Change of Control for purposes of this Plan; provided, however, that such limitation shall only apply to the extent necessary to prevent any tax becoming due under Section 409A of the Code; and (y) a transaction shall not constitute a Change of Control if its sole purpose is to change the state of the Company's incorporation, or to create a holding company that will be owned in substantially the same proportions by the persons who hold the Company's securities immediately before such transaction.

(k) "Code" means the Internal Revenue Code of 1986, as amended.

(l) "Committee" means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(m) "Common Stock" means the Class A Common Stock of the Company.

(n) "Company" means Affirm Holdings, Inc., a Delaware corporation.

(o) "Consultant" means any natural person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services, and any director of the Company whether compensated for such services or not, who satisfies the requirements of subsection (c)(1) of Rule 701 under the Securities Act of 1933, as amended.

(p) "Continuous Service Status" means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status. However, for Incentive Stock Option purposes, termination of Continuous Service Status will occur when the Employee ceases to be an employee (as determined in accordance with Section 3401(c) of the Code and the regulations promulgated thereunder) of the Company or one of its Subsidiaries. The Administrator shall determine whether any corporate transaction, such as a sale or spin-off of a division or business unit, or a joint venture, shall be deemed to result in a termination of Continuous Service Status.

(q) "Director" means a member of the Board.

(r) "Disability" means "disability" within the meaning of Section 22(e)(3) of the Code.

(s) "Employee" means any person employed by the Company or any Parent or Subsidiary, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the Applicable Laws. The payment by the Company of a director's fee to a Director shall not be sufficient to constitute "employment" of such Director by the Company.

(t) "Evergreen Shares" means Shares made available for issuance under the Plan pursuant to Section 3(b) of the Plan.

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

(v) "Fair Market Value" means, as of any date, the value of a share of Common Stock or other property as determined by the Administrator, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) If, on such date, the Common Stock is listed on a national or regional securities exchange or market system, including without limitation the Nasdaq Global Market, the Fair Market Value of a share of Common Stock shall be the closing price on such date of a share of Common Stock (or the mean of the closing bid and asked prices of a share of Common Stock if the stock is so quoted instead) as quoted on such exchange or market system constituting the primary market for the Common Stock, as reported in The Wall Street Journal or such other source as the Administrator deems reliable. If the relevant date does not fall on a day on which the Common Stock has traded on such securities exchange or market system, the date on which the Fair Market Value shall be established shall be the last day on which the Common Stock was so traded prior to the relevant date, or such other appropriate day as shall be determined by the Administrator, in its discretion.

(ii) If, on such date, the Common Stock is not listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Common Stock shall be as determined by the Administrator in good faith using a reasonable application of a reasonable valuation method in a manner that complies with Sections 409A and 422 of the Code and without regard to any restriction other than a restriction which, by its terms, will never lapse.

(w) "Holder" means any holder of one or more Awards or Shares issued pursuant to an Award.

(x) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(y) "Initial Public Offering" means the consummation of the first firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act covering the offer and sale by the Company of its equity securities, as a result of or following which the Shares shall be publicly held.

(z) "IPO Date" means the offering date of the Initial Public Offering.

(aa) "Non-statutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(bb) "Option" means a stock option granted pursuant to the Plan. Options granted under the Plan may be Incentive Stock Options or Non-statutory Stock Options, as determined by the Administrator at the time of grant.

(cc) "Option Agreement" means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(dd) "Option Exchange Program" means a program approved by the Administrator whereby outstanding Options are exchanged for Options with a lower exercise price or are amended to decrease the exercise price as a result of a decline in the Fair Market Value of the Common Stock.

(ee) "Optioned Stock" means Shares that are subject to an Option or that were issued pursuant to the exercise of an Option.

(ff) "Optionee" means an Employee or Consultant who receives an Option.

(gg) "Other Award" means an award granted to a Holder pursuant to Section 11 of the Plan.

(hh) "Other Award Agreement" means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of Other Awards granted under the Plan and includes any document attached to such agreement.

(ii) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(jj) "Person" shall mean any individual, corporation, partnership (limited or general), limited liability company, limited liability partnership, association, trust, joint venture, unincorporated organization or any similar entity.

(kk) "Plan" means this Affirm Holdings, Inc. Amended and Restated 2012 Stock Plan.

(ll) "Restricted Stock Agreement" means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of Restricted Stock granted under the Plan and includes any documents attached to such agreement.

(mm) "Restricted Stock Award" means Awards granted pursuant to Section 9 below and "Restricted Stock" means Shares issued pursuant to such Awards.

(nn) "Restricted Stock Unit" means an Award of phantom stock units to a Holder, which may be settled in cash or Shares as determined by the Administrator, pursuant to Section 10.

(oo) "Restricted Stock Unit Agreement" means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of Restricted Stock Units granted under the Plan and includes any document attached to such agreement.

(pp) "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(qq) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(rr) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14 of the Plan.

(ss) "Stock Exchange" means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.

(tt) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(uu) "Tax Withholding Obligations" means any applicable U.S. federal, state, local or non-U.S. tax withholding obligations, social contributions, required deductions or other similar obligations that may arise in connection with an Award.

(vv) "Ten Percent Holder" means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

(ww) "Voting Power" means the total combined voting power of all classes of stock (or, in the case of an entity that is not a corporation, similar equity interests) of the relevant entity determined in a manner consistent with the principles applicable to Section 409A of the Code.

3. Stock Subject to the Plan.

(a) Available Shares. Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be issued under the Plan is 118,374,202 Shares of Common Stock. The aggregate number of Shares which may be issued upon the exercise of Incentive Stock Options shall in no event exceed 118,374,202 Shares, subject to adjustment pursuant to Section 14 of the Plan. The Shares may be authorized, but unissued, or reacquired Common Stock. For purposes of this limitation, the Shares underlying any Awards that are forfeited, canceled, satisfied without the issuance of Shares, surrendered pursuant to an Option Exchange Program or otherwise terminated (other than by exercise) and Shares that are withheld upon exercise of any Option or settlement of an Award to cover the exercise price or tax withholding shall become available for future grant or sale under the Plan.

(b) Evergreen Shares. In addition, the number of Shares available for issuance under the Plan will automatically increase on the first day of each fiscal year, for a period of not more than ten years from the date the Plan is approved by the stockholders of the Company, commencing on July 1, 2021 and ending on (and including) July 1, 2030, in an amount equal to five percent (5%) of the total number of shares of the Company's capital stock outstanding on the last day of the calendar month prior to the date of such automatic increase. Notwithstanding the foregoing, the Board may act prior to the first day of a given fiscal year to provide that there will be no increase in the number of Shares available for issuance under the Plan for such fiscal year or that the increase in the number of Shares available for issuance under the Plan for such year will be a lesser number of Shares than would otherwise occur pursuant to the preceding sentence.

4. Administration of the Plan.

(a) General. The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Holders and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make awards under the Plan.

(b) Committee Composition. If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 of the Code, to the extent permitted or required by such provisions. The Committee shall in all events conform to any requirements of the Applicable Laws.

(c) Powers of the Administrator. Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to administer the Plan and to adopt, amend and rescind from time to time rules and regulations for the administration of the Plan;

(ii) to determine the Fair Market Value of the Common Stock in accordance with Section 2(v) of the Plan; provided that such determination shall be applied consistently with respect to Holders under the Plan;

(iii) to select the Employees and Consultants to whom Awards may from time to time be granted;

(iv) to determine whether and to what extent Plan awards are granted;

(v) to determine the number of Shares to be covered by each Award (other than a cash-based Other Award), and the amount of cash to be covered by each cash-based Other Award;

(vi) to approve the form(s) of Award Agreement(s) and other related documents used under the Plan;

(vii) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when Awards may vest and/or be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, any pro rata adjustment to vesting as a result of a Holder's transitioning from full- to part-time service (or vice versa), and any restriction or limitation regarding any Award, Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award;

(viii) to determine whether and under what circumstances an Award may be settled in cash under Section 10(e) instead of Common Stock;

(ix) subject to Applicable Laws and Section 4(h) of the Plan, to implement an Option Exchange Program on such terms and conditions as the Administrator in its discretion deems appropriate; provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Optionee shall be made without the prior written consent of the Optionee;

(x) to amend, waive or otherwise adjust the terms and conditions of any outstanding Award, any Award Agreement or any other agreement related to any Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award, including any amendment adjusting vesting or exercisability (e.g., in connection with a change in the terms or conditions under which such person is providing services to the Company); provided that no such amendment, waiver or adjustment shall be made that would materially and adversely affect the rights of any Holder without his or her consent; and provided, further, that the Administrator shall not have any such authority to the extent that the grant of such authority would cause any tax to become due under Section 409A of the Code;

(xi) to (A) extend the term of any Award, including, without limitation, extending the period following a termination of a Holder's Continuous Service Status during which any such Award may remain outstanding or (B) provide for the accrual of dividends or dividend equivalents with respect to any such Award; provided that the Administrator shall not have any such authority to the extent that the grant of such authority would cause any tax to become due under Section 409A of the Code; and provided, further, that no payment in respect of accrued dividends or dividend equivalents shall be made prior to the vesting of the relevant Award;

(xii) to construe and interpret the terms of the Plan, any Award Agreement and any agreement related to any Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award, which constructions, interpretations and decisions shall be final and binding on all Holders;

(xiii) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Awards to Holders who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs;

(xiv) to approve addenda pursuant to Section 4(d) of the Plan or to grant Awards to, or to modify the terms of any outstanding Award Agreement or any agreement related to any Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award held by, Holders who are foreign nationals or employed outside of the United States with such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy or custom which deviate from the terms and conditions set forth in this Plan to the extent necessary or appropriate to accommodate such differences; and

(xv) to exercise discretion to take or make any and all other actions or determinations which it determines to be necessary or advisable for the administration of the Plan.

(d) Addenda. The Administrator may approve such addenda to the Plan as it may consider necessary or appropriate for the purpose of granting Awards to Employees or Consultants, which Awards may contain such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy or custom, which, if so required under Applicable Laws, may deviate from the terms and conditions set forth in this Plan. The terms of any such addenda shall supersede the terms of the Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of the Plan as in effect for any other purpose.

(e) Delegation of Administration of the Plan. Subject to Applicable Laws, the Administrator, in its discretion, may delegate to one or more officers of the Company the power to designate Employees who are not officers of the Company to be recipients of Options, and to determine the number of such Options to be received by such Employees; provided, however, that the resolution so authorizing such officer(s) shall specify the total number of Options the officer(s) may so award and may not delegate the authority to set the exercise price or the vesting terms of such Options. Any such delegation by the Administrator shall also provide that such officer(s) may not grant Awards to himself or herself (or other officers of the Company) without the approval of the Administrator. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(f) Indemnification. To the maximum extent permitted by Applicable Laws, each member of the Committee (including officers of the Company, if applicable), or of the Board, as applicable, shall be indemnified and held harmless by the Company against and from (i) any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or pursuant to the terms and conditions of any Award except for actions taken in bad faith or failures to act in good faith, and (ii) any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit or proceeding against him or her; provided that such member shall give the Company an opportunity, at its own expense, to handle and defend any such claim, action, suit or proceeding before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation, Certificate of Incorporation or Bylaws, by contract, as a matter of law or otherwise, or under any other power that the Company may have to indemnify or hold harmless each such person.

(g) Decisions of the Administrator. Decisions of the Administrator shall be final, binding and conclusive on all parties. For the avoidance of doubt, the Administrator may exercise all discretion granted to it under the Plan in a non-uniform manner among Holders and Awards, and the Administrator may take different actions with respect to the vested and unvested portions of an Award.

(h) Shareholder Approval Required for Repricing. Notwithstanding any provision of this Plan to the contrary, in no event shall (i) any repricing (within the meaning of U.S. generally accepted accounting principles or any applicable Stock Exchange rule) of Options issued under the Plan be permitted at any time under any circumstances, (ii) any new Awards be issued in substitution for outstanding Options previously granted to Holders if such action would be considered a repricing (within the meaning of U.S. generally accepted accounting principles or any applicable Stock Exchange rule) or (iii) any Option or stock appreciation right (x) have its exercise price be reduced or (y) be purchased (or otherwise "cashed out") by the Company if, on the date of such purchase, the exercise price per Share covered by such Option or stock appreciation right is less than 100% of the Fair Market Value of a Share on such date, in the case of each (i)-(iii), unless the approval of the stockholders of the Company has been obtained to take such action.

5. Eligibility. Nonstatutory Stock Options, Restricted Stock, Restricted Stock Units and Other Awards may be granted to Employees and Consultants, subject to Applicable Laws. Incentive Stock Options may be granted only to Employees of the Company or of a Subsidiary.

6. Limitations.

(a) ISO $100,000 Limitation. Notwithstanding any designation under Section 8(a), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Non-statutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(b) No Employment Rights. Neither the Plan nor any Award shall confer upon any Holder any right with respect to continuation of an employment or consulting relationship with the Company (or any Parent, Subsidiary or Affiliate), nor shall it interfere in any way with (i) such Holder's right or the Company's right (or the Parent's, Subsidiary's or Affiliate's right) to terminate the employment or consulting relationship at any time for any reason, or (ii) the Company's right to increase or decrease the compensation of the Holder from the rate in existence at the time of the grant of an Award. No payment with respect to any Awards under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(c) No Right to Awards. No person shall have any claim or right to receive an Award hereunder. The Administrator's granting of an Award to a Holder at any time shall neither require the Administrator to grant an Award to such Holder, or to any other Holder or other person at any time, nor preclude the Administrator from making subsequent grants to such Holder or any other Holder or other person.

(d) Limitation on Grants to Non-Employee Directors. The maximum number of Shares subject to Awards (and of cash subject to cash-based Other Awards) granted under the Plan or otherwise during any one fiscal year to any Director (other than a Director who is also an Employee) for service on the Board, taken together with any cash fees paid by the Company to such Director during such fiscal year for service on the Board, will not exceed $600,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); provided, however, that with respect to the first fiscal year during which such a Director serves on the Board (or, in the event such Director does not receive any Awards during such first fiscal year, the second fiscal year during which such a Director serves on the Board), such maximum total value shall instead be $900,000.

7. Term of Plan. The Plan shall become effective as of the IPO date, subject to the approval of the stockholders of the Company as provided in Section 27 of the Plan (the "Effective Date"). It shall continue in effect for a term of ten (10) years from the Effective Date unless sooner terminated under Section 17(a) of the Plan.

8. Stock Options.

Upon the grant of any Option, the Company and the Optionee shall enter into an Option Agreement. The terms and conditions of each such Option Agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and Optionees.

(a) Type of Option. Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Non-statutory Stock Option.

(b) Term of Option. The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

(c) Exercise Price. The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be set forth in the Option Agreement and such price as is determined by the Administrator but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be such price as is determined by the Administrator, provided that, if the per Share exercise price is less than 100% of the Fair Market Value on the date of grant, it shall otherwise comply with all Applicable Laws, including Section 409A of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(d) Permissible Consideration. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option and to the extent required by Applicable Laws, shall be determined at the time of grant) and may consist entirely of (1) cash; (2) check; (3) subject to any requirements of the Applicable Laws, delivery of Optionee’s promissory note having such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate (subject to the provisions of Section 153 of the Delaware General Corporation Law); (4) cancellation of indebtedness; (5) Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option is exercised, provided that in the case of Shares acquired, directly or indirectly, from the Company, such Shares must have been owned by the Optionee for more than six months on the date of surrender (or such other period as may be required to avoid the Company's incurring an adverse accounting charge); (6) a Cashless Transaction; (7) any combination of the foregoing methods of payment; or (8) such other consideration and method of payment as determined by the Administrator and to the extent permitted under Applicable Laws. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

(e) Exercise of Option.

(i) General.

(A) Exercisability. Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the terms of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee. Any such vesting requirements or performance criteria may be based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, Continuous Service Status), or any other basis determined by the Administrator in its sole discretion. Each Option shall be exercisable in whole or in part. The partial exercise of an Option shall not cause the expiration, termination or cancellation of the remaining portion thereof.

(B) Leave of Absence. The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, vesting of Options shall be tolled during any such unpaid leave (unless otherwise required by the Applicable Laws). In the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Holder's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Holder continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(C) Minimum Exercise Requirements. An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, or a minimum aggregate exercise price; provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(D) Procedures for and Results of Exercise. An Option shall be deemed exercised when written or electronic notice of such exercise has been given to the Company in accordance with the terms of the Option Agreement by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised and has paid, or made arrangements to satisfy, any Tax Withholding Obligations in accordance with Section 12 of the Plan. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 8(d) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise. The exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(E) Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 14 of the Plan.

(ii) Termination of Employment or Consulting Relationship. Except as otherwise set forth in this Section 8(e), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. Unless the Administrator otherwise provides in the Option Agreement, to the extent that the Optionee is not vested in Shares underlying his or her Option at the date of termination of his or her Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Shares underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7 of the Plan).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(A) Termination other than Upon Disability or Death or for Cause. In the event of termination of Optionee's Continuous Service Status other than under the circumstances set forth in subsections (B), (C) and (D) below, such Optionee may exercise an Option until the earlier of (1) three months following the date of such termination (to the extent the Optionee was vested in the Shares underlying the Option as of the date of such termination), if the Optionee's Continuous Service Status is terminated prior to the Optionee completing two full years of Continuous Service Status; (2) seven years following the date of such termination (to the extent the Optionee was vested in the Shares underlying the Option as of the date of such termination), if the Optionee's Continuous Service Status is terminated on or after the Optionee completing two or more full years of Continuous Service Status; or (3) the expiration of the term of such Option; provided, however, that the Administrator may in the Option Agreement specify a shorter or longer period of time (but not beyond the expiration date of the Option) following termination of Optionee's Continuous Service Status during which Optionee may exercise the Option as to Shares that were vested and exercisable as of the date of termination of Optionee's Continuous Service Status. No termination shall be deemed to occur and this Section 8(e)(ii)(A) shall not apply if (y) the Optionee is a Consultant who becomes an Employee, or (z) the Optionee is an Employee who becomes a Consultant.

(B) Disability of Optionee. In the event of termination of an Optionee's Continuous Service Status as a result of his or her Disability, such Optionee may exercise an Option until the earlier of (1) any time within twelve months following the date of such termination (to the extent the Optionee was vested in the Shares underlying the Option as of the date of such termination), if the Optionee's Continuous Service Status is terminated prior to the Optionee completing two full years of Continuous Service Status; (2) any time within seven years following the date of such termination (to the extent the Optionee was vested in the Shares underlying the Option as of the date of such termination), if the Optionee's Continuous Service Status is terminated on or after the Optionee completing two or more full years of Continuous Service Status; or (3) the expiration of the term of such Option.

(C) Death of Optionee. In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within thirty days following termination of Optionee's Continuous Service Status, the Option may be exercised by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance until the earliest of (1) any time within twelve months following the date of death (to the extent the Optionee was vested in the Shares underlying the Option as of the date of death, or the date the Optionee's Continuous Service Status terminated, if earlier), if the Optionee's Continuous Service Status is terminated prior to the Optionee completing two full years of Continuous Service Status; (2) any time within seven years following the date of death (to the extent the Optionee was vested in the Shares underlying the Option as of the date of death, or the date the Optionee's Continuous Service Status terminated, if earlier), if the Optionee's Continuous Service Status is terminated on or after the Optionee completing two or more full years of Continuous Service Status; or (3) the expiration of the term of such Option.

(D) Termination for Cause. In the event of termination of an Optionee's Continuous Service Status for Cause, any Option (including any exercisable portion thereof) held by such Optionee shall immediately terminate in its entirety upon first notification to the Optionee of termination of the Optionee's Continuous Service Status. If an Optionee's employment or consulting relationship with the Company is suspended pending an investigation of whether the Optionee shall be terminated for Cause, all the Optionee's rights under any Option likewise shall be suspended during the investigation period and the Optionee shall have no right to exercise any Option. The Administrator shall have authority to effect such procedures and take such actions as are necessary to carry out the legal intent of this Section 8(e)(ii)(D), including such procedures and actions as are required to cause the Optionee to return to the Company Shares purchased under the Option that have been purchased or that vested within six months of the events giving rise to the for-Cause termination of the Optionee's Continuous Service Status and, if such Shares have been transferred by the Optionee, to remit to the Company the value of such transferred Shares.

9. Restricted Stock Awards.

(a) Nature of Restricted Stock Awards. The Administrator may, in its sole discretion, grant (or sell at par value or such other purchase price determined by the Administrator) to an eligible individual (as determined under Section 5 of the Plan) a Restricted Stock Award under the Plan. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Award at the time of grant. Conditions may be based on Continuing Service Status, achievement of pre-established performance goals and objectives and/or such other criteria as the Administrator may determine. Upon the grant of a Restricted Stock Award, the Company and the Holder shall enter into a Restricted Stock Agreement. The terms and conditions of each such Restricted Stock Agreement shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and Holders.

(b) Rights as a Stockholder. Upon the grant of the Restricted Stock Award and payment of any applicable purchase price, a Holder of Restricted Stock shall be considered the record owner of and shall be entitled to vote the Restricted Stock if, and to the extent, such Shares are entitled to voting rights, subject to such conditions contained in the Restricted Stock Agreement. The Holder shall be entitled to receive all dividends and any other distributions declared on the Shares; provided, however, that the Company is under no duty to declare any such dividends or to make any such distribution.

(c) Restrictions. Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Agreement. Except as may otherwise be provided by the Administrator either in the Restricted Stock Agreement or, subject to Section 13 below, in writing after the Restricted Stock Agreement is issued, if a Holder's Continuous Service Status terminates, the Company or its assigns shall have the right, as may be specified in the relevant instrument, to repurchase some or all of the Shares subject to the Award at such purchase price as is set forth in the Award Agreement.

(d) Vesting of Restricted Stock. The Administrator at the time of grant shall specify in the Restricted Stock Agreement the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the substantial risk of forfeiture imposed shall lapse and the Restricted Stock shall become vested, subject to such further rights of the Company or its assigns as may be specified in the Restricted Stock Agreement. Any vesting criteria may be based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, Continuous Service Status), or any other basis determined by the Administrator in its sole discretion. Notwithstanding the foregoing, at any time after the delivery of Restricted Stock, the Administrator, in its sole discretion, may reduce or waive any applicable vesting criteria.

(e) Leave of Absence. The Administrator shall have the discretion to determine whether and to what extent the lapsing of Company repurchase rights shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, such lapsing shall be tolled during any such unpaid leave (unless otherwise required by the Applicable Laws). In the event of military leave, the lapsing of Company repurchase rights shall toll during any unpaid portion of such leave, provided that, upon a Holder's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given "vesting" credit with respect to Shares purchased pursuant to the Restricted Stock Agreement to the same extent as would have applied had the Holder continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(f) Termination of Continuous Service Status. Unless otherwise provided in the applicable Restricted Stock Agreement, in the event the Holder's Continuous Service Status is terminated for any reason (including death or Disability) prior to the vesting of a Share of Restricted Stock, such Share shall be (i) forfeited for no consideration, in the event it was granted to the Holder, or (ii) subject to a repurchase option exercisable by the Company at the original purchase price paid by the Holder, in the event it was purchased by the Holder.

(g) Other Provisions. The Restricted Stock Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

10. Restricted Stock Units.

(a) Nature of Restricted Stock Units. The Administrator may, in its sole discretion, grant to an eligible person (as determined under Section 5 of the Plan) Restricted Stock Units under the Plan. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Unit at the time of grant. Vesting conditions may be based on Continuous Service Status, achievement of pre-established performance goals and objectives and/or other such criteria as the Administrator may determine Upon the grant of Restricted Stock Units, the Holder and the Company shall enter into an Restricted Stock Unit Agreement. The terms and conditions of each such Restricted Stock Unit Agreement shall be determined by the Administrator and may differ among individual Awards and Holders. On or promptly following the vesting date or dates applicable to any Restricted Stock Unit, but in no event later than March 15 of the year following the year in which such vesting occurs, such Restricted Stock Unit(s) shall be settled in the form of cash or Shares, as specified in the Restricted Stock Unit Agreement. Restricted Stock Units may not be sold, assigned, transferred, pledged, or otherwise encumbered or disposed of.

(b) Rights as a Stockholder. A Holder shall have the rights of a stockholder only as to Shares, if any, acquired upon settlement of Restricted Stock Units. A Holder shall not be deemed to have acquired any such Shares unless and until the Restricted Stock Units shall have been settled in Shares pursuant to the terms of the Plan and the Restricted Stock Unit Agreement.

(c) Award Terms. When Restricted Stock Units are granted under the Plan, the Company shall advise the recipient in writing of the terms, conditions and restrictions applicable to the Award, including the number of Restricted Stock Units that such person shall be entitled to receive. The offer to receive Restricted Stock Units shall be accepted by execution of a Restricted Stock Unit Agreement.

(d) Vesting and Settlement. The Administrator may, in its sole discretion, set vesting criteria for the Restricted Stock Units that must be met in order to be eligible to receive a payout pursuant to the Award (note that the Administrator may specify additional conditions which must also be met in order to receive a payout pursuant to the Award). Any such vesting criteria may be based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, Continuous Service Status), or any other basis determined by the Administrator in its sole discretion. Notwithstanding the foregoing, at any time after the grant of Restricted Stock Units, the Administrator, in its sole discretion, may reduce or waive any applicable vesting criteria.

(e) Form and Timing of Settlement. Settlement of earned Restricted Stock Units will be made upon the date(s) determined by the Administrator and may be subject to additional conditions, if any, each as set forth in the Restricted Stock Unit Agreement. The Administrator, in its sole discretion, may settle earned Restricted Stock Units in cash, Shares, or a combination of both.

(f) Termination. Except as may otherwise be provided by the Administrator either in the Restricted Stock Unit Agreement or in writing after the Restricted Stock Unit Agreement is issued, a Holder's right in all Restricted Stock Units that have not vested shall automatically terminate upon the Holder's cessation of Continuous Service Status with the Company and any Subsidiary for any reason.

(g) Other Provisions. The Restricted Stock Unit Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Unit Agreements need not be the same with respect to each Holder.

11. Other Awards.

(a) General. The Administrator may from time to time grant cash-based, equity-based or equity-related awards not otherwise described herein in such amounts and on such terms as it shall determine, subject to the terms and conditions set forth in the Plan. Without limiting the generality of the preceding sentence, each such Other Award may (i) involve the transfer of actual Shares to Holders, either at the time of grant or thereafter, or payment in cash or otherwise, (ii) be subject to performance-based vesting conditions and/or multipliers and/or service-based vesting conditions, (iii) be in the form of cash, stock appreciation rights, phantom stock, performance shares, deferred share units, share-denominated performance units or other similar awards and (iv) be designed to comply with Applicable Laws of jurisdictions other than the United States; provided that each cash-based Other Award shall be denominated in cash and each equity-based or equity-related Other Award shall be denominated in, or shall have a value determined by reference to, a number of Shares, in each case that is specified (or will be determined using a formula that is specified) at the time of the grant of such Other Award.

(b) Award Terms. When Other Awards are granted under the Plan, the Company shall advise the recipient in writing of the terms, conditions and restrictions applicable to the Other Award. The offer to receive Other Awards shall be accepted by execution of an Other Award Agreement in the form determined by the Administrator.

(c) Vesting, Settlement and Payment. The Administrator may, in its sole discretion, set vesting criteria for the Other Award that must be met in order to be eligible to receive a payout pursuant to the Award (note that the Administrator may specify additional conditions which must also be met in order to receive a payout pursuant to the Award). Any such vesting criteria may be based upon the achievement of Company-wide, business unit, or individual goals (including, but not limited to, Continuous Service Status), or any other basis determined by the Administrator in its sole discretion. Notwithstanding the foregoing, at any time after the grant of the Other Award, the Administrator, in its sole discretion, may reduce or waive any applicable vesting criteria.

(d) Form and Timing of Settlement or Payment. Settlement or payment of earned Other Awards will be made upon the date(s) determined by the Administrator and may be subject to additional conditions, if any, each as set forth in the Other Award Agreement. The Administrator will settle earned cash-based Other Awards solely in cash but, in its sole discretion, may settle earned equity-based or equity related Other Awards in cash, Shares, or a combination of both.

(e) Other Provisions. The Other Award Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. The provisions of Other Award Agreements need not be the same with respect to each Holder.

(f) Rights as a Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) (if any), no right to vote or receive dividends or any other rights as a holder of capital stock shall exist with respect to the equity-based or equity-related Other Awards. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 14 of the Plan.

12. Taxes.

(a) Tax Withholding Obligations.

(i) As a condition of the grant, vesting and exercise or settlement of an Award, the Holder (or, in the case of the Holder's death or a permitted transferee, the person holding, exercising or receiving the proceeds of the Award) shall make such arrangements as the Administrator may require for the satisfaction of any Tax Withholding Obligations that may arise in connection with such Award. The Company and any Subsidiary shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee.

(ii) The Company's required tax withholding obligation may be satisfied, in whole or in part, by the Company withholding from Shares to be issued pursuant to an Award a number of Shares having an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the satisfaction of any Tax Withholding Obligations that may arise in connection with such Award. The Administrator may, in its sole discretion, permit or require a Holder (or, in the case of the Holder's death or a permitted transferee, the person holding, exercising or receiving the proceeds of the Award) to satisfy all or part of his or her Tax Withholding Obligations by remitting cash to the Company, by Cashless Transaction or by surrendering Shares (either directly or by stock attestation) that he or she previously acquired; provided that, unless specifically permitted by the Administrator (i) any Cashless Transaction must be an approved broker-assisted Cashless Transaction and the Shares withheld in the Cashless Transaction must be limited to avoid financial accounting charges under applicable accounting guidance, and (ii) any surrendered Shares must have been previously held for any minimum duration required to avoid financial accounting charges under applicable accounting guidance. Any payment of taxes by surrendering Shares to the Company may be subject to restrictions, including, but not limited to, any restrictions required by rules of the Securities and Exchange Commission. In addition, upon the exercise or settlement of any Award in cash, or the making of any other payment with respect to any Award (other than in Shares), the Company shall have the right to withhold from any payment required to be made pursuant thereto an amount sufficient to satisfy any Tax Withholding Obligations attributable to such exercise, settlement or payment.

(b) Compliance with Section 409A. Notwithstanding anything to the contrary contained in this Plan, to the extent that the Administrator determines that any Award granted under the Plan is subject to Code Section 409A and unless otherwise specified in the applicable Award Agreement, the Award Agreement evidencing such Award shall incorporate the terms and conditions necessary for such Award to avoid the consequences described in Code Section 409A(a)(1), and to the maximum extent permitted under Applicable Law (and unless otherwise stated in the applicable Award Agreement), the Plan and the Award Agreements shall be interpreted in a manner that results in their conforming to the requirements of Code Section 409A(a)(2), (3) and (4) and any Department of Treasury or Internal Revenue Service regulations or other interpretive guidance issued under Section 409A (whenever issued, the "Guidance"). Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement provides otherwise, with specific reference to this sentence), to the extent that a Holder holding an Award that constitutes "deferred compensation" under Section 409A and the Guidance is a "specified employee" (also as defined thereunder), no distribution or payment of any amount shall be made before a date that is six months following the date of such Holder's "separation from service" (as defined in Section 409A and the Guidance) or, if earlier, the date of the Holder's death.

(c) Deferral of Award Benefits. The Administrator may in its discretion and upon such terms and conditions as it determines appropriate permit one or more Holders whom it selects to (i) defer compensation payable pursuant to the terms of an Award, or (ii) defer compensation arising outside the terms of this Plan pursuant to a program that provides for deferred payment in satisfaction of such other compensation amounts through the issuance of one or more Awards. Any such deferral arrangement shall be evidenced by an Award Agreement in such form as the Administrator shall from time to time establish, and no such deferral arrangement shall be a valid and binding obligation unless evidenced by a fully executed Award Agreement, the form of which the Administrator has approved, including through the Administrator's establishing a written program (the "Program") under this Plan to govern the form of Award Agreements participating in such Program. Any such Award Agreement or Program shall specify the treatment of dividends or dividend equivalent rights (if any) that apply to Awards governed thereby, and shall further provide that any elections governing payment of amounts pursuant to such Program shall be in writing, shall be delivered to the Company or its agent in a form and manner that complies with Code Section 409A and the Guidance, and shall specify the amount to be distributed in settlement of the deferral arrangement, as well as the time and form of such distribution in a manner that complies with Code Section 409A and the Guidance.

13. Transfer Restrictions. Unless otherwise determined by the Administrator, Awards may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by a Holder will not constitute a transfer. An Option may be exercised, during the lifetime of the holder of the Option, only by such holder or a transferee permitted by this Section 13. Upon the death of a Holder, outstanding Awards granted to such Holder may be exercised only by the executors or administrators of the Holder's estate, by any person or persons who shall have acquired such right to exercise by will or by the laws of descent and distribution or by another transferee permitted by the Administrator pursuant to this Section 13. No transfer by will, the laws of descent and distribution or otherwise of any Award, or of the right to exercise any Award, shall be effective to bind the Company unless (a) the Administrator shall have been furnished with written notice thereof and with a copy of the will and/or such evidence as the Administrator may deem necessary to establish the validity of the transfer, (b) if the transfer was other than by will or by the laws of descent or distribution, the Administrator has provided its written consent to such transfer, and (c) the Administrator shall have been furnished with an agreement by the transferee to comply with all the terms and conditions of the Award that are or would have been applicable to the Holder, to be bound by the acknowledgements made by the Holder in connection with the grant of the Award and, if the transfer was other than by will or by the laws of descent or distribution, to be bound by any additional conditions the Administrator may, in its sole discretion, impose. For the avoidance of doubt, to the extent an unvested Award is transferred, the Continuous Service Status of the Holder will continue to determine, without limitation, the vesting and exercisability of such Award, to the same extent that the Continuous Service Status of the Holder would have done so had the Holder continued to directly hold such Award.

14. Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions.

(a) Changes in Capitalization. Subject to any action required under Applicable Laws by the stockholders of the Company, (i) the numbers and class (or type) of Shares, units representing Shares, or other stock or securities: (x) available for future Awards (including pursuant to Incentive Stock Options) under Section 3(a) of the Plan and (y) covered by each outstanding Award, (ii) the price per Share covered by each such outstanding Option, and (iii) any repurchase price per Share applicable to Shares issued pursuant to any Award, shall be proportionately adjusted (or substituted) by the Administrator in the event of a stock split, reverse stock split, stock dividend, combination, consolidation, recapitalization (including a recapitalization through a large nonrecurring cash dividend) or reclassification of the Shares, subdivision of the Shares, exchange of the Shares, a rights offering, a reorganization, merger, spin-off, split-up, change in corporate structure, other increase or decrease in the number of Shares or other similar occurrence. Any adjustment by the Administrator pursuant to this Section 14 shall be made in the Administrator's sole discretion and shall be final, binding and conclusive. Except as expressly provided herein, (I) no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to, or the terms related to, an Award, and (II) no Holder shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividends or dividend equivalents, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger or consolidation of the Company or any other corporation. If, by reason of a transaction described in this Section 14 or an adjustment pursuant to this Section 14, a Holder's Award Agreement or agreement related to any Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award covers additional or different shares of stock or securities (or units representing additional or different shares of stock or securities), then such additional or different shares (and the units representing such additional or different shares), and the Award Agreement or agreement related to the Optioned Stock, Restricted Stock, Restricted Stock Unit or Share underlying an Other Award in respect thereof, shall be subject to all of the terms, conditions and restrictions which were applicable to the Award, Optioned Stock, Restricted Stock, Restricted Stock Units or Shares underlying an Other Award prior to such adjustment.

(b) Dissolution or Liquidation. In the event of the dissolution or liquidation of the Company, each Award will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) Corporate Transactions. In the event of (i) a transfer of all or substantially all of the Company's assets, (ii) a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, entity or person, (iii) the consummation of a transaction, or series of related transactions, in which any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of more than 50% of the total Voting Power of the Company, or (iv) a Change of Control (each transaction set forth in clauses (i) through (iv) hereof, a "Corporate Transaction"), each outstanding Award (vested or unvested) will be treated as the Administrator determines, which determination may be made without the consent of any Holder and need not treat all outstanding Awards (or portion thereof) in an identical manner. Such determination, without the consent of any Holder, may provide (without limitation) for one or more of the following in the event of a Corporate Transaction: (A) the continuation of such outstanding Awards by the Company (if the Company is the surviving corporation); (B) the assumption of such outstanding Awards by the surviving corporation or its parent; (C) the substitution by the surviving corporation or its parent of new options or equity awards for such Awards; (D) the cancellation of such Awards in exchange for a payment to the Holders equal to the excess (if any) of (1) the Fair Market Value of the Shares subject to such Awards as of the closing date of such Corporate Transaction (which may, for this purpose, be determined by reference to the value, as determined by the Administrator, of the property (including cash) received by the holder of a Share as a result of such Corporate Transaction) over (2) the exercise price or purchase price paid or to be paid for the Shares subject to the Awards (if any); or (E) the opportunity for Optionees to exercise their Options prior to the occurrence of the Corporate Transaction and the termination (for no consideration) upon the consummation of such Corporate Transaction of any Options not exercised prior thereto.

(d) Savings Clause. No provision of this Section 14 shall be given effect to the extent that such provision would cause any tax to become due under Section 409A of the Code. Furthermore, no provision of this Section 14 shall be given effect to the extent such provision would result in short-swing profits liability under Section 16 of the Exchange Act or violate the exemptive conditions of Rule 16b-3 of the Exchange Act.

15. Change of Control. An Award may be subject to additional acceleration of vesting and exercisability upon or after a Change of Control as may be provided in the Award Agreement for such Award.

16. Time of Granting Awards. The date of grant of an Award shall, for all purposes, be the date on which the Administrator makes the determination granting such Award, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each Employee or Consultant to whom an Award is so granted within a reasonable time after the date of such grant.

17. Amendment and Termination of the Plan.

(a) Authority to Amend or Terminate. The Board may at any time amend, alter, suspend, discontinue or terminate the Plan, but no amendment, alteration, suspension, discontinuation or termination (other than an adjustment pursuant to Section 14 of the Plan) shall be made that would materially and adversely affect the rights of any Holder under any outstanding Award, without his or her consent. The preceding sentence shall not restrict the Administrator's ability to exercise its discretionary authority hereunder, which discretion may be exercised without amendment to the Plan. No provision of this Section 17 shall be given effect to the extent that such provision would cause any tax to become due under Section 409A of the Code. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

18. Conditions Upon Issuance of Shares; Securities Matters. The Company shall be under no obligation to affect the registration pursuant to the Securities Act of 1933, as amended, of any Shares to be issued hereunder or to effect similar compliance under any state, local or non-U.S. laws. Notwithstanding any other provision of the Plan or any Award Agreement, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. The Administrator may require, as a condition to the issuance of Shares pursuant to the terms hereof, that the recipient of such Shares make such covenants, agreements and representations, and that any related certificates representing such Shares bear such legends, as the Administrator, in its sole discretion, deems necessary or desirable. The exercise or settlement of any Award granted hereunder shall only be effective at such time as counsel to the Company shall have determined that the issuance and delivery of Shares pursuant to such exercise or settlement is in compliance with all Applicable Laws. The Company may, in its sole discretion, defer the effectiveness of any exercise or settlement of an Award granted hereunder in order to allow the issuance of Shares pursuant thereto to be made pursuant to registration or an exemption from registration or other methods for compliance available under U.S. federal, state, local or non-U.S. securities laws. The Company shall inform the Holder in writing of its decision to defer the effectiveness of the exercise or settlement of an Award granted hereunder. During the period that the effectiveness of the exercise of an Award has been deferred, the Holder may, by written notice, withdraw such exercise and obtain the refund of any amount paid with respect thereto.

19. Recoupment. Notwithstanding anything in the Plan or in any Award Agreement to the contrary, the Company will be entitled to the extent permitted or required by Applicable Law, Company policy and/or the requirements of a Stock Exchange on which the Shares are listed for trading, in each case, as in effect from time to time, to recoup compensation of whatever kind paid by the Company at any time to a Holder under this Plan. No such recoupment of compensation will be an event giving rise to a right to resign for “good reason” or “constructive termination” (or similar term) under any agreement between any Holder and the Company.

20. Changes in Status & Leaves of Absence. The Administrator shall have the discretion to determine (whether by establishing a policy applicable to the treatment of any or all Awards in such circumstances, or by making an individualized determination) at any time whether and to what extent any tolling, reduction, vesting-extension, forfeiture or other treatment should be applied to an Award in connection with a Holder’s leave of absence or a change in a Holder’s regular level of time commitment to the Company (e.g., in connection with a change from full-time to part-time status); provided, however, that the Administrator shall not have any such discretion (whether pursuant to a policy or specific determination) to the extent that the grant of such discretion would cause any tax to become due under Section 409A of the Code; and provided, further, that in the absence of a determination to the contrary by the Administrator, vesting shall continue during any paid leave and shall be tolled during any unpaid leave (in all cases, unless otherwise required by Applicable Laws). In the event of any such tolling, forfeiture, reduction or extension, the Holder shall have no right to the portion of the Award so tolled, forfeited, reduced or extended (except for the right that remains, if any, after the application of such action).

21. Failure to Comply. In addition to the remedies of the Company elsewhere provided for herein, failure by a Holder to comply with any of the terms and conditions of the Plan or any Award Agreement, unless such failure is remedied by such Holder within ten days after having been notified of such failure by the Administrator, shall be grounds for the cancellation and forfeiture of such Award, in whole or in part, as the Administrator, in its sole discretion, may determine.

22. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

23. Agreements. Awards shall be evidenced by Award Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

24. Section 409A.

(a) Unless otherwise expressly provided for in an Award Agreement, the Plan and each Award Agreement will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Administrator determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the Shares are publicly traded, and if a Holder holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Holder's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Holder's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

(b) With respect to any Award that constitutes nonqualified deferred compensation within the meaning of Section 409A of the Code, termination of a Holder's Continuous Service Status shall mean a separation from service within the meaning of Section 409A of the Code, unless the Holder was an Employee immediately prior to such termination and is then contemporaneously retained as a Consultant pursuant to a written agreement and such agreement provides otherwise. The Continuous Service Status of a Holder shall be deemed to have terminated for all purposes of the Plan if such person is employed by or provides services to Subsidiary and such Subsidiary ceases to be a Subsidiary, unless the Administrator determines otherwise. To the extent permitted by Section 409A of the Code, a Holder who ceases to be an Employee of the Company but continues, or simultaneously commences, services as a Director of the Company shall be deemed to have had a termination of Continuous Service Status for purposes of the Plan.

25. Beneficiaries. Unless stated otherwise in an Award Agreement, a Holder may designate one or more beneficiaries with respect to an Award by timely filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Holder's death. If no beneficiary was designated or if no designated beneficiary survives the Holder, then, after a Holder's death, any vested Award(s) shall be transferred or distributed to the Holder's estate.

26. Expenses and Receipts. The expenses of the Plan shall be paid by the Company. Any proceeds received by the Company in connection with any Award will be used for general corporate purposes.

27. Stockholder Approval. If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws. If the stockholders fail to approve the Plan within 12 months after its adoption by the Board, then any Awards granted or sold under the Plan shall be rescinded and no additional grants or sales shall thereafter be made under the Plan. Subject to such approval by stockholders and to the requirement that no Shares may be issued hereunder prior to such approval, Awards may be granted hereunder on and after adoption of the Plan by the Board.

28. Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Holder shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Administrator, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Holder. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of Shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the preparation of the Award Agreement or related grant documentation, the corporate records will control, and the Holder will have no legally binding right to the incorrect term in the Award Agreement or related grant documentation.

29. Severability. If all or any part of this Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not serve to invalidate any portion of this Plan not declared to be unlawful or invalid. Any Section or part of a Section so declared to be unlawful or invalid shall, if possible, be construed in a manner that will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

30. Notice. Any written notice to the Company required by any provisions of this Plan shall be addressed to the Secretary of the Company and shall be effective when received.

31. Governing Law; Interpretation of Plan and Awards.

(a) This Plan and all determinations made and actions taken pursuant hereto shall be governed by the substantive laws, but not the choice of law rules, of the state of Delaware.

(b) In the event that any provision of the Plan or any Award granted under the Plan is declared to be illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision shall be reformed, if possible, to the extent necessary to render it legal, valid and enforceable, or otherwise deleted, and the remainder of the terms of the Plan and/or Award shall not be affected except to the extent necessary to reform or delete such illegal, invalid or unenforceable provision.

(c) The headings preceding the text of the sections hereof are inserted solely for convenience of reference, and shall not constitute a part of the Plan, nor shall they affect its meaning, construction or effect.

(d) The terms of the Plan and any Award shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, beneficiaries, successors and assigns.

(e) All questions arising under the Plan or under any Award shall be decided by the Administrator in its total and absolute discretion. In the event the Holder believes that a decision by the Administrator with respect to such person was arbitrary or capricious, the Holder may request arbitration with respect to such decision. The review by the arbitrator shall be limited to determining whether the Administrator's decision was arbitrary or capricious. This arbitration shall be the sole and exclusive review permitted of the Administrator's decision, and the Awardee shall as a condition to the receipt of an Award be deemed to explicitly waive any right to judicial review.

32. Limitation on Liability. The Company and any Affiliate which is in existence or hereafter comes into existence shall not be liable to a Holder, an Employee or any other persons as to:

(a) The Non-Issuance of Shares. The non-issuance or sale of Shares (including under Section 18 above) as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares hereunder.

(b) Tax Consequences. Any tax consequence realized by any Holder, Employee or other person due to the receipt, vesting, exercise or settlement of any Award granted hereunder or due to the transfer of any Shares issued hereunder. The Holder is responsible for, and by accepting an Award under the Plan agrees to bear, all taxes of any nature that are legally imposed upon the Holder in connection with an Award, and the Company does not assume, and will not be liable to any party for, any cost or liability arising in connection with such tax liability legally imposed on the Holder. In particular, Awards issued under the Plan may be characterized by the Internal Revenue Service (the "IRS") as "deferred compensation" under the Code resulting in additional taxes, including in some cases interest and penalties. In the event the IRS determines that an Award constitutes deferred compensation under the Code or challenges any good faith characterization made by the Company or any other party of the tax treatment applicable to an Award, the Holder will be responsible for the additional taxes, and interest and penalties, if any, that are determined to apply if such challenge succeeds, and the Company will not reimburse the Holder for the amount of any additional taxes, penalties or interest that result.

(c) Forfeiture. The requirement that a Holder forfeit an Award, or the benefits received or to be received under an Award, pursuant to any Applicable Law.

AFFIRM HOLDINGS, INC.
2020 EMPLOYEE STOCK PURCHASE PLAN

The following constitute the provisions of the Affirm Holdings, Inc. 2020 Employee Stock Purchase Plan.

1. Purpose. The purpose of the Plan is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock of the Company through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Internal Revenue Code of 1986, as amended. The provisions of the Plan, accordingly, shall be construed so as to extend and limit participation in a manner consistent with the requirements of that section of the Code. However, the Company may grant options pursuant to one or more offerings under the Plan that are not intended to meet the requirements of Code Section 423.

The Plan was adopted by the Board on November 18, 2020, and approved by the Company's stockholders on [•]. The Plan shall become effective on [•].

2. Definitions.

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(c) "Common Stock" shall mean the Class A Common Stock of the Company.

(d) "Company" shall mean Affirm Holdings, Inc., a Delaware corporation.

(e) "Compensation" shall mean the base salary payable to an Employee by the Company or one or more Designated Subsidiaries during such individual's period of participation in one or more offerings under the Plan, plus any pre-tax contributions made by the Employee to any cash-or-deferred arrangement that meets the requirements of Section 401(k) of the Code or any cafeteria benefit program that meets the requirements of Section 125 of the Code, now or hereafter established by the Company or any Designated Subsidiary. The Plan Administrator may make modifications to the definition of Compensation for one or more offerings as deemed appropriate.

(f) "Designated Subsidiaries" shall mean all Subsidiaries of the Company designated by the Plan Administrator from time to time in its sole discretion as eligible to participate in the Plan.

(g) "Employee" shall mean any individual who is a regular employee of the Company or a Designated Subsidiary, excluding those individuals who (i) have not been regular employees of the Company or a Designated Subsidiary for, at least, thirty (30) days prior to the Offering Period, or such other period of time as specified by the Plan Administrator in the Company's eligibility policy as from time to time amended and in effect, (ii) are customarily employed twenty (20) hours or less per week, and (iii) are customarily employed not more than five (5) months in any calendar year. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company. Unless otherwise determined by the Plan Administrator and set forth in the applicable offering, where the period of leave exceeds three (3) months and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the 1st day following the expiration of such three (3)-month period.

(h) "Enrollment Date" shall mean the first day of each Offering Period.

(i) "Exercise Date" shall mean the last Trading Day in each Offering Period.

(j) "Fair Market Value" shall mean, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange, its Fair Market Value shall be the closing sales price for such stock as reported by the National Association of Securities Dealers (if primarily traded on the NASDAQ Global Select Market) or as quoted in the composite tape of transactions on any other stock exchange (with the greatest volume of trading in Common Stock) at the end of regular hours trading on the day of such determination (or if no closing price was reported on that day, on the last preceding Trading Day such closing price was reported), as reported in the Wall Street Journal or such other source as the Plan Administrator deems reliable, or;

(ii) If the Common Stock is quoted on the NASDAQ system (but not on the National Market System thereof) or is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high and low asked prices for the Common Stock at the end of regular hours trading on the day of such determination (or if no such prices were reported on that day, on the last preceding Trading Day such prices were reported), as reported in the Wall Street Journal or such other source as the Plan Administrator deems reliable, or;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board.

(k) "Offering Period" shall mean a period with respect to which the right to purchase Common Stock may be granted under the Plan, as set forth in Section 5.

(l) "Plan" shall mean this Affirm Holdings, Inc. 2020 Employee Stock Purchase Plan.

(m) "Plan Administrator" shall mean the Board or a committee of the Board appointed by the Board to administer the Plan in accordance with Section 15.

(n) "Purchase Price" shall mean an amount equal to 85% of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided, however, the Plan Administrator may establish a higher price for one or more offerings under the Plan.

(o) "Reserves" shall mean the number of shares of Common Stock covered by the options under the Plan which have not yet been exercised and the number of shares of Common Stock which have been authorized for issuance under the Plan but not yet placed under option.

(p) "Subsidiary" shall mean a corporation, domestic or foreign, of which not less than 50% of the total combined voting power of all classes of stock are held by the Company or a Subsidiary, whether or not such corporation now exists or is hereafter organized or acquired by the Company or a Subsidiary.

(q) "Trading Day" shall mean a day on which the National Association of Securities Dealers Automated Quotation (NASDAQ) System is open for trading.

3. Eligibility.

(a) Options may be granted only to Employees. Unless otherwise determined by the Plan Administrator for an offering, any Employee, as defined in Section 2(g), who has been continuously employed by the Company for at least thirty (30) days and who shall be employed by the Company on the Enrollment Date for an Offering Period shall be eligible to participate in the Plan for such Offering Period.

(b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (and any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any Subsidiary of the Company, or (ii) which permits his or her rights to purchase stock under all employee stock purchase plans (within the meaning of Section 423 of the Code) of the Company and its Subsidiaries to accrue at a rate which exceeds Twenty-Five Thousand Dollars ($25,000) worth of stock (determined at the Fair Market Value of the shares at the time such option is granted) for each calendar year in which such option is outstanding at any time.

4. Offerings. The Plan shall be implemented through one or more offerings. Offerings may be consecutive or overlapping. Each offering shall be in such form and shall contain such terms and conditions as the Plan Administrator shall deem appropriate. The terms of separate offerings need not be identical; provided, however, that each offering shall comply with the provisions of the Plan and the participants in each offering shall have equal rights and privileges under that offering in accordance with the requirements of Section 423(b)(5) of the Code and the applicable regulations thereunder.

5. Offering Periods. Offerings shall be implemented by consecutive Offering Periods. Each Offering Period shall commence at such time and be of such duration not to exceed twenty-seven (27) months, as determined by the Plan Administrator prior to the start of the applicable Offering Period. The initial Offering Period shall commence on the date established by the Plan Administrator and shall be of such duration (not to exceed twenty-seven (27) months) as determined by the Plan Administrator.

7. Participation.

(a) An eligible Employee determined in accordance with Section 3 may elect to become a participant by accessing the website designated by the Company and electronically enrolling in an Offering Period or by submitting an enrollment agreement (in such form as the Company may provide) authorizing payroll deductions at least one (1) day prior to the applicable Enrollment Date, unless an earlier or later time for enrolling is set by the Plan Administrator for all eligible Employees with respect to a given offering or Offering Period.

(b) The Plan Administrator may permit Employees in one or more offerings to contribute to the Plan by means other than payroll deductions.

8. Payroll Deductions.

(a) At the time a participant enrolls in an Offering Period, he or she shall elect to have payroll deductions made during the Offering Period pursuant to such procedures as the Plan Administrator may specify from time to time and in an amount between one percent (1%) and twenty-five percent (25%) of the Compensation which he or she receives during the Offering Period.

(b) Payroll deductions shall commence on the first payroll period following the Enrollment Date and shall end on the last payroll period in the Offering Period, unless sooner altered or terminated as provided in the Plan.

(c) All payroll deductions made for a participant shall be credited to his or her account under the Plan and will be withheld in whole percentages only. A participant may not make any additional payments into such account unless specifically provided for in the offering.

(d) A participant may discontinue his or her participation in the Plan as provided in Section 12, or may decrease the rate of his or her payroll deductions during the current Offering Period by accessing the website designated by the Company and electronically amending his or her enrollment agreement or by submitting a new enrollment agreement (in such form as the Company may provide) authorizing a decrease in payroll deduction rate. The decrease in rate shall be effective with the first full payroll period following ten (10) business days after the Company's receipt of the amended enrollment or earlier to the extent administratively practicable. A participant may increase the rate of his or her payroll deductions for an upcoming Offering Period by accessing the website designated by the Company and electronically amending his or her enrollment agreement or by submitting a new enrollment agreement (in such form as the Company may provide) authorizing an increase in payroll deduction rate within ten (10) business days prior to commencement of the upcoming Offering Period. A participant's enrollment agreement shall remain in effect for successive Offering Periods unless terminated as provided in Section 12. The Plan Administrator shall be authorized to limit the number of participation rate changes during any Offering Period.

(e) Notwithstanding the foregoing, to the extent necessary to comply with the limitations of Section 423(b)(8) of the Code and Section 3(b)(ii) herein, a participant's payroll deductions may be decreased to 0% during any Offering Period if such participant would, as a result of such limitations, be precluded from buying any additional Common Stock on the Exercise Date for that Offering Period. The suspension of such deductions shall not terminate the participant's participation in the Plan. Payroll deductions shall recommence at the rate provided in such participant's enrollment agreement at the beginning of the first Offering Period for which the participant is able to purchase shares in compliance with the limitations of Section 423(b)(8) of the Code and Section 3(b)(ii) herein, unless terminated by the participant as provided in Section 12.

9. Grant of Option. On the Enrollment Date of each Offering Period, each eligible Employee participating in such Offering Period shall be granted an option to purchase on the Exercise Date for such Offering Period (at the applicable Purchase Price) up to a number of shares of the Company's Common Stock determined by dividing such Employee's payroll deductions (and contributions) accumulated prior to such Exercise Date and retained in the participant's account as of the Exercise Date by the applicable Purchase Price; provided that such purchase shall be subject to the limitations set forth in Sections 3(b) and 14 hereof. However, the maximum number of shares of Common Stock purchasable per participant on any Exercise Date shall not exceed twenty-five thousand U.S. dollars ($25,000) worth of shares (calculated based on the closing price of shares of Common Stock on the first day of the applicable Offering Period), subject to periodic adjustments in the event of certain changes in the Company's capitalization as provided in Section 20. Exercise of the option shall occur as provided in Section 10, unless the participant has withdrawn pursuant to Section 12.

10. Exercise of Option.

(a) Unless a participant withdraws from the Plan as provided in Section 12 below, his or her option for the purchase of shares will be exercised automatically on each Exercise Date, and the maximum number of full shares subject to option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions (and contributions) in his or her account. No fractional shares will be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Offering Period, subject to earlier withdrawal by the participant as provided in Section 12. Any other monies left over in a participant's account after the Exercise Date shall be returned to the participant as soon as administratively practicable following the Exercise Date. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

(b) At the time the option is exercised, in whole or in part, or at the time some or all of the Company's Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, local, foreign or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company may, but will not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefit attributable to sale or early disposition of Common Stock by the participant. The Plan Administrator may require the participant to notify the Company before the participant sells or otherwise disposes of any shares acquired under the Plan.

11. Delivery to Broker Account. As promptly as practicable after each Exercise Date on which a purchase of shares occurs, the Company shall deliver the shares purchased by the participant to a brokerage account established for the participant at a Company-designated brokerage firm. The account will be known as the "ESPP Broker Account". The Company may require that, except as otherwise provided below, the deposited shares may not be transferred (either electronically or in certificate form) from the ESPP Broker Account until the later of the following two periods: (i) the end of the two (2)-year period measured from the Enrollment Date for the Offering Period in which the shares were purchased and (ii) the end of the one (1)-year measured from the Exercise Date for that Offering Period.

Such limitation shall apply both to transfers to different accounts with the same broker and to transfers to other brokerage firms. Any shares held for the required holding period may be transferred (either electronically or in certificate form) to other accounts or to other brokerage firms.

The foregoing procedures shall not in any way limit when the participant may sell his or her shares. Those procedures are designed solely to assure that any sale of shares prior to the satisfaction of the required holding period is made through the ESPP Broker Account. In addition, the participant may request a stock certificate or share transfer from his or her ESPP Broker Account prior to the satisfaction of the required holding period should the participant wish to make a gift of any shares held in that account. However, shares may not be transferred (either electronically or in certificate form) from the ESPP Broker Account for use as collateral for a loan, unless those shares have been held for the required holding period.

The foregoing procedures shall apply to all shares purchased by the participant under the Plan, whether or not the participant continues in Employee status.

12. Withdrawal; Termination of Employment.

(a) A participant may withdraw all but not less than all the payroll deductions and other contributions, if any, credited to his or her account and not yet used to exercise his or her option under the Plan at any time by accessing the website designated by the Company and electronically withdrawing from the Offering Period or by giving written notice to the Company (in such form as the Company may provide). All of the participant's payroll deductions credited to his or her account will be paid to such participant as soon as practicable after receipt of notice of withdrawal and such participant's option for the Offering Period will be automatically terminated, and no further payroll deductions (or contributions) for the purchase of shares will be made during the Offering Period. If a participant withdraws from an Offering Period, payroll deductions (or contributions) will not resume at the beginning of the succeeding Offering Period unless the participant timely enrolls in that Offering Period.

(b) Upon a participant's ceasing to be an Employee for any reason or upon termination of a participant's employment relationship (as described in Section 2(g)), the payroll deductions and other contributions, if any, credited to such participant's account during the Offering Period but not yet used to exercise the option will be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 16, and such participant's option will be automatically terminated. A participant whose employment is deemed to have terminated under Section 2(g) may participate in any future Offering Period in which such individual is eligible to participate by timely enrollment in that Offering Period.

13. Interest. No interest shall accrue on the payroll deductions credited to a participant's account under the Plan unless otherwise required by applicable law.

14. Stock.

(a) The maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan shall be 6,389,958 shares of Common Stock. The share reserve shall be subject to adjustment upon changes in capitalization of the Company as provided in paragraph 19. If on a given Exercise Date the number of shares with respect to which options are to be exercised exceeds the number of shares then available under the Plan, the Company shall make a pro rata allocation of the shares remaining available for purchase in as uniform a manner as shall be practicable and as it shall determine to be equitable.

(b) In addition, the number of shares of the Company's Common Stock available for issuance under the Plan will automatically increase on the first day of each fiscal year, for a period of not more than ten years from the date the Plan is approved by the stockholders of the Company, commencing on July 1, 2021, and ending on (and including) July 1, 2030, in an amount equal to the lesser of (i) one percent (1%) of the total number of shares of the Company's capital stock outstanding on the last day of the calendar month prior to the date of such automatic increase; (ii) 18,000,000 shares of Common Stock; or (iii) such lesser number of shares of Common Stock as determined by the Board at any time prior to the first day of a given fiscal year.

(c) The participant will have no interest or voting right in shares covered by his option until such option has been exercised and the participant has become a holder of record of the purchased shares.

15. Administration.

(a) The Plan shall be administered by the Board of the Company or a committee of members of the Board appointed by the Board. The Board or its committee shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. Every finding, decision and determination made by the Board or its committee shall, to the full extent permitted by law, be final and binding upon all parties. Members of the Board who are eligible Employees are permitted to participate in the Plan, provided that:

(i) Members of the Board who are eligible to participate in the Plan may not vote on any matter affecting the administration of the Plan or the grant of any option pursuant to the Plan.

(ii) If a committee is established to administer the Plan, no member of the Board who is eligible to participate in the Plan may be a member of the committee.

(b) In addition, subject to the provisions of the Plan and, in the case of a committee, the specific duties delegated by the Board to such committee, the Board shall have the authority, in its sole discretion to approve addenda pursuant to Section 15(c) to accommodate participation of Employees employed by a non-U.S. Subsidiary with such terms and conditions as the Board deems necessary or appropriate to accommodate differences in local law, tax policy or custom which deviate from the terms and conditions set forth in the Plan to the extent necessary or appropriate to accommodate such differences.

(c) The Board may approve such addenda to the Plan as it may consider necessary or appropriate to accommodate differences in local law, tax policy or custom, which, if so required under applicable laws, may deviate from the terms and conditions set forth in the Plan. The terms of any such addenda shall supersede the terms of the Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of the Plan as in effect for any other purpose.

16. Designation of Beneficiary.

(a) A participant may file a written designation of a beneficiary who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such participant of such shares and cash. In addition, a participant may file a written designation of a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant (and his or her spouse, if any) at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

17. Transferability. Neither payroll deductions (or contributions) credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 16 by the participant). Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 12.

18. Use of Funds. All payroll deductions (and contributions) received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such monies unless otherwise required by applicable law.

19. Reports. Individual book accounts will be maintained for each participant in the Plan. Statements of account will be given to participating Employees at least annually, which statements will set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any.

20. Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the stockholders of the Company, the Reserves as well as the number of shares and price per share of Common Stock covered by each option under the Plan which has not yet been exercised and the maximum number of shares that may be purchased per participant on any Exercise Date, shall be equitably adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration". Such adjustment shall be made by the Plan Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an option. The Plan Administrator may, if it so determines in the exercise of its sole discretion, make provision for adjusting the Reserves as well as the price per share of Common Stock covered by each outstanding option and the maximum number of shares that may be purchased per participant on any Exercise Date, in the event the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of shares of its outstanding Common Stock.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Offering Periods will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Plan Administrator.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each option under the Plan shall be assumed or an equivalent option shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless the Plan Administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Periods then in progress by setting a new Exercise Date (the "New Exercise Date"). If the Plan Administrator shortens the Offering Periods then in progress in lieu of assumption or substitution in the event of a merger or sale of assets, the Plan Administrator shall notify each participant in writing, at least ten (10) days prior to the New Exercise Date, that the Exercise Date for his option has been changed to the New Exercise Date and that his option will be exercised automatically on the New Exercise Date, unless prior to such date he has withdrawn from the Offering Period as provided in Section 12. For purposes of this paragraph, an option granted under the Plan shall be deemed to be assumed if, following the sale of assets or merger, the option confers the right to purchase, for each share of option stock subject to the option immediately prior to the sale of assets or merger, the consideration (whether stock, cash or other securities or property) received in the sale of assets or merger by holders of Common Stock for each share of Common Stock held on the effective date of the transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration received in the sale of assets or merger was not solely common stock of the successor corporation or its parent (as defined in Section 424(e) of the Code), the Plan Administrator may, with the consent of the successor corporation and the participant, provide for the consideration to be received upon exercise of the option to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by holders of Common Stock in the sale of assets or merger.

21. Amendment or Termination.

(a) The Board may at any time and for any reason terminate or amend the Plan. Except as provided in Section 20 or as necessary to comply with applicable laws or regulations, no such termination or amendment can adversely affect options previously granted without the consent of the affected participant. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision) or any other applicable law or regulation, the Company shall obtain stockholder approval in such a manner and to such a degree as required.

(b) Without stockholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Plan Administrator shall be entitled to change the Offering Periods, change the maximum number of shares of Common Stock purchasable per participant on any Exercise Date, limit the frequency and/or number of changes in the amount withheld during Offering Periods, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation or contributed by the participant, and establish such other limitations or procedures as Plan Administrator determines in its sole discretion advisable which are consistent with the Plan.

22. Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

23. Conditions Upon Issuance of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance. In addition, should the Plan not be registered on an Exercise Date of any Offering Period in any foreign jurisdiction in which such registration is required, then no options granted with respect to the Offering Period to employees in that foreign jurisdiction shall be exercised on such Exercise Date, and all contributions accumulated on behalf of such employees during the Offering Period ending with such Exercise Date shall be distributed to the participating employees in that foreign jurisdiction without interest unless the terms of the offering specifically provide otherwise or otherwise required by applicable law.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

24. Governing Law. The Plan and the rights of all persons under the Plan shall be construed and administered in accordance with the laws of the State of Delaware without regard to its conflict of law principles.

25. Term of Plan. The Plan was adopted by the Board on November 18, 2020, and approved by the Company's stockholders on [•]. The Plan shall become effective on [•]. It shall continue in effect until terminated under paragraph 21.

Exhibit 10.4

Certain identified information in this document has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed, and has been marked with "[***]" to indicate where omissions have been made.

SECOND AMENDED AND RESTATED

LOAN PROGRAM AGREEMENT

between

CROSS RIVER BANK

and

AFFIRM, INC.

Dated as of

November 1, 2020

Table of Contents

Exhibits

Schedules

LOAN PROGRAM AGREEMENT

THIS SECOND AMENDED AND RESTATED LOAN PROGRAM AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made and entered into as of November 1, 2020 (the "Effective Date"), by and between CROSS RIVER BANK, an FDIC-insured New Jersey state chartered bank ("Bank") and AFFIRM, INC., a Delaware corporation ("Platform Agent").

WHEREAS, Bank is an FDIC-insured New Jersey state-chartered commercial bank with the authority to originate consumer loans throughout the United States of America;

WHEREAS, Platform Agent is in the business of facilitating the marketing of consumer loans;

WHEREAS, Platform Agent and its Affiliates have developed a loan application processing system (the "Platform") which is capable of processing applications for consumer loans in accordance with Bank's credit criteria;

WHEREAS, Platform Agent and Bank are parties to that certain Amended and Restated Loan Program Agreement, dated as of February 1, 2018 (the "Existing Program Agreement");

WHEREAS, Platform Agent and Bank desire to amend and restate the Existing Program Agreement as set forth herein; and

WHEREAS, Bank desires to use the Platform to promote the availability of credit, encourage the submission of applications through the Platform for such credit and facilitate the making of loans in accordance with Bank's credit criteria to qualifying consumers.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions and mutual covenants and agreements contained herein, for good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. The following defined terms shall have the indicated meanings set forth in this Section 1.1. To the extent used but not otherwise defined herein, defined terms shall have the meanings attributed to them in the Loan Sale Agreement.

"ACH" means automated clearing house.

"Advertising Materials" means all materials and methods used by Platform Agent in the performance of its marketing, advertising, promotional and solicitation services under this Agreement, including advertisements, direct mail pieces, electronic, telephonic and/or internet marketing, brochures, call scripts, website materials and any other similar materials.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person. As used in this definition of Affiliate, the term "control" means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through ownership of such Person's voting securities, by contract or otherwise, and the terms "affiliated," "controlling" and "controlled" have correlative meanings to the foregoing.

"Agreement" means this Loan Program Agreement, including all schedules and exhibits hereto.

"Anti-Corruption Laws" means all laws, rules and regulations of any jurisdiction applicable to Platform Agent or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Anti-Money Laundering Laws" means all laws, rules and regulations of any jurisdiction applicable to Platform Agent or its Subsidiaries from time to time concerning or relating to money-laundering, including the Bank Secrecy Act 31 U.S.C. § 5311 et seq. and Regulation X promulgated thereunder and the applicable sections of the Patriot Act and implementing regulations related to know-your-customer and customer identification programs.

"Applicable Laws" means all federal, state and local laws, statutes, ordinances, regulations and orders, together with all rules established by self-regulatory organizations, including the National Automated Clearing House Association, or government sponsored entities, applicable to a party or relating to or affecting any aspect of the Program (including the Loans), consumer credit laws, rules and regulations, and all requirements of any Regulatory Authority having jurisdiction over a party hereto or any activity provided for in this Agreement or any other Program Document, including in connection with a judicial proceeding in which Bank, Platform Agent or a Third-Party Service provider is a party and all rules and any regulations or policy statements or guidance and any similar pronouncement of a Regulatory Authority, or officially published regulatory interpretation of the foregoing, applicable to the acts of Bank, Platform Agent or a Third-Party Service Provider as they relate to the Program or a party's performance of their obligations under the Program Documents.

"Bank" means Cross River Bank.

"Bank Allocation Percentage" has the meaning set forth in Exhibit A.

"Bank Origination Month" means each month in which Bank originates Loans during the Term.

"Bank Origination Monthly Cohort" means, with respect to each Bank Origination Month, each of the Loans originated by Bank during such Bank Origination Month.

"Borrower" means, with respect to a Loan, each Person who is a borrower under such Loan and each other obligor (including any co-signor or guarantor) that is required to satisfy the payment obligation with respect to such Loan.

"Business Day" means any day upon which New Jersey state banks are open for business, but excluding Saturdays and Sundays.

"Change of Control" means, with respect to a Person, the occurrence of either (a) any merger or consolidation with another Person or (b) an event by which any Person that is not an Affiliate of such Person succeeds to all or substantially all of its properties and assets; provided, however, that neither an initial public offering of such party's securities nor an internal reorganization of such party whereby the same beneficial owner of such party retains such beneficial ownership after giving effect to such transfer shall constitute a "Change of Control".

"Competitor Agent" means other platform agents which market point-of-sale or other unsecured consumer loans for Bank substantially similar in all respects to the Loans marketed by Platform Agent under the Program.

"Complaint" means an oral or written statement or inquiry from a consumer, or his or her representatives, or about a consumer concerning products or services offered by Bank or Platform Agent in connection with this Agreement. "Inquiry" for purposes of this definition excludes a question that a reasonable person would conclude from the facts does not indicate a concern on the part of the person making the inquiry. For the avoidance of doubt, a Complaint shall not include: (a) general information requests; (b) transaction requests; (c) any communication that a reasonable person would conclude from the facts does not indicate a concern on the part of the person submitting such communication; (d) comments on social media channels maintained by Platform Agent that are either (1) from an individual that is not a customer or prospective customer or (2) from a customer that does not seek a specific outcome or assistance; or (e) communications from a customer after a completed or remediated application, interaction, Complaint or dispute in which such customer expresses disagreement with the outcome but does not provide or identify any justification for such disagreement or for changing the outcome.

"Compliance Guidelines" means the policies and procedures for compliance with Applicable Laws, as set forth in Exhibit C.

"Confidential Information" means confidential or proprietary information including the names and addresses of a party's customers, marketing plans and objectives, research and test results and other information that is confidential and the property of the party disclosing the information, which shall include (i) the Program Documents, the Program Guidelines and the Program Materials, (ii) Customer Information, (iii) business information (including products and services, employee information, business models, know-how, strategies, designs, reports, data, research, financial information, pricing information, corporate client information, market definitions and information, and business inventions and ideas), and (iv) Technical Information.

"Credit Policy" means the credit requirements, including requirements applicable to applications for the extension of credit, of Bank as set forth in the Program Guidelines to be used by Platform Agent in reviewing all Loan Applications on behalf of Bank, as more fully set forth in Exhibit B.

"Credit Model Policy" means Platform Agent's policies and procedures regarding its model risk management, which shall include the policies and procedures required by FIL 22.

"Credit Model Documentation" means all documentation concerning the Credit Model Policy mutually agreed between Platform Agent and Bank and for which both parties agree to use their reasonable efforts to have in place on or before January 31, 2018, but which shall in no event be less than the standard reasonably determined by Bank to verify compliance with the Credit Model Policy.

"Customer Information" means all information concerning Borrowers and Loan Applicants, including nonpublic personal information as defined under the Gramm-Leach-Bliley Act of 1999 and implementing regulations, including all nonpublic personal information of or related to customers or consumers of either party, including names, addresses, telephone numbers, account numbers, customer lists, credit scores and account, financial and transaction information, consumer reports and information derived from consumer reports that is subject to protection from publication under Applicable Laws, including any and all Borrower information handled by Platform Agent in connection with the Program required to be treated as confidential or otherwise subject to the control objectives of the Payment Card Industry Data Security Standard, including the rules and regulations thereunder.

"Disbursed Proceeds" means, with respect to a Loan, an amount equal to the Original Borrower Loan Amount *less* the Platform Agent Facilitation Fee that is disbursed to the related Merchant, on behalf of the related Borrower, in connection with the origination of such Loan by Bank under the Program.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974 and any rule or regulation issued thereunder.

"FCRA" means the Fair Credit Reporting Act of 1970 and any rule or regulation implemented thereunder.

"FDIC" means the Federal Deposit Insurance Corporation.

"FFIEC" means the Federal Financial Institutions Examination Council.

"FIL 22" means Financial Institution Letter FIL-22-2017, dated June 7, 2017, by the FDIC and any guidance issued thereunder.

"Funding Date" means any day on which Bank receives a Funding Statement from Platform Agent pursuant to Section 5.1(a); provided, however, that if Bank receives any such Funding Statement (i) on a day that is not a Business Day or (ii) after 12:00 pm (eastern time) on a Business Day, Bank may delay the Funding Date to be the immediately succeeding Business Day.

"Funding Statement" means a statement provided by Platform Agent to Bank with respect to each Loan that Platform Agent is submitting to Bank for origination containing (i) a list of all Loan Applicants that meet the eligibility criteria set forth in the Program Guidelines; (ii) the Original Borrower Loan Amount and the Disbursed Proceeds for each such Loan; (iii) all information necessary for the transfer of the Disbursed Proceeds to the related Merchant on behalf of the Borrower, including depository institution names, routing numbers and account numbers; and (iv) such other information as shall be reasonably requested by Bank and mutually agreed to by Bank and Platform Agent.

"GAAP" means generally accepted accounting principles in the United States of America, applied on a materially consistent basis.

"Government List" means (i) the Annex to Presidential Executive Order 13224 (Sept. 23, 2001), (ii) OFAC's most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including the OFAC website, http://www.treasury.gov/ofac/downloads/sdnlist.pdf or any successor website or webpage) and (iii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained by a Governmental Authority that Bank notifies Platform Agent in writing is now included in a "Government List."

"Governmental Authority" means any court, board, agency, commission, office or authority of any nature whatsoever or any governmental unit (federal, state, commonwealth, county, district, municipal, city or otherwise), including the Office of the Comptroller of the Currency, the Department of Justice, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System and the New Jersey Department of Banking and Insurance whether now or hereafter in existence, including any Regulatory Authority.

"Information Security Incident" means any actual or reasonably suspected unauthorized access to or acquisition, use, disclosure, modification or destruction of any nonpublic personal information.

"Initial Term" means the three (3) years following the Effective Date.

"Intellectual Property Rights" means (i) all intellectual property rights of any kind, worldwide, including utility patents, design patents, utility models and all applications for the foregoing, (ii) Marks, and (iii) published and unpublished works of authorship, registered and unregistered copyrights and all registrations and applications for the foregoing; software, technology and documentation; and trade secrets, Technical Information, business information, ideas, inventions, know-how and other confidential and proprietary information, in whatever form.

"Level One Complaint" means any Complaint (i) received through a Governmental Authority, or (ii) identifying any violation of UDAAP or Fair Lending Laws (as defined in Exhibit C) that requires immediate attention.

"Loan" means a consumer loan made by Bank to a Borrower under the Program.

"Loan Account Agreement" means, with respect to a Loan, the document or documents containing the terms and conditions of such Loan, including the disclosure statement, the loan agreement and the privacy notice.

"Loan Applicant" means a prospective Borrower that has completed a Loan Application for a Loan.

"Loan Application" means, with respect to a Loan or prospective Loan, the completed electronic application submitted by a Loan Applicant, on a form approved by Bank, related to a request for a Loan, together with any exhibits and ancillary materials; provided that the Loan Application may only be modified with the consent of Bank in its sole discretion.

"Loan Documents" mean, collectively, with respect to a Loan, the related Loan Account Agreement, the related Loan Application and any other documents provided to the related Borrower in connection with such Loan.

"Loan Origination Report" means a report substantially in the form of Exhibit D.

"Loan Performance Fee" means [***].

"Loan Performance Fee Rate" has the meaning set forth in Exhibit A.

"Loan Sale Agreement" means the Second Amended and Restated Loan Sale Agreement, dated as of the date hereof, between Bank, as seller, and the Purchaser [***].

"Losses" means all costs, damages, losses, fines, penalties, judgments, settlements and expenses whatsoever, including outside attorneys' fees and disbursements and court costs reasonably incurred by an indemnified party.

"Marks" means trademarks, trade names, service marks, logos, brands, corporate names, trade dress, domain names, social media user names, other source identifiers or indicia of goods or services, whether registered or unregistered, all registrations and applications for registration of the foregoing, all issuances, extensions, and renewals of such registrations and applications, and all goodwill associated with any of the foregoing.

"Material Adverse Effect" means, (a) with respect to a party, a material adverse effect on (i) the business, condition (financial or otherwise), operations or performance under this Agreement or any other Program Document of such party or (ii) the validity, enforceability or collectability of this Agreement or any other Program Document or (b) with respect to the Loans, the validity, enforceability or collectability of a material portion of (i) the Loans or (ii) the Loan Documents.

"Merchant" means a seller of goods or services to a Borrower.

"Monthly Minimum Purchase Premium" [***].

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA.

"Notification Related Costs" means Bank's internal and external costs associated with investigating, addressing and responding to an Information Security Incident, including: (i) preparation and mailing or other transmission of notifications or other communications to consumers, employees or others as Bank deems reasonably appropriate; (ii) establishment of a call center or other communications procedures in response to such Information Security Incident (e.g., customer service FAQs, talking points and training); (iii) public relations and other similar crisis management services; (iv) legal, consulting, forensic expert and accounting fees and expenses associated with Bank's investigation of and response to such incident; and (v) costs for commercially reasonable credit reporting and monitoring services that are associated with legally required notifications or are advisable under the circumstances.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of Treasury.

"Original Borrower Loan Amount" means, with respect to a Loan, the original principal balance of such Loan.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, and corresponding provisions of future laws.

"Patriot Act Offense" means any violation of the criminal laws of the Unites States of America or any state therein, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any state therein, as well as the crimes of conspiracy to commit, or aiding and abetting another to commit a crime, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism, (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, (D) the Money Laundering Control Act of 1986 or (E) the Patriot Act.

"Pension Plan" means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, other than a Multiemployer Plan, which Borrower sponsors or maintains, or to which it makes, is making, or is obliged to make contributions, or in the case of a multiple employer plan (as defined in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five plan years.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any Governmental Authority or any fiduciary acting in such capacity on behalf of any of the foregoing.

"Platform Agent" means Affirm, Inc., a Delaware corporation.

"Platform Agent Facilitation Fee" means, with respect to a Loan, the applicable fee payable to Platform Agent for the acquisition of the Borrower related to such Loan in an amount equal to the product of the Platform Agent Facilitation Fee Rate and the Original Borrower Loan Amount related to such Loan.

"Platform Agent Facilitation Fee Rate" means, with respect to each Loan, the rate negotiated between Platform Agent and the related Merchant or a Third-Party Service Provider within the range set forth in Exhibit A.

"Platform Agent Platform" means the computer software, proprietary system information, and related technology and documentation, developed and owned by, or licensed by third parties to, Platform Agent relating to the services offered or provided by Platform Agent to its customers pursuant to this Agreement, including the website operated by Platform Agent, and all Intellectual Property Rights therein owned by Platform Agent or licensed by third parties to Platform Agent; provided that the Platform Agent Platform does not include any Intellectual Property Rights owned by Bank or licensed by third parties to Bank.

"Platform Technical Auditor" means a consultant that is (a) not an Affiliate of Bank and (b) qualified to audit the Technical Information related to the Program.

"Program" means the Platform Agent's program for the marketing and servicing of Loans which Bank will originate pursuant to this Agreement and the Program Guidelines.

"Program Documents" means, collectively, this Agreement, the Servicing Agreement and the Loan Sale Agreement.

"Program Guidelines" means the guidelines for the administration of the Program, including the Credit Policy, the Underwriting Procedures and the Compliance Guidelines.

"Program Manager" means the respective principal contact appointed by Bank and Platform Agent to facilitate day-to-day operations and resolve issues that may arise in connection with the Program.

"Program Materials" means all Loan Documents and all other documents, materials and methods used in connection with the performance of Platform Agent's and Bank's obligations under this Agreement, including the Loan Applications, disclosures required by Applicable Laws and collection materials.

"Program Terms" means the pricing schedule and other loan terms and conditions in connection with the Program and all Loans, as specified on Exhibit A and the Credit Policy.

"Projection" means, with respect to a future fiscal year of Platform Agent, a report to be delivered by Platform Agent setting forth projected origination volumes, growth rates, loan term, expectations of credit quality (e.g., likelihood of delinquencies, losses and charge-offs) and projected liquidity for such fiscal year with respect to the Loans to be originated under the Program.

"Purchase Premium" means, [***].

"Purchase Premium Rate" has the meaning set forth in Exhibit A.

"Purchaser" means Affirm, Inc., in its capacity as Purchaser pursuant to the Sale Agreement.

"Regulatory Authority" means the Office of the New Jersey Department of Banking, the FDIC and any local, state or federal regulatory authority, that currently has, or may in the future have, jurisdiction or exercising regulatory or similar oversight with respect to any of the activities contemplated by this Agreement or any other Program Document or to Bank, Platform Agent or Third-Party Service Providers (except that nothing herein shall be deemed to constitute an acknowledgement by Bank or Platform Agent that any Regulatory Authority other than the New Jersey Department of Banking and the FDIC has jurisdiction or exercises regulatory or similar oversight with respect to Bank or this Agreement).

"Representatives" means, with respect to any Person, the respective Affiliates, officers, directors, counsel, representatives, employees, advisors, accountants, auditors or agents of such Person.

"Retained Loan" means each Loan that is not sold by Bank to Purchaser pursuant to Section 2 of the Loan Sale Agreement.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the United States government, including those administered by the OFAC or the U.S. Department of State.

"Securitization Transaction" means the issuance of an "asset backed security" (as defined under 17 C.F.R. § 229.1101(c) or Section 3(a)(77) of the Securities Exchange Act of 1934) backed by any Loans and any amounts owing thereunder.

"Servicing Agreement" means the Second Amended and Restated Servicing Agreement, dated as of the date hereof, between Affirm, Inc., as servicer, and Bank.

"Subsidiary" means, with respect to a Person, any entity with respect to which more than fifty percent (50%) of the outstanding voting securities shall at any time be owned or controlled, directly or indirectly, by such Person or any similar business organization which is so owned or controlled.

"Technical Information" means, with respect to the Program and Platform Agent Platform, all software, source code, documentation, algorithms, models, developments, inventions, processes, ideas, designs, drawings, hardware configuration and technical specifications, including computer terminal specifications and the source code developed from such specifications.

"Termination Event" has the meaning set forth in Section 8.1(a).

"Third-Party Service Provider" means, with respect to either Bank or Platform Agent, any contractor or service provider retained by Bank or Platform Agent, respectively, that provides or renders services in connection with the Program or this Agreement.

"Underwriting Procedures" means the underwriting requirements of Bank to be used by Platform Agent in reviewing all Loan Applications on behalf of Bank, as set forth in Exhibit B.

Section 1.2. Construction. As used in this Agreement: (i) all references to the masculine gender shall include the feminine gender (and vice versa); (ii) all references to "include," "includes" or "including" shall be deemed to be followed by the words "without limitation"; (iii) references to any law or regulation refer to that law or regulation as amended from time to time and include any successor law or regulation; (iv) references to another agreement, instrument or other document means such agreement, instrument or other document as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof; (v) references to "dollars" or "$" shall be to United States dollars unless otherwise specified herein; (vi) unless otherwise specified, all references to days, months, quarters or years shall be deemed to be preceded by the word "calendar"; (vii) "or" is not exclusive; (viii) unless otherwise specified, all references to an article, section, subsection, exhibit or schedule shall be deemed to refer to, respectively, an article, section, subsection, exhibit or schedule of or to this Agreement; (ix) unless the context otherwise clearly indicates, words used in the singular include the plural and words in the plural include the singular; and (x) in connection with the computation of any time period, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding".

ARTICLE II

GENERAL PROGRAM DESCRIPTION

Section 2.1. General Description. Platform Agent and Bank hereby agree that (a) Platform Agent shall market loans in accordance with the Program Guidelines throughout the United States and its territories in order to facilitate the making of Loans by Bank to Borrowers; (b) any review or other involvement by Bank in any action or any document preparation shall not relieve Platform Agent from its obligations to ensure that Loans are originated and Loan Applications are handled in accordance with Applicable Laws and the Program Guidelines; and (c) Platform Agent is acting under this Agreement as a service provider for Bank.

Section 2.2. Program Terms and Program Guidelines. Platform Agent shall comply with the Program Terms and the Program Guidelines in connection with the administration of the Program.

Section 2.3. Program Modifications.

(a) Program Modifications. Bank may change the Program Guidelines in its discretion, upon not less than thirty (30) days prior notice to Platform Agent, provided that the foregoing prior notice shall not be required in the event such modification is the result of a change in Applicable Law or at the request of a Regulatory Authority; provided further that if (i) such change is not as a result of a change in Applicable Law or at the request of a Regulatory Authority and such change would, in the reasonable and good faith determination of Platform Agent, materially and adversely affect Platform Agent, Platform Agent may suspend the Program until it has mutually agreed with Bank to modify the Program Guidelines in a manner that satisfies Bank, and (ii) such change is as a result of a change in Applicable Law or at the request of a Regulatory Authority, Platform Agent shall implement such change as soon as practicable. In the event that Bank's change to the Program Guidelines requires modifications to the Platform Agent Platform, Bank agrees to provide Platform Agent with adequate time as may be reasonably necessary for Platform Agent to implement such changes.

(b) Platform Agent Requests. Platform Agent may recommend modifications to the Program Guidelines for the improvement of the Program to Bank for incorporation into the Program Guidelines by Bank. Such modifications shall not be unreasonably rejected or delayed.

(c) Temporary Suspension. Notwithstanding anything in this Agreement to the contrary, Platform Agent may suspend its promotion or marketing of the Program, and may suspend its acceptance of Loan Applications on behalf of Bank, during any period in which the Platform Agent and the Bank do not agree on the terms of the Program Guidelines, including any Advertising Materials or Program Materials.

Section 2.4. Ownership of Loans and Customer Information.

(a) From the date Bank funds a Loan in accordance with the Program Guidelines to the date on which Bank sells, transfers and assigns any such Loan to the Purchaser pursuant to the Loan Sale Agreement, Bank shall be the sole owner for all purposes (including for tax, accounting and legal purposes) of such Loan, it being understood that Bank shall be the sole owner of any Loans that are not sold under the Loan Sale Agreement. Bank agrees to make entries on its books and records to clearly indicate the sale, transfer and assignment of each Loan to Purchaser pursuant to the terms of the Loan Sale Agreement. Except as otherwise set forth in this Agreement, Bank shall not have any liability to Purchaser for (i) the repayment of any amount at any time due under any Loan or (ii) the servicing of any Loan after each such date on which Bank sells, transfer and assigns such Loan to Purchaser pursuant to the Loan Sale Agreement. Subject to the right of Platform Agent to purchase Loans pursuant to the Loan Sale Agreement, nothing in this Agreement, or any other Program Documents, shall be construed to limit Bank's ability to sell any Loans to another Person in the event Platform Agent is unwilling or unable, or for any reason fails, to purchase such Loans under the terms of the Loan Sale Agreement.

(b) Bank shall have sole ownership of all Customer Information at all times prior to the sale of the related Loan pursuant to the Loan Sale Agreement including with respect to a Retained Loan and the Platform Agent shall be the owner of all Customer Information associated with any Loan purchased by Platform Agent. Without limiting the foregoing, Bank shall be permitted to retain copies of and use Customer Information associated with all Loans as necessary to comply with all Applicable Laws and Platform Agent shall deliver copies of all Customer Information that Bank has not received upon request of Bank.

Section 2.5. Securitization Transactions.

(a) Except as set forth in the Loan Sale Agreement, each of Platform Agent and Bank shall be permitted to (i) securitize any or all of the Loans it owns and any amounts owing thereunder, (ii) enter into a Securitization Transaction, or (iii) effect one or more sales of such Loans.

ARTICLE III

DUTIES OF PLATFORM AGENT AND BANK

Section 3.1. Duties and Responsibilities of Platform Agent and Bank. Platform Agent and Bank shall perform and discharge the following duties and responsibilities in connection with the Program:

(a) Compliance with Applicable Laws. Platform Agent and Bank shall comply in all material respects with Applicable Laws in performing their respective duties under this Agreement.

(b) Executive Departure. Each party shall notify the other party in writing (email being sufficient) within ten (10) Business Days after the departure from such party of an employee identified as being part of "Leadership" on such party's corporate website, provided that a violation of this Section 3.1(b) shall not be considered a default for purposes of Section 8.1(a).

(c) Notice/Approval and Response Guidelines. Each party shall comply with the obligations set forth in Exhibit F; provided that a violation of this Section 3.1(c) shall not be considered a default for purposes of Section 8.1(a). Where Platform Agent is seeking Bank's approval (the "Approval Request"), Bank shall provide approval or rejection within the applicable timeline specified in Exhibit F (the "Response Timeline"); provided that Bank's failure to respond to the Approval Request within the applicable Response Timeline shall be deemed an approval only if (i) the Approval Request was sent via email to the marketplace lending group responsible for responding to Approval Requests as designated by Bank from time to time and (ii) the Approval Request clearly states that Affirm is requesting Bank's approval of the subject matter therein.

Section 3.2. Duties and Responsibilities of Platform Agent. Platform Agent shall perform and discharge the following duties and responsibilities in connection with the services provided to Bank hereunder:

(a) Compliance Management. Platform Agent shall adopt and maintain compliance management systems satisfactory for (i) complying with the examination manual of the FDIC, (ii) achieving at least a "satisfactory" rating under the FFIEC consumer compliance rating system and (iii) meeting the Compliance Guidelines set forth in Exhibit C attached hereto. Platform Agent shall provide Bank full access to any information or data necessary for Bank, in Bank's discretion, to perform its oversight, risk management and compliance management responsibilities, including, but not limited to, Platform Agent's loan application and performance data, internal and external audits, liquidity and funding information.

(b) Reports and Information.

(i) Monthly Report. On the fifth (5th) Business Day of each month, Platform Agent shall deliver to Bank a report setting forth (1) the calculation of [***] for the prior Bank Origination Month and [***] for the prior month, which Bank may independently verify and (2) the information included in Schedule 3.2(b); provided that Bank may provide an updated Schedule 3.2(b) at any time upon reasonable prior notice to Platform Agent. Exhibit E outlines the reporting (as mutually agreed upon between Bank and Platform Agent) that will be provided to Bank by Platform Agent to reconcile the accuracy of the calculation of [***]. In the event that the reporting provided by Platform Agent appears to be erroneous or deviates materially from Exhibit E, each in Bank's reasonable discretion, Platform Agent shall provide any additional report or calculation as requested by Bank for Bank to reconcile the accuracy of the calculation of the [***].

(ii) Platform Reporting and Compliance. Platform Agent shall provide to Bank data submissions and reports reasonably requested by Bank to maintain effective enterprise risk management and internal controls to monitor Platform Agent's and its Third-Party Service Provider's compliance with this Agreement and with Applicable Laws. In addition, and without limiting the foregoing, Platform Agent shall provide such supplemental information as Bank may reasonably request regarding Loans originated using the Platform Agent Platform including measures such as production volumes and trends, approval rates, rejection or decline rates, losses, delinquencies, collections and any other measure that Platform Agent tracks in order to comply with the Program Guidelines. For Loans originated under this Agreement, Platform Agent shall provide such information (to the extent such information is not otherwise readily available to Bank) in a commercially reasonable manner and in a form sufficient to permit Bank to conduct a meaningful analysis for compliance with the Program Guidelines.

(c) Projections. On an annual basis beginning not later than July 1 of each fiscal year of Platform Agent, if such date is a Business Day, or if not, the first Business Day thereafter, Platform Agent shall provide a Projection to Bank. Platform Agent shall prepare a Projection in a commercially reasonable manner.

(d) Access to Records. Platform Agent shall provide Bank and applicable Regulatory Authorities with reasonable access to Platform Agent's offices (and shall cause its Third-Party Service Providers to provide access to their offices), to the books and records of Platform Agent (solely to the extent such books and records pertain to the Loans), the officers, employees and accountants of Platform Agent in each case, and to all computer files containing the Loan Documents, for the purpose of ensuring that Platform Agent and its Third-Party Service Providers are complying with the Program Guidelines and Applicable Laws.

(e) Access to Business Models and Technical Information. Platform Agent shall at all times comply with the Credit Model Policy and shall provide Bank with periodic access to the Technical Information underlying the Credit Model Policy, including all pricing, credit and underwriting assumptions related thereto and the applicable Credit Model Documentation for the sole purpose of validating consistency with FIL 22 and the Program Guidelines. Bank shall have the right to test and validate the Technical Information and the Credit Model Policy, including any underlying data, for the sole purpose of validating consistency with FIL 22 and the Program Guidelines. Subject to the confidentiality provisions of Section 10.4 hereof, Bank may, at its election and at the expense of Platform Agent, require Platform Agent to submit all Technical Information to a Platform Technical Auditor of Platform Agent's choosing (i) for validation of compliance with FIL 22 and the Program Guidelines, including, but not limited to, Applicable Laws and (ii) to independently test and validate Platform Agent's models for the Program, including Platform Agent's loan performance models. In connection with any such testing and validation, Bank shall cooperate with Platform Agent and Platform Technical Auditor including delivering any requested information and making available responsible personnel to answer questions on a timely and complete basis and Bank shall consent to the scope of such audit and such scope shall be designed to satisfy FIL 22. Any information shared with such Platform Technical Auditor shall be considered Confidential Information hereunder and such Platform Technical Auditor shall be subject to the confidentiality restrictions hereunder and may not share any Technical Information received from Platform Agent in connection with such audit with Bank. Platform Agent shall be the owner of the results of such review and shall share the results and any other requested information related to the Credit Model Policy, Program Guidelines and Applicable Laws with Bank promptly upon the completion of such review or audit. If the Platform Agent desires to modify the credit model, Platform Agent shall provide Bank ten (10) Business Days' prior written notice of the intended effectiveness of such credit model update, including a full-context summary of the assumptions underlying such credit model update as well as the anticipated effects thereof and Bank shall provide its consent to such update, not to be unreasonably withheld, within five (5) Business Days of the receipt of such notice; provided that in the event that Bank does not provide its consent by such 5th Business Day, Bank's consent shall be deemed to have been given to the implementation of such update; provided further that Bank may request that Platform Agent extend the time required to consent by five (5) Business Days while it reviews such update in good faith.

(f) Audit.

(i) Subject to any other agreement entered into with respect to Bank's right to audit, or cause an audit of, Platform Agent, on an annual basis, Bank shall be permitted to cause an audit (except to the extent a Platform Technical Auditor has audited the Program) by an independent third party firm selected by Platform Agent and acceptable to Bank and at Platform Agent's sole cost and expense, [***], to be conducted of Platform Agent's controls relating to the control, monitoring and supervision of the operation of the Program and of Platform Agent's and its Third-Party Service Provider's compliance with this Agreement, including ensuring that all Loans comply with the Program Guidelines and all Applicable Laws; provided, however, that if such audit has been conducted within the twelve (12) months prior to the Effective Date, then Platform Agent shall have met its Platform Audit obligations for the initial year under this Agreement; provided further that Bank shall (i) own the results of such audit, (ii) share such results with Platform Agent and (iii) keep such audit confidential except as required by Applicable Laws; provided further that Bank hereby consents to Platform Agent sharing the results of such audit with a third party, as Platform Agent deems reasonably necessary (subject to Platform Agent entering into a non-disclosure or other confidentiality agreement with any such third party). Platform Agent shall provide Bank with notice of such sharing of any audit that was paid for by both Parties. In addition to the foregoing, Platform Agent shall comply with all auditing obligations set forth in Schedule 3.2(f), and to cause the auditing reports to be delivered to Bank on the dates specified in such Schedule 3.2(f), each in form and substance satisfactory to Bank. [***].

(ii) Notwithstanding anything in this Agreement to the contrary, Bank shall have the following obligations to Platform Agent with respect to the annual audit performed pursuant to Section 3.2(f)(i):

a. Bank shall prepare and send an annual audit plan to Platform Agent on or before January 31st of the calendar year the audit is scheduled to take place, which sets forth the proposed scope and schedule of the audit; and

b. After an engagement letter has been negotiated and executed among the parties and the auditor, but before the audit has officially commenced, Bank shall, at a minimum, host and participate in a kick-off call (or multiple calls, if necessary) among Bank, Platform Agent and the auditor, which shall include a thorough discussion and consensus agreement about the exact scope and timeline of the audit.

(g) Non-Compliance and Remediation. Platform Agent agrees that should an audit, investigation or review of Platform Agent or its Third-Party Service Providers reveal noncompliance with this Agreement, the Program Guidelines or Applicable Laws, Platform Agent shall notify Bank as soon as reasonably practicable but in any event within ten (10) days of notice of the noncompliance. In addition to the indemnification provided for in Section 10.1, Platform Agent agrees to take all necessary steps to conform its or its Third-Party Service Providers' actions to the terms of this Agreement, the Program Guidelines or Applicable Laws, including providing applicable remediation or restitution to affected Borrowers that is required by Applicable Law.

(h) Quarterly Report. (a) In addition to Platform Agent's provision of annual and quarterly financial statements in accordance with Sections 9.3(a)(i) and 9.3(a)(ii), Platform Agent agrees that, upon the reasonable request by Bank not more often than quarterly, Platform Agent will provide a written overview of any material updates to its liquidity profile and loan funding capital partnerships.

(i) Monthly Report. Platform Agent shall provide a report to Bank, on a monthly basis not later than the twentieth (20^{th}) day of each month and in form and substance satisfactory to Bank, detailing all Complaints received by Platform Agent or any Third-Party Service Provider. Such report shall include for each Complaint, the name and address of the complaining Borrower or Loan Applicant, a brief summary of the Borrower's or Loan Applicant's Complaint, and (A) if resolved, a brief summary of how the Complaint was resolved (B) if not resolved, an anticipated timeframe for resolution.

(j) Platform Agent's Program Manager; Monthly Meetings. Platform Agent shall designate a Program Manager. On a monthly basis, Platform Agent's Program Manager and/or designated personnel shall meet with Bank's Program Manager and/or designated personnel to review the processes and procedures used by Platform Agent to ensure that the Program and this Agreement comply with Applicable Laws. If Platform Agent's Program Manager and Bank's Program Manager are unable to reach agreement with respect to any processes or procedures under the Program, then the dispute will be handled in accordance with Section 3.4(f) below.

(k) Regulatory Examinations. Both parties agree to submit to any examination that may be required by a Regulatory Authority having jurisdiction over the other party, during regular business hours and upon reasonable prior notice, and to otherwise reasonably cooperate with the other party in responding to such Regulatory Authority's examination and requests related to the Program.

(l) [***]

(m) Anti-Money Laundering Laws; Anti-Corruption Laws; Sanctions. Platform Agent shall comply and cause each of its Affiliates and Third-Party Service Providers to take action to enable Bank to comply in all material respects with all applicable Anti-Money Laundering Laws, Anti-Corruption Laws and Sanctions. Without limiting the generality of the foregoing, Platform Agent shall (a) maintain an anti-money laundering compliance program that is in compliance, in all material respects, with Anti-Money Laundering Laws, (b) conduct, in all material respects, the due diligence required under Anti-Money Laundering Laws and Sanctions in connection with all Loan Applications and Borrowers, including with respect to the applicable Borrower and (c) maintain sufficient information to identify the applicable Borrower for purposes of compliance, in all material respects, with Anti-Money Laundering Laws and Sanctions. Platform Agent shall provide notice to Bank, within five (5) Business Days of receipt, of any written notice of a violation or action received under any Anti-Money Laundering Law, Anti-Corruption Law or Sanctions involving Platform Agent or Third-Party Service Providers.

(n) Governmental Proceedings. Platform Agent shall reasonably cooperate with Bank with respect to any proceedings before any Governmental Authority related to this Agreement, the Loan Sale Agreement, the Servicing Agreement, including related to any Loan and, in connection therewith, permit Bank, at its election, to participate in any such proceedings.

(o) Disaster Recovery. Platform Agent shall establish and maintain a disaster recovery plan and business continuity plan, consisting of policies and procedures, as well as ancillary backup capabilities and facilities ("DRP"), that is designed to enable the performance of all Platform Agent's duties and obligations contemplated under this Agreement and other Program Documents in the event of any natural disaster or other unplanned interruption of services. At the request of Bank, the Platform Agent shall provide a current copy or summary of the DRP. Platform Agent shall not amend the DRP in a manner that knowingly materially increases the risks of disruptions and delays of its services without the consent of the Bank. Reinstating the services contemplated under this Agreement shall receive as high a priority as reinstating the similar services provided to Platform Agent's affiliates and other customers.

(p) Accounting System. Platform Agent shall establish and maintain, at its sole cost and expense, a comprehensive accounting and Loan tracking system to accurately track and report all Loan Applications, Loans and related information regarding the Program to satisfy the requirements of Bank set forth in this Agreement, applicable Regulatory Authorities and Bank's internal and external auditors. Platform Agent shall cause such system to provide Bank with access to copies of all Loan Applications and Loan Documents, including the information needed for Bank to underwrite and approve Loan Applications pursuant to the Program Guidelines.

(q) Site Visits. Upon reasonable prior notice from Bank to Platform Agent, Platform Agent shall permit Bank no more than once per calendar year (unless Platform Agent is in breach of this Agreement) the ability to visit the Platform Agent's office and the Platform Agent shall provide Bank with an update on its business practices relating to the Program during such visit. Platform Agent shall reimburse Bank for its reasonable and documented out-of-pocket expenses incurred in connection with such site visit [***].

(r) New Product RFPs. During the Term, Platform Agent hereby agrees to (i) allow Bank to participate in any request for proposal process undertaken by Platform related to a new Platform Agent product for which a bank partner is sought and (ii) consider Bank's proposal in good faith.

(s) [reserved]

(t) Third-Party Service Providers. Platform Agent shall not be permitted to retain or otherwise engage any Third Party Service Provider that will provide services that are (i) deemed critical by Platform Agent based on Platform Agent's Third Party Risk Management Policy and (ii) material to the Program, without the prior written consent of Bank; provided that any such Third-Party Service Provider listed on Exhibit G hereto shall be deemed to be approved by Bank as of the Effective Date.

(u) Monitoring Communications. Platform Agent shall maintain records of all communication with Borrowers and Loan Applicants.

Section 3.3. Duties and Responsibilities of Platform Agent on Behalf of Bank. Platform Agent shall perform and discharge the following duties and responsibilities in connection with the services provided on behalf of Bank under this Agreement:

(a) Marketing. Platform Agent shall be responsible for marketing Loans to persons through the use of the Advertising Materials. Platform Agent's marketing efforts may include the use of radio, television, internet and print advertising and any other form of media deemed reasonable by Bank and approved by Bank in accordance with Section 4.2. In marketing the Loans, Platform Agent shall at all times and in all material respects comply with Bank's trademark usage guidelines which may be updated from time to time.

(b) Program Controls and Monitoring Policies. Platform Agent shall establish and maintain such controls as may be necessary or desirable to adequately control, monitor and supervise the operation of the Program, including the approval of each Loan thereunder. Platform Agent shall maintain policies and procedures to meet the Program Guidelines for the Program that are acceptable to Bank, including procedures relating to periodic training and on-going monitoring and auditing of Platform Agent and Third-Party Service Providers to ensure compliance with this Agreement, the Program Guideline, and all Applicable Laws. Platform Agent acknowledges that Bank retains the authority to require Platform Agent to revise its existing policies and procedures, or, as necessary, implement new policies and procedures, relating to any function or activity integral to the Program Guidelines for the Program and all Applicable Laws; provided that Bank shall give Platform Agent the notice required by Section 2.3(a).

(c) Loan Origination.

(i) Application Processing. Platform Agent shall (i) accept Loan Applications from Loan Applicants, (ii) provide reasonable assistance to each Loan Applicant in completing such Loan Application, (iii) on behalf of Bank, review all completed Loan Applications for compliance with the Credit Policy and Underwriting Procedures, (iv) take appropriate measures to verify the identity of all Loan Applicants consistent with Applicable Laws and the Program Guidelines, (v) take such further steps as it deems reasonably necessary to prevent fraud in connection with the Program and (vi) forward completed Loan Applications that meet the Credit Policy and the Underwriting Procedures and Platform Agent's standards to Bank (or its designated loan processing agent) electronically or by other appropriate means acceptable to Platform Agent and Bank.

(ii) Approvals. All approvals shall be made in accordance with the Underwriting Procedures and shall be based upon the information provided in the related Loan Application and such other information as Platform Agent obtains at the direction of Bank. Bank shall have the exclusive authority to approve or deny any or all Loan Applications in its sole discretion and any Loan Application shall be deemed not approved by Bank to the extent it does not comply with the Program Guidelines.

(iii) Declines. On behalf of Bank, Platform Agent shall provide notices in accordance with FCRA, including any adverse action notices, to the Loan Applicant if the related Loan Application is rejected by Bank.

(d) FCRA. Platform Agent shall furnish, in accordance with FCRA, as well as Platform Agent's own policies and practices, information (e.g., favorable and unfavorable) on its Loan Applicant credit files to TransUnion, Experian or Equifax. For purposes of FCRA, the Platform Agent and not Bank, shall be the "furnisher." Platform Agent shall be responsible for receiving and responding timely to Complaints (as they pertain to Loans), and forwarding copies of each Complaint and any response thereto to Bank. Platform Agent shall maintain Complaint resolution policies and procedures, and shall further include information summarizing the Complaints and responses thereto for the given time period in each FCRA report by the 10th day of each month, along with sufficient information for Bank to analyze Program activity relating to the Loans. As part of the FCRA report, Platform Agent shall provide Bank information with respect to the number of Loan Applications rejected as a percentage of both total Loan Applications received and total Loan Applications accepted, as well as any additional information reasonably requested by Bank for its fair lending review and analysis.

(e) Loan Document Submission. Platform Agent shall be responsible for preparing and transmitting to each Loan Applicant all documents and all notices required by Bank to originate the Loan, including the Loan Account Agreement. Prior to submitting any Loan to Bank pursuant to Section 5.1(b), Platform Agent shall, on behalf of Bank, (i) obtain from the Borrower the executed Loan Account Agreement and (ii) deliver a copy of Bank's privacy notice to the related Borrower.

(f) Document Retention. Platform Agent shall maintain and retain on behalf of Bank all Loan Applications and copies of all adverse action notices and other documents relating to rejected Loan Applications for the period required by Applicable Laws. Platform Agent shall further maintain copies of all Loan Documents and any other documents provided to or received from Borrowers for the period required by Applicable Laws.

Section 3.4. Duties and Responsibilities of Bank. Bank shall perform and discharge the following duties and responsibilities in connection with the Program:

(a) Bank shall comply with any reporting requirements of the New Jersey Department of Banking and Insurance or the FDIC applicable to Bank's performance of this Agreement.

(b) Bank may modify the Program Guidelines from time to time in its reasonable discretion in accordance with Section 2.3.

(c) Bank shall establish and maintain such controls as may be reasonably necessary to adequately control, monitor and supervise the operation of the Program, including the approval of each Loan. Bank shall be solely responsible for the cost of such activities. All Loan Application processing functions performed by Platform Agent hereunder shall be supervised by Bank and Bank shall review and audit Loan Applications to determine compliance with the Program Guidelines; provided that neither Bank's failure to establish and maintain any such controls nor the inadequacy of any Bank's controls shall relieve Platform Agent of its obligations to establish and maintain its own such controls or to comply with the Program Guidelines and Applicable Laws.

(d) Bank shall manage the Program in good faith, employing at least the same degree of care, skill and attention that Bank devotes to the management of its other assets.

(e) Bank shall fund all Loans in the manner set forth in the Program Guidelines. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall obligate Bank to extend credit to a Loan Applicant or disburse a Loan if Bank determines in its reasonable discretion that doing so would be an unsafe or unsound banking practice.

(f) Bank shall designate a Program Manager. Bank's Program Manager and Platform Agent's Program Manager shall meet monthly. If during the course of such meetings, Bank's Program Manager and Platform Agent's Program Manager are unable to solve a dispute which arises, then the dispute will be escalated within each of Bank and Platform Agent to authorized personnel who will work together in good faith towards a resolution. If the parties are unable to resolve the dispute, a party may, upon written notice to the other party, resolve the dispute in accordance with Section 10.3.

(g) Upon Platform Agent's request, Bank shall facilitate ACH debits from Merchant bank accounts for which Platform Agent has been properly authorized to initiate direct debits of amounts owed to Platform Agent.

Section 3.5. Conditions Precedent to the Obligations of Bank. The obligations of Bank in this Agreement are subject to the satisfaction of the following conditions precedent on or prior to Bank's funding of a Loan pursuant to Section 5.1(b):

(a) Each Loan shall be sourced by the Platform Agent under the Program and meet the standards set forth in the Program Terms and the Program Guidelines then in effect;

(b) No action or proceeding shall have been instituted or threatened against Platform Agent or Bank to prevent or restrain the consummation of the origination or other transactions contemplated hereby and there shall be no injunction, decree, or similar restraint preventing or restraining such consummation;

(c) The representations and warranties of Platform Agent set forth in Section 9.1 shall be true and correct in all material respects as though made on and as of such date and the Platform Agent shall be in compliance in all material respects with its covenants and agreements set forth in this Agreement and each other Program Document;

(d) The obligations of Platform Agent set forth in this Agreement and Section 5 of the Loan Sale Agreement to be performed on or before each date that a Loan is funded shall have been performed in all material respects as of such date by Platform Agent;

(e) Each other Program Document to which Platform Agent and Bank are parties shall be in full force and effect and Platform Agent shall not be in default thereunder; and

(f) Consistent with Section 3.2(e), the efficacy of the Technical Information, including any algorithm used by Platform Agent in connection with the Program, shall be established to Bank's satisfaction.

ARTICLE IV

TRADE NAMES, ADVERTISING AND PROGRAM MATERIALS

Section 4.1. Trade Names and Trademarks. Platform Agent shall have no authority to use any Marks of Bank except as explicitly permitted in this ARTICLE IV. Bank acknowledges that approved Program Materials or Advertising Materials may contain Marks of Platform Agent, and Bank shall have no authority to use any Marks of Platform Agent separate and apart from their use in the Program Materials or Advertising Materials or as otherwise approved hereunder or in writing by Platform Agent. The parties shall use Program Materials and Advertising Materials only as permitted under this Agreement for the purpose of implementing the provisions of this Agreement and shall not use Program Materials or Advertising Materials in any manner that would violate Applicable Laws, the terms of this Agreement or any provision of the Program Guidelines.

Section 4.2. Advertising and Program Materials.

(a) Platform Agent shall prepare Advertising Materials and Program Materials to be used in connection with the Program and shall ensure that such materials (i) comply, at all times, with Applicable Laws, the terms of this Agreement, Section 4.1 and the Program Guidelines, (ii) are true and accurate and not misleading in any material respect and (iii) are approved and authorized by Bank prior to use (which approval may have been given prior to the date of this Agreement).

(b) At least ten (10) Business Days prior to the first use of any Marks of Bank, Platform Agent shall provide to Bank all Advertising Materials and all Program Materials proposed to be used by Platform Agent in connection with the Program in order to enable Bank to complete an initial review and to approve or reject any such materials. Bank shall review and shall promptly (and in no event, later than thirty (30) Business Days following receipt thereof) approve or reject any such Advertising Materials or Program Materials (which approval shall not be unreasonably withheld or delayed); provided that Advertising Materials and Program Materials shall be considered approved and authorized by Bank only upon approval and authorization clearly communicated by Bank in writing, which may be by email. In the event that Bank does not accept and authorize such materials, Platform Agent shall not use any such materials in connection with the Program and Bank shall provide Platform Agent the reason for such denial. Platform Agent hereby agrees that any approval by Bank of any Advertising Materials and Program Materials shall not relieve Platform Agent of its primary responsibility for the preparation and maintenance of Advertising Materials and Program Materials in accordance with this Section 4.2.

(c) Bank may at any time retract or modify any approval previously given by it with respect to any Advertising Materials or Program Materials if Bank reasonably determines that such action is required to remain in compliance with Applicable Laws or for the safe and sound operation of the Program, or to preserve or protect the Marks of the Bank or its reputation.

(d) Upon the prior written approval of Platform Agent and subject to Section 4.2(b) above, Platform Agent (i) may use such Advertising Materials and Program Materials in accordance with the terms of this Agreement and (ii) shall comply with all instructions from Bank (including any restrictions or prohibitions) as to the use of the Bank's Marks with any other Marks. In the event that the Platform Agent desires to make a substantive change in the Advertising Materials or Program Materials, Platform Agent shall submit such materials to Bank for review and approval in accordance with Section 4.2(b).

(e) Subject to the terms and conditions of this Agreement, Bank hereby grants Platform Agent a non-exclusive, non-assignable license without the right to sublicense, to use and reproduce Bank's Marks in the United States, as necessary to perform its obligations under this Agreement; provided, however, that (a) Platform Agent shall obtain Bank's prior written approval for the use of Bank's Marks and such use shall at all times comply with all written instructions provided by Bank regarding the use of Bank's Marks; (b) Platform Agent acknowledges that it shall acquire no interest in Bank's Marks; and (c) Platform Agent shall obtain Bank's prior written approval for the release of any press release incorporating the name, Marks or likeness of Bank. Upon termination of this Agreement, Platform Agent shall cease using Bank's Marks.

(f) Platform Agent recognizes the value of the goodwill associated with the Bank's Marks and acknowledges that Bank exclusively owns all right, title and interest in and to the Bank's Marks and all goodwill pertaining thereto. Platform Agent acknowledges and agrees that any and all of its use of the Bank's Marks shall be on behalf of and accrue and inure solely to the benefit of Bank.

(g) Platform Agent shall not, anywhere in the world, use or seek to register in its own name, or that of any third party, any Marks that are the Bank's Marks, that are colorably or confusingly similar to the Bank's Marks, or that incorporate the Bank's Marks or any element colorably or confusingly similar to the Bank's Marks.

Section 4.3. Intellectual Property.

(a) Platform Agent shall retain sole and exclusive right, title and interest to all of its Intellectual Property Rights, including its Marks, its websites, the Platform Agent Platform, the Platform Agent technology related thereto, and Platform Agent's proprietary information. Bank shall retain sole and exclusive right, title and interest in and to all of Bank's Intellectual Property Rights, including its Marks, websites, promotional materials, proprietary information and technology. This Agreement does not transfer any Intellectual Property Rights from Platform Agent to Bank.

(b) Bank shall retain sole and exclusive right, title, and interest to all of its Intellectual Property Rights, its Marks, its website(s), including all aspects of the website(s)' content, and the services and processes performed by Bank under the Program. This Agreement does not transfer any Intellectual Property Rights from Bank to Platform Agent.

ARTICLE V

LOAN ORIGINATION AND COMPENSATION

Section 5.1. Loan Origination.

(a) On (i) each day on which Platform Agent receives a Loan Application from a Loan Applicant that Platform Agent determines satisfies the eligibility criteria set forth in the Program Guidelines, and (ii) each Business Day on which any Loan is sold by Bank to Purchaser pursuant to the Loan Sale Agreement, Platform Agent shall provide to Bank a Funding Statement.

(b) On each Funding Date, Bank shall (1) confirm that each Loan listed on the related Funding Statement complies with the Program Guidelines, (2) originate each such Loan, (3) deliver to Platform Agent a Loan Origination Report related to such Funding Date and (4) by the close of business on such Funding Date, distribute via ACH transfer or wire the following amounts:

(i) to the related Merchant on behalf of the related Borrower, an amount equal to the Disbursed Proceeds for the applicable Loan; and

(ii) to Platform Agent, an amount equal to the applicable Platform Agent Facilitation Fee; provided that, upon mutual agreement by the parties, the Platform Agent Facilitation Fee may be distributed on a different cadence.

Section 5.2. Compensation.

(a) Within ten (10) days after receipt of an invoice from Bank (or if such day is not a Business Day, the following Business Day), Platform Agent shall pay to Bank [***].

(b) Within ten (10) days after receipt of an invoice from Bank (or if such day is not a Business Day, the following Business Day), Platform Agent shall pay to Bank [***].

(c) [***]

ARTICLE VI

EXPENSES

Section 6.1. Expenses.

(a) Platform Agent shall pay all reasonable and documented costs and expenses of Bank incurred in connection with any event with respect to which the Platform Agent requests Bank enter into an amendment, modification or waiver of any provision of this Agreement or the Program Documents or enter into another agreement with Platform Agent or a third party with respect to the Program (including reasonable legal fees and expenses); provided that Bank shall be responsible for any expenses incurred by it as a result of any amendment, modification or waiver of any provision of this Agreement requested by Bank or at the request of a Regulatory Authority; it being understood that each of Platform Agent and Bank shall be responsible for any expenses incurred by it as a result of the execution of this Agreement and the Loan Sale Agreement.

(b) Platform Agent shall pay all costs and expenses incurred by Platform Agent in connection with (a) providing the services set forth in this Agreement, including the costs of obtaining credit reports and delivering adverse action notices and (b) implementing a compliance management system to comply with Applicable Laws and the Program Guidelines.

Section 6.2. ACH and Wire Costs. Without limiting the generality of Section 6.1, Platform Agent shall be responsible for the costs associated with all ACH and wire transfers executed in connection with the Program and as described in Section 5.1(b).

Section 6.3. Taxes. Each party shall be responsible for the payment of any federal, state or local taxes or assessments applicable to such party associated with the performance of its obligations under this Agreement and for compliance with all filing, registration and other requirements applicable to such party related to this Agreement.

ARTICLE VII

TERM

Section 7.1. Terms. Unless terminated earlier in accordance with Article VIII, this Agreement shall remain in effect for the Initial Term, and shall automatically renew for two (2) successive terms of one (1) year, (each a "Renewal Term," collectively, the Initial Term and Renewal Term(s) shall be referred to as the "Term"), unless either party provides notice to the other party of its intent not to renew at least ninety (90) days prior to the end of the Initial Term or Renewal Term.

ARTICLE VIII

TERMINATION

Section 8.1. Termination.

(a) Either party shall have the right to terminate this Agreement immediately upon written notice to the other party in any of the following circumstances (each a "Termination Event"):

(i) the other party shall default in any material respect in the performance of any obligation or undertaking under this Agreement or the Loan Sale Agreement and such default is not cured within thirty (30) days after such other party obtains knowledge thereof or written notice thereof has been given to such other party;

(ii) any representation or warranty made by the other party in this Agreement or the Loan Sale Agreement is incorrect in any material respect and is not corrected within thirty (30) days after such other party obtains knowledge thereof or written notice thereof has been given to such other party;

(iii) the other party commences a voluntary action or other proceeding seeking reorganization, liquidation or other relief with respect to itself or its debts under any bankruptcy, insolvency, receivership, conservatorship or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, conservator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of a trustee, receiver, liquidator, conservator, custodian or other similar official or to any involuntary action or other proceeding commenced against it; or

(iv) the other party becomes subject to an involuntary action or other proceeding, whether pursuant to banking regulations or otherwise, seeking reorganization, liquidation or other relief with respect to it or its debts under any bankruptcy, insolvency, receivership, conservatorship or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, conservator, custodian or other similar official of it or any substantial part of its property; or an order for relief shall be entered against either party under the federal bankruptcy laws as now or hereafter in effect.

(b) Either party shall have the right to terminate this Agreement (i) upon written notice to the other party if the activities of either party under this Agreement or the Program (A) violate Applicable Laws in any material respects, and (B) such activities cannot be remedied without causing a Material Adverse Effect on the other party or the Loans, provided, however, that if the illegality or prohibition is of a state or local rule, the parties shall only discontinue the Program in those states or localities affected by such Applicable Laws without terminating this Agreement in its entirety for such reason; (ii) upon written notice to the other party if such party reasonably determines in good faith that the continued activities of the parties under this Agreement would affect the continued viability and existence of such party; or (iii) if Bank determines in its reasonable discretion that the continuing operation of the Program will, in the case of Bank, materially and adversely affect the safety and soundness of Bank or at the request of a Regulatory Authority.

(c) This Agreement shall automatically be terminated upon the termination of the Loan Sale Agreement in accordance with its terms.

(d) In addition to any other rights or remedies available to the Platform Agent under this Agreement or by law, either party shall have the right to terminate this Agreement upon five (5) days' written notice to the other if (i) the other party is materially unable to perform its obligations in connection with the Program, (ii) a Material Adverse Effect has occurred with respect to the other party or (iii) a Change of Control occurs with respect to the other party that the terminating party determines in its reasonable discretion will have a Material Adverse Effect with respect to Bank, Platform Agent or the Loans. For the avoidance of doubt, a termination pursuant to this Section 8.1(d) by Platform Agent shall not be subject to any termination fees or penalties that would otherwise be payable by Platform Agent to the Bank under this Agreement or under the Program Terms.

Section 8.2. Effect of Termination. Upon the termination of this Agreement, (a) Bank shall cease originating any new Loans, (b) Platform Agent shall cease marketing the Program and soliciting new Borrowers, (c) each party shall immediately discontinue the use of the other party's Marks, (d) all amounts due and owing hereunder shall become due and payable, including any amounts due under Section 6.1; provided that any Loan Performance Fees shall continue to be payable by Platform Agent as described in Section 5.2(b), and (e) [***]. Notwithstanding the termination hereof, to the extent that any terms set forth in this Agreement are applicable to the servicing of the Loans, such terms shall survive the termination of this Agreement and shall remain in effect until such time as each Loan is paid in full by the related Borrower or charged off by Platform Agent or Bank.

ARTICLE IX

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1. Platform Agent's Representations and Warranties. Platform Agent makes the following warranties and representations to Bank:

(a) This Agreement constitutes a legal, valid and binding obligation of Platform Agent, enforceable against Platform Agent in accordance with its terms, except (i) to the extent such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect, which may affect the enforcement of creditors' rights in general, and (ii) as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity) and Platform Agent has received all necessary approvals and consents for the execution, delivery and performance by it of this Agreement.

(b) Platform Agent is duly organized, existing and in good standing under the laws of the state of its organization and is authorized, registered and licensed to do business in each state in which the lack of such authorization, registration or licensing would have a Material Adverse Effect with respect to Platform Agent or the Loans.

(c) Platform Agent has the full power and authority to execute and deliver this Agreement and perform all of its obligations hereunder.

(d) The execution of this Agreement and the completion of all actions required or contemplated to be taken by Platform Agent hereunder are within the ordinary course of Platform Agent's business and not prohibited by Applicable Laws in any material respect.

(e) The provisions of this Agreement and the performance of each of its obligations hereunder do not conflict with Platform Agent's organizational or governing documents, or any material agreement, contract, lease, order or obligation to which Platform Agent is a party or by which Platform Agent is bound, including any exclusivity or other provisions of any other agreement to which Platform Agent or any related entity is a party, and including any non-compete agreement or similar agreement limiting the right of Platform Agent to engage in activities competitive with the business of any other party or any Governmental Authority that Platform Agent is subject to.

(f) No approval, authorization or other action by, or filing with, any Governmental Authority is required in connection with the execution, delivery and performance by it of this Agreement or any other Program Document other than approvals and authorizations that have previously been obtained and filings which have previously been made or would not have a Material Adverse Effect with respect to the Loans.

(g) All information which was heretofore furnished by it or on its behalf in writing to Platform Agent for purposes of or in connection with this Agreement, any Program Document or any transaction contemplated hereby or thereby is true and accurate in all material respects in the aggregation and as of the date such information was furnished (except to the extent that such furnished information relates solely to an earlier date, in which case such information was true and accurate in all material respects on and as of such earlier date).

(h) Except as licensed or otherwise permitted, Platform Agent has not used the Intellectual Property Rights, trade secrets or other confidential business information of any third party that it was not authorized to use in connection with the development of the Program Materials and Advertising Materials or in carrying out its obligations or exercising its rights under this Agreement.

(i) There is no action, suit, proceeding or investigation pending or, to the knowledge of Platform Agent, threatened against Platform Agent seeking a determination or ruling which, either in any one instance or in the aggregate, would reasonably be expected to result in a Material Adverse Effect with respect to Platform Agent, or which would render invalid this Agreement or any Program Document, or asserting the invalidity of, or seeking to prevent the consummation of any of the transactions contemplated by, the Program Documents. No proceeding has been instituted against Platform Agent seeking to adjudicate it bankrupt or insolvent, or seeking the liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for Platform Agent or any substantial part of its property.

(j) Neither Platform Agent nor any principal thereof has been or is the subject of any of the following that will materially effect Platform Agent's ability to perform under this Agreement:

(i) Enforcement agreement, memorandum of understanding, cease and desist order, administrative penalty or similar agreement concerning lending matters, or participation in the affairs of a financial institution;

(ii) Administrative or enforcement proceeding or investigation commenced by the Securities Exchange Commission, state securities regulatory authority, Federal Trade Commission, any banking regulator or any other state or federal Regulatory Authority, with the exception of routine communications from a Regulatory Authority concerning a Complaint and routine examinations of Platform Agent conducted by a Regulatory Authority in the ordinary course of Platform Agent's business; or

(iii) Restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on the part of Platform Agent or any principal thereof.

For purposes of this Section 9.1(f) the word "principal" of Platform Agent shall include (i) any person owning or controlling [***] or more of the voting power of Platform Agent, (ii) any officer or director of Platform Agent and (iii) any person actively participating in the control of Platform Agent's business.

(k) None of Platform Agent, any of its Affiliates or any of their respective officers, directors or members is a Person (or to Platform Agent's knowledge, is owned or controlled by a Person) that (i) is listed on any Government Lists, (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) is currently under investigation by any Governmental Authority for alleged felony involving a crime of moral turpitude.

(l) Platform Agent and each of its Affiliates is in compliance in all material respects with all applicable Anti-Money Laundering Laws. Without limiting the generality of the foregoing, to the extent required by Anti-Money Laundering Laws or Anti-Corruption Laws, Platform Agent has established an anti-money laundering compliance program that is in compliance, in all material respects, with Anti-Money Laundering Laws and Anti-Corruption Laws.

(m) Platform Agent has a compliance management system in place to ensure compliance with the terms of this Agreement, including the Program Guidelines, Applicable Laws, that includes management of Third-Party Service Providers and Complaints filed with Platform Agent that provides Platform Agent with the ability to track and respond to Complaints to the extent required within the required time period.

(n) Platform Agent is solvent and does not believe, nor does it have any reason or cause to believe, that it cannot perform its obligations contained in this Agreement.

(o) Platform Agent is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, and is not owned or controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(p) Platform Agent is not a "money services business" as it is defined in 31 C.F.R. § 1010.100(ff).

(q) Platform Agent is in material compliance with all Applicable Laws.

(r) Platform Agent has in full force and effect insurance in such amounts and with such terms, as follows:

(i) comprehensive general liability with limits not less than $1 million per occurrence and $5 million annual aggregate, with coverages to include contractual liability, personal injury and advertising injury;

(ii) statutorily required worker's compensation;

(iii) employer's liability of five million ($5,000,000.00) dollars per employee/occurrence;

(iv) crime liability of not less than five million ($5,000,000.00) dollars;

(v) cybersecurity and privacy liability of not less than five million ($5,000,000.00) Dollars;

(vi) umbrella liability with limits not less than twenty five million ($25,000,000.00) dollars per occurrence and aggregate;

(vii) professional liability/errors & omissions of not less than five million ($5,000,000.00) dollars.

Section 9.2. Bank's Representations and Warranties. Bank makes the following warranties and representations to Platform Agent:

(a) This Agreement constitutes a valid and binding obligation of Bank, enforceable against Bank in accordance with its terms except (i) to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect, which may affect the enforcement of creditors' rights in general, and (ii) as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).

(b) Bank is an FDIC-insured New Jersey state-chartered commercial bank, duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

(c) Bank has full corporate power and authority to execute, deliver and perform all of its obligations under this Agreement.

(d) The execution of this Agreement and the completion of all actions required or contemplated to be taken by Bank hereunder are within the ordinary course of Bank's business and not prohibited by Applicable Laws.

(e) The execution, delivery and performance of this Agreement have been duly authorized by Bank, and are not in conflict with and do not violate the terms of the charter or by-laws of Bank and will not result in a material breach of or constitute a default under, or require any consent under, any indenture, loan or agreement to which Bank is a party.

(f) Bank has the authority to originate Loans in accordance with the Program Terms to the Borrowers who meet the minimum Credit Policy requirements established in the Program Guidelines as contemplated hereunder. Bank has adopted the Credit Policy and approved each Loan in accordance therewith, and each Loan and disbursement of Disbursed Proceeds complies with Applicable Laws; provided that Bank shall have no responsibility with respect to complying with Applicable Laws to the extent any such non-compliance arises out of erroneous data or information provided by Platform Agent to Bank hereunder unless Bank is aware of such error and refuses to remedy its compliance to the extent Bank is able to remedy such error or the failure of Platform Agent to comply with Applicable Laws in the performance of its duties hereunder;

(g) Bank has the authority to originate Loans in each state in which Loans are originated under the Program.

(h) To the best knowledge of Bank, and as of each date of origination and sale of the Loans to Platform Agent, (i) each Loan meets the criteria outlined in the Program Guidelines; (ii) each Loan has not been satisfied, subordinated or rescinded, and no right of rescission, set-off, counterclaim or defense exists or has been asserted with respect to such Loan; (iii) each Loan was originated and disbursed by Bank in accordance with Applicable Laws; and (iv) there is no action before any Regulatory Authority involving such Loan in which an adverse result would have a Material Adverse Effect with respect to such Loan.

(i) Neither Bank nor any principal thereof has been or is the subject of any of the following that will materially effect Bank's ability to perform under this Agreement:

(i) An enforcement agreement, memorandum of understanding, cease and desist order, administrative penalty or similar agreement;

(ii) An administrative or enforcement proceeding or investigation commenced by the Securities Exchange Commission, state securities regulatory authority, Federal Trade Commission, any banking regulator or any other state or federal Regulatory Authority; or

(iii) A restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on the part of Bank or any principal thereof.

For purposes of this Section 9.2(i) the word "principal" of Bank shall include (i) any person owning or controlling [***] or more of the voting power of Bank, (ii) any officer or director of Bank and (iii) any person actively participating in the control of Bank's business.

(j) Bank is in full compliance with applicable minimum capital requirements prescribed by the FDIC and any other Regulatory Authority having jurisdiction over Bank, and Bank meets the requirements to be considered "adequately capitalized" as defined in the Federal Deposit Insurance Act, as amended, and the applicable regulations promulgated thereunder.

Section 9.3. Platform Agent's Covenants. Platform Agent hereby covenants and agrees as follows:

(a) Information. Platform Agent shall furnish to Bank:

(i) Annual Financial Statements. Within one hundred twenty (120) days after the end of each of its fiscal years, copies of its annual audited financial statements certified by independent certified public accountants reasonably satisfactory to Bank and prepared on a consolidated basis in conformity with GAAP, together with a report of such firm expressing such firm's opinion thereon without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of the audit.

(ii) Quarterly Financial Statements. Within forty-five (45) days after each of its fiscal quarters, copies of its unaudited consolidated balance sheet and related statements of operations and stockholders' equity as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its chief financial officer, principal accounting officer, treasurer or controller as presenting fairly in all material respects its (and its consolidated Subsidiaries) financial condition and results of operations on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

(iii) Auditors' Management Letters. Promptly after receipt thereof, notice that it has received any auditors' management letters from its accountants that refer in whole or in part to any inadequacy, defect, problem, qualification or other lack of fully satisfactory accounting controls utilized by it and an opportunity to discuss the contents of such letter with its management.

(iv) Representations. Promptly upon having knowledge or notice that any representation or warranty set forth herein or in any other Program Document was incorrect at the time it was given or deemed to have been given, which failure or breach would reasonably be expected to materially and adversely affect Bank, together with a written notice setting forth in reasonable detail the nature of such facts and circumstances.

(v) Reportable Event. Promptly upon having knowledge of the occurrence of any Reportable Event with respect to any Pension Plan, notice of such Reportable Event.

(vi) Proceedings. As soon as possible and in any event within three (3) Business Days after any of its executive officers receives notice or obtains knowledge thereof, any settlement of, material judgment (including a material judgment with respect to the liability phase of a bifurcated trial) in or commencement of any material labor controversy, litigation, action, suit or proceeding before any Governmental Authority, which, in the case of any of the foregoing, has had or would reasonably be expected to have a Material Adverse Effect with respect to Platform Agent.

(vii) Notice of Material Events. Promptly upon becoming aware thereof, notice of any other event or circumstances that, in its reasonable judgment has had or would reasonably be expected to have a Material Adverse Effect with respect to Platform Agent.

(viii) Other. As promptly as practicable, from time to time, such information, documents or records or reports respecting the Program or the condition or operations, financial or otherwise, of Platform Agent as Bank may reasonably request; provided that Platform Agent shall not be required to deliver any Technical Information to Bank.

(b) Notice of Termination Events. As soon as possible, after obtaining actual knowledge thereof, notify Bank of the occurrence of any Termination Event applicable to it.

(c) Conduct of Business. The Platform Agent shall perform all actions necessary to remain duly organized or incorporated, validly existing and in good standing in its jurisdiction of formation and to maintain all requisite authority to conduct its business in each jurisdiction in which it conducts business except where the failure to preserve and maintain such existence has had, or could reasonably be expected to have, a Material Adverse Effect with respect to Platform Agent or the Loans.

(d) Preservation of Corporate Existence. The Platform Agent shall preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified and in good standing as a foreign corporation in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualifications has had, or could reasonably be expected to have, a Material Adverse Effect with respect to Platform Agent.

(e) Taxes. The Platform Agent shall file and pay any and all material taxes.

(f) ERISA Matters. The Platform Agent shall not (i) engage in any prohibited transaction for which an exemption is not available or has not previously been obtained from the United States Department of Labor, (ii) fail to satisfy the minimum funding standards under Section 302 of ERISA or Section 412 of the Code with respect to any Pension Plan, (iii) fail to make any payments to a Multiemployer Plan that it may be required to make under the agreement relating to such Multiemployer Plan or any law pertaining thereto, (iv) terminate any Pension Plan so as to result in any liability to it, or (v) permit to exist any occurrence of any Reportable Event with respect to any Pension Plan.

(g) Total Systems Failure. It shall promptly notify Bank of any total systems failure and shall advise Bank of the estimated time required to remedy such total systems failure. Until a total systems failure is remedied, it shall (i) furnish to Bank such periodic status reports and other information relating to such total systems failure as Bank may reasonably request and (ii) promptly notify Bank if it believes that such total systems failure cannot be remedied by the estimated date, which notice shall include a description of the circumstances which gave rise to such delay, the action proposed to be taken in response thereto and it shall promptly notify Bank when a total systems failure has been remedied.

(h) Improper Contact. Platform Agent shall not, and shall cause its Affiliates not to, without the prior written consent of Bank, initiate or maintain contact (except in the ordinary course of business) with any officer, director, employee, or customer of Bank for the purposes of obtaining information regarding Bank's operations, assets, prospects or finances.

(i) USA PATRIOT Act. The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003, Section 326 of the USA PATRIOT Act requires all financial institutions to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The Platform Agent agrees that it will provide Bank such information as it may request, from time to time, in order for Bank to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

(j) Furnishing of Information. It will furnish to Bank, as soon as practicable after receiving a request therefor in accordance with Section 10.10, such information with respect to the Program as Bank may reasonably request.

(k) Disaster Recovery Plan. It will maintain an adequate disaster recovery plan in light of its duties under this Agreement and contemplated volume of business.

(l) Mergers, Acquisition, Sales, etc. It will not consolidate with or merge into any other Person or convey substantially all of its assets to any Person, unless:

(i) it is the surviving entity in a consolidation or merger;

(ii) it has delivered to Bank an officer's certificate and an opinion of counsel each stating that any consolidation, merger or conveyance complies with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with and such other matters as the Bank may reasonably request;

(iii) it shall have delivered prior written notice of such consolidation, merger or conveyance to Bank; and

(iv) after giving effect thereto, no Termination Event or event that with notice or lapse of time, or both, would constitute a Termination Event shall have occurred.

Section 9.4. Bank's Covenant – Improper Contact. Bank hereby covenants and agrees that it shall not, and shall cause its Affiliates not to, without the prior written consent of Platform Agent, initiate or maintain contact (except in the ordinary course of business) with any officer, director, employee, or customer of Platform Agent for the purposes of obtaining information regarding Platform Agent's operations, assets, prospects or finances.

ARTICLE X

MISCELLANEOUS

Section 10.1. Indemnification.

(a) Indemnification by Platform Agent. Except to the extent of any Losses which arise from the direct acts or omissions of Bank or an Affiliate of Bank, Platform Agent shall be liable to and shall indemnify Bank and its directors, officers, employees, agents and Affiliates and permitted assigns from and against any and all Losses arising out of (i) any failure of Platform Agent or any of its Third-Party Service Providers to comply with any of the terms and conditions of this Agreement or any other Program Document (without giving effect to any qualification as to materiality or Platform Agent's knowledge or lack thereof in such term or condition), (ii) the inaccuracy of any representation or warranty made by Platform Agent or any of its Third-Party Service Providers herein or any other Program Document (without giving effect to any qualification as to materiality or Platform Agent's knowledge or lack thereof in such term or condition), (iii) any infringement by Platform Agent or by any of its Third-Party Service Providers of any Marks of Bank, or the use thereof hereunder or any infringement or misappropriation or alleged infringement or misappropriation of any Intellectual Property Rights, (iv) a failure of Platform Agent or any of its Third-Party Service Providers to comply, in respect of its obligations in connection with the Program hereunder, with any Applicable Laws, (v) any act or omission by a Merchant in connection with the Program, (vi) any claim that a Loan Document, the Program Materials, the Advertising Materials, any other Program Document or any other aspect of the Program violate any Applicable Law (whether material or immaterial), (vii) any claims based on a fraudulent application submitted by a Loan Applicant or (viii) any Information Security Incident. [***]. Platform Agent agrees to promptly notify Bank of any event or occurrence that would reasonably be expected to impair Platform Agent's capacity to honor its indemnification obligations under this Agreement.

(b) Indemnification by Bank. Except to the extent of any Losses which arise directly from any act or omission of Platform Agent or an Affiliate of Platform Agent, Bank shall be liable to and shall indemnify and hold harmless Platform Agent and its officers, directors, employees, agents and Affiliates and permitted assigns, from and against any Losses arising out of (i) the failure of Bank to comply with any of the terms and conditions of this Agreement or in any Program Document (ii) the inaccuracy of any representation or warranty made by Bank in this Agreement or in any Program Document, (iii) any infringement or alleged infringement by Bank of any trade names, trademarks or service marks of Platform Agent, or the use thereof hereunder, or (iv) [***].

(c) Notice of Claims. In the event any claim is made, any suit or action is commenced or any knowledge of a state of facts that, if not corrected, would give rise to a right of indemnification of a party hereunder by the other party is received, the indemnified party will give notice to the indemnifying party as promptly as practicable, but, in the case of lawsuit, in no event later than the time necessary to enable the indemnifying party to file a timely answer to the complaint. The indemnified party shall make available to the indemnifying party and its counsel and accountants at reasonable times and for reasonable periods, during normal business hours, all books and records of the indemnified party relating to any such possible claim for indemnification, and each party hereunder will render to the other such assistance as it may reasonably require of the other (at the expenses of the party requesting assistance) in order to insure prompt and adequate defense of any suit, claim or proceeding based upon a state of facts which may give rise to a right of indemnification hereunder.

(d) Defense and Counsel. Subject to the terms hereof, the indemnifying party shall have the right to assume the defense of any suit, claim, action or proceeding. In the event that the indemnifying party elects to defend any suit, claim or proceeding, then the indemnifying party shall notify the indemnified party via facsimile transmission or email, with a copy by mail, within ten (10) days of having been notified pursuant to this Section 10.1 that the indemnifying party elects to employ counsel and assume the defense of any such claim, suit, action or proceeding. The indemnifying party shall institute and maintain any such defense diligently and reasonably and shall keep the indemnified party fully advised of the status thereof. The indemnified party shall have the right to employ its own counsel if the indemnified party so elects to assume such defense, but the fees and expense of such counsel shall be at the indemnified party's expenses, unless (i) the employment of such counsel shall have been authorized in writing by the indemnifying party; (ii) such indemnified party shall have reasonably concluded that the interests of such parties are conflicting such that it would be inappropriate for the same counsel to represent both parties or shall have reasonably concluded that the ability of the parties to prevail in the defense of any claim are improved if separate counsel represents the indemnified party (in which case the indemnifying party shall not have the right to direct the defense of such action on behalf of the indemnified party), and in either of such events such reasonable fees and expenses shall be borne by the indemnifying party; (iii) the indemnified party shall have reasonably concluded that it is necessary to institute separate litigation, whether in the same or another court, in order to defend the claims asserted against it; (iv) the indemnified party reasonably concludes that the ability of the parties to prevail in the defense of any claim is materially improved if separate counsel represents the indemnified party; and (v) the indemnifying party shall not have employed counsel reasonably acceptable to the indemnified party to take charge of the defense of such action after electing to assume the defense thereof. In the event that the indemnifying party elects not to assume the defense of any suit, claim, action or proceeding, then the indemnified party shall do so and the indemnifying party shall pay for, or reimburse indemnified party, as the indemnified party shall elect, all Losses of the indemnified party.

(e) Settlement of Claims. The indemnifying party shall have the right to compromise and settle any suit, claim or proceeding in the name of the indemnified party; provided, however, that the indemnifying party shall not compromise or settle a suit, claim or proceeding (i) unless it indemnifies the indemnified party for all Losses arising out of or relating thereto and (ii) with respect to any suit, claim or proceeding which seeks any non-monetary relief, without the consent of the indemnified party, which consent shall not unreasonably be withheld. The indemnifying party shall not be permitted to make any admission of guilt on behalf of the indemnified party. Any final judgment or decree entered on or in, any claim, suit or action which the indemnifying party did not assume the defense of in accordance herewith, shall be deemed to have been consented to by, and shall be binding upon, the indemnifying party as fully as if the indemnifying party had assumed the defense thereof and a final judgment or decree had been entered in such suit or action, or with regard to such claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree. The indemnifying party shall be subrogated to any claims or rights of the indemnified party as against any other Persons with respect to any amount paid by the indemnifying party under this Section 10.1(e).

(f) Indemnification Payments. Amounts owing under Section 10.1 shall be paid promptly upon written demand for indemnification containing in reasonable detail the facts giving rise to such Losses.

Section 10.2. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THE PROGRAM DOCUMENTS; PROVIDED, HOWEVER, THAT NOTIFICATION RELATED COSTS SHALL NOT BE DEEMED INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES.

Section 10.3. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING GENERAL OBLIGATIONS LAW §5-1401 AND §5-1402, BUT OTHERWISE WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN NEW YORK CITY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND EACH PARTY HERETO HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURTS OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT NOT SUBJECT TO FURTHER APPEAL, IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

Section 10.4. Confidential Information.

(a) In performing their obligations pursuant to this Agreement, either party may disclose Confidential Information to the other party, either directly or indirectly, in writing, orally or by inspection of intangible objects (including documents).

(b) Bank and Platform Agent agree that Confidential Information shall be used by each party solely in the performance of its obligations under the Program Documents.

(c) Each party (including their respective Representatives) shall receive Confidential Information in confidence and shall not, without the prior written consent of the disclosing party, disclose any Confidential Information of the disclosing party; provided, however, that there shall be no obligation on the part of the parties to maintain in confidence any Confidential Information disclosed to it by the other which (i) is generally known to the trade or the public at the time of such disclosure, (ii) becomes generally known to the trade or the public subsequent to the time of such disclosure, but not as a result of disclosure by the other in violation of this Agreement, (iii) is legally received by either party or any of its respective Representatives from a third party on a non-confidential basis provided that to such party's knowledge such third party is not prohibited from disclosing such information to the receiving party by a contractual, legal or fiduciary obligation to the other party, its Representatives or another party, or (iv) was or hereafter is independently developed by either party or any of its Representatives without using Confidential Information or in violation of its obligations under this Agreement.

(d) The parties agree that the disclosing party owns all rights, title and interest in and to its Confidential Information, and that the party receiving such Confidential Information will not reverse-engineer any software or other materials embodying the Confidential Information. The parties acknowledge that Confidential Information is being provided for limited use internally, and the receiving party agrees to use the Confidential Information only in accordance with the terms and conditions of this Agreement.

(e) Notwithstanding the foregoing, however, disclosure of the Confidential Information may be made if, and to the extent, requested or required by Applicable Laws or Governmental Authority without liability and, except as required by the following sentence, without notice to the other party. In the event that the receiving party or any of its Representatives receives a demand or request to disclose all or any part of the disclosing party's Confidential Information to a Governmental Authority, (i) to the extent practicable and permitted, the receiving party agrees to promptly notify the disclosing party of the existence, terms and circumstances surrounding such a demand or request and (ii) if the receiving party or its applicable Representative is compelled to disclose all or a portion of the disclosing party's Confidential Information, the receiving party or its applicable Representative may disclose that Confidential Information that its counsel advises that it is compelled to disclose and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information that is being so disclosed.

(f) Each party represents and covenants that it will protect the Confidential Information of the other party in accordance with prudent business practices and will use the same degree of care to protect the other party's Confidential Information that it uses to protect its own confidential information of a similar type. Except as expressly provided herein, no right or license whatsoever is granted with respect to the Confidential Information or otherwise.

Following termination of this Agreement, upon the request of the disclosing party, the non-disclosing party will, within ten (10) days after receiving a request by the disclosing party, destroy all Confidential Information furnished to it or any of its Representatives by or on behalf of the disclosing party. Except to the extent a party is advised by legal counsel that such destruction is prohibited by law, the non-disclosing party and its Representatives will also destroy all written material, memoranda, notes, copies, excerpts and other writings or recordings whatsoever prepared by the non-disclosing party or its Representatives based upon, containing or otherwise reflecting any Confidential Information; provided, however, that neither the non-disclosing party nor any of its Representatives shall be obligated to return or destroy Confidential Information (i) to the extent it has been electronically archived by any such party in accordance with its automated security or disaster recovery procedures as in effect from time to time or (ii) to the extent required by their respective internal record retention policies for legal, compliance or regulatory purposes; provided that any such Confidential Information so retained shall remain subject to the confidentiality provisions contained herein for so long as it is retained by the non-disclosing party, irrespective of the Term of this Agreement. At the request of the disclosing party made at the time of its request for the return or destruction of Confidential Information, the return or destruction of materials in accordance with the foregoing shall be certified to the disclosing party in writing by a Representative of the non-disclosing party.

Section 10.5. Privacy Law Compliance; Security Breach Disclosure. In addition to the requirements of Section 10.4, each party agrees that it shall obtain, use, retain and share Customer Information in strict compliance with all applicable state and federal laws and regulations concerning the privacy and confidentiality of such Customer Information, including the requirements of the federal Gramm-Leach-Bliley Act of 1999, its implementing regulations, the California Consumer Privacy Act, Cal. Civ. Code §1798.100 et seq., and any regulations promulgated thereunder by the Attorney General of California, and Bank's privacy notice, in connection with this Agreement. Neither party shall disclose or use Customer Information concerning Borrowers or Loan Applicants other than (i) to carry out the purposes for which such Customer Information has been disclosed to it hereunder or (ii) in connection with a sale or financing of the related Loans. Further, Platform Agent shall by written contract require any Third-Party Service Providers to maintain the confidentiality of Customer Information in a similar manner.

Platform Agent shall immediately inform Bank in writing of any Information Security Incident of which Platform Agent becomes aware, but in no case later than twenty-four (24) hours after it becomes aware of such Information Security Incident. Such notice shall summarize in reasonable detail the effect on Bank, if known, of the Information Security Incident and the corrective action taken or to be taken by Platform Agent. Platform Agent shall promptly take all necessary and advisable corrective actions, and shall cooperate fully with Bank in all reasonable and lawful efforts to prevent, mitigate or rectify such Information Security Incident. Platform Agent shall (i) investigate such Information Security Incident and perform a root cause analysis thereon; (ii) remediate the effects of such Information Security Incident; and (iii) provide Bank with such assurances as Bank shall request that such Information Security Incident is not likely to recur. The content of any filings, communications, notices, press releases or reports related to any Information Security Incident shall be approved by Bank prior to any publication or communication thereof.

Upon the occurrence of an Information Security Incident involving nonpublic personal information in the possession, custody or control of Platform Agent or for which Platform Agent is otherwise responsible, Platform Agent shall reimburse Bank on demand for all reasonable Notification Related Costs incurred by Bank arising out of or in connection with any such Information Security Incident.

In addition, Platform Agent agrees that it will not make any material changes to its security procedures and requirements affecting the performance of its obligations hereunder which would materially reduce the security of its operations or materially reduce the confidentiality of any databases and information maintained with respect to Bank, Borrowers and Loan Applicants without the prior written consent of Bank.

Each of Bank and Platform Agent agrees and represents to the other that it and each of its Third-Party Service Providers have, or will have prior to the receipt of any Confidential Information or Customer Information, designed and implemented an information security program that will comply in all material respects with the applicable requirements set forth in 12 C.F.R. Part 332 (Privacy of Consumer Financial Information), 12 C.F.R. Part 364 (including the Interagency Guidelines Establishing Information Security Standards found at Appendix B to Part 364), and 16 C.F.R Part 314, all as amended, supplemented or interpreted in writing by Regulatory Authorities and all other Applicable Law.

Section 10.6. Force Majeure. In the event that either party fails to perform its obligations under the Program Documents in whole or in part as a consequence of events beyond its reasonable control (including acts of God, fire, explosion, public utility failure, accident, floods, embargoes, epidemics, war, terrorist acts, nuclear disaster or riot), such failure to perform shall not be considered a breach of the Program Documents during the period of such disability. In the event of any force majeure occurrence as set forth in this Section 10.6, the disabled party shall use its best efforts to meet its obligations as set forth in the Program Documents. The disabled party shall promptly and in writing advise the other party if it is unable to perform due to a force majeure event, the expected duration of such inability to perform and of any developments (or changes therein) that appear likely to affect the ability of that party to perform any of its obligations hereunder in whole or in part.

Section 10.7. Relationship of Parties; No Authority to Bind. Bank and Platform Agent agree that they are independent contractors to each other in performing their respective obligations hereunder. Nothing in this Agreement or in the working relationship established and developed hereunder shall be deemed or is intended to be deemed, nor shall it cause, Bank and Platform Agent to be treated as partners, joint venturers or otherwise as joint associates for profit. Platform Agent understands and agrees that Platform Agent's name shall not appear on any Loan Document as a maker of a Loan and that Bank shall be responsible for all decisions to make or fund a Loan. Prior to the purchase by Purchaser, Platform Agent shall refer to Bank any inquiries from the related Borrowers concerning the accuracy, interpretation or legal effect of any Loan Document. Platform Agent shall not modify the terms of any Loan Document on behalf of Bank prior to purchase of the Loan by Platform Agent. Platform Agent's responsibilities hereunder shall not constitute the "receipt" of the Loan Documents by Bank; instead, Bank shall be deemed to have received and reviewed the Loan Documents and supporting materials only after the Loan Documents and materials have previously been received at Bank's offices, at which time and place Bank shall decide whether to make the Loan. Platform Agent shall not represent to anyone that Platform Agent has the authority or power to do any of the foregoing and shall make no representations concerning Bank's transactions except as Bank shall expressly authorize in writing. Bank shall not have any authority or control over any of the property interests or employees of Platform Agent. Without limitation of the foregoing, Bank and Platform Agent intend, and they agree to undertake such action as may be necessary or advisable to ensure, that: (a) the Program complies with federal guidelines regarding outsourcing of bank-related activities, installment loans, bank supervision and control and safety and soundness procedures; (b) Bank is the lender under applicable federal standards and is authorized to export its home-state interest rates and matters material to the rate under 12 U.S.C.A. § 1831d; (c) all activities related to the marketing and origination of a loan are made by or on behalf of Bank as disclosed principal for any relevant regulatory, agency law and contract-law purposes; and (d) the Program has been initiated by Platform Agent for its benefit, that Bank is acting as an accommodation party for the benefit of Platform Agent for the purpose of origination of each Loan.

Section 10.8. Severability. In the event that any part of this Agreement is ruled by a court, Regulatory Authority or other public or private tribunal of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed to have been omitted from this Agreement. The remainder of this Agreement shall remain in full force and effect, and shall be modified to any extent necessary to give such force and effect to the remaining provisions, but only to such extent. In addition, if the operation of the Program or the compliance by a party with its obligations set forth herein causes or results in a violation of an Applicable Law, the parties agree to negotiate in good faith to modify the Program or this Agreement as necessary in order to permit the parties to continue the Program in full compliance with Applicable Laws.

Section 10.9. Successors and Third Parties. This Agreement and the rights and obligations hereunder shall bind and inure to the benefit of the parties hereto and their successors and assigns. The rights and benefits hereunder are specific to the parties and shall not be delegated or assigned without the prior written consent, not to be unreasonably withheld, of the other party. Nothing in this Agreement is intended to create or grant any right, privilege or other benefit to or for any person or entity other than the parties hereto. Notwithstanding the foregoing, in the event that (a) Bank agrees to sell all, or substantially all, of its assets to a third party or (b) agrees to merge with a third party pursuant to which Bank will not be the surviving entity, then Bank may assign this Agreement and its rights hereunder to such third party upon Platform Agent's consent, provided that to the extent Platform Agent does not consent to such assignment then Bank may terminate this Agreement.

Section 10.10. Notices. All notices and other communications under this Agreement shall be in writing (including communication by facsimile copy or other electronic means) and shall be deemed to have been duly given when delivered in person, by facsimile or email transmission, by express or overnight mail delivered by a nationally recognized courier (delivery charges prepaid), or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties as follows:

To Bank:	Cross River Bank 400 Kelby Street Fort Lee, New Jersey 07024 Attention: Gilles Gade, President Telephone: [***] Facsimile No.: [***] Email: [***]
With a copy to:	Cross River Bank 400 Kelby Street Fort Lee, New Jersey 07024 Attention: Arlen Gelbard, Esq., General Counsel Telephone: [***] Facsimile No.: [***] Email: [***]
To Platform Agent:	Affirm, Inc. 650 California St., 12th Floor San Francisco, CA 94108 Attention: Max Levchin, Chief Executive Officer Email: [***]
With a copy to:	Affirm, Inc. 650 California St., 12th Floor San Francisco, CA 94108 Attention: Sharda Caro, Chief Legal Officer Email: [***]

Section 10.11. Waiver; Amendments. The delay or failure of either party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of any right of that party. All waivers must be in writing and signed by both parties. Subject to Section 2.3(a), alterations, modifications or amendments of a provision of this Agreement, including all exhibits and schedules attached hereto, shall not be binding and shall be void unless such alteration, modification or amendment is in writing and signed by authorized representatives of Platform Agent and Bank.

Section 10.12. Counterparts. This Agreement may be executed and delivered by the parties hereto in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties agree that this Agreement and signature pages may be transmitted between them by electronic mail and that PDF signatures may constitute original signatures and that a PDF signature page containing the signature (PDF or original) is binding upon the parties.

Section 10.13. Further Assurances. From time to time, each party will execute and deliver to the other such additional documents and will provide such additional information as such other party may reasonably require to carry out the terms of this Agreement.

Section 10.14. Entire Agreement. The Program Documents, including this Agreement and its schedules and exhibits (all of which schedules and exhibits are hereby incorporated into this Agreement) and the documents executed and delivered pursuant hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersede any prior or contemporaneous negotiations or oral or written agreements between the parties hereto with respect to the subject matter hereof or thereof, except where survival of prior written agreements is expressly provided for herein.

Section 10.15. Survival. The terms of Section 4.2(f), 4.2(g), 4.3, 4.3 (Effect of Termination), Section 9.1 (Platform Agent's Representations and Warranties), Section 9.2 (Bank's Representations and Warranties), and this Article X (Miscellaneous) shall survive the termination or expiration of this Agreement.

Section 10.16. Referrals. Neither party has agreed to pay any fee or commission to any agent, broker, finder or other person for or on account of such person's services rendered in connection with this Agreement that would give rise to any valid claim against the other party for any commission, finder's fee or like payment.

Section 10.17. Interpretation. The parties acknowledge that each party and its 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 amendments thereto, and the same shall be construed neither for nor against either party, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

Section 10.18. Headings. Captions and headings in this Agreement are for convenience only, and are not deemed part of this Agreement.

Section 10.19. Amendment and Restatement. As of the Effective Date, (a) this Agreement shall amend and restate the Existing Program Agreement in its entirety and all rights and obligations under the Existing Program Agreement arising prior to the Effective Date shall be governed by the Existing Program Agreement, (b) the Existing Program Agreement shall terminate with respect to the Program after the Effective Date and (c) the relationship of the parties with respect to the Program after the Effective Date shall be governed exclusively by the terms set forth in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth above.

CROSS RIVER BANK

By: /s/ Gilles Gade
Name: Gilles Gade
Title: CEO

By: /s/ Arlen Gelbard
Name: Arlen Gelbard
Title: General Counsel

AFFIRM, INC.

By: /s/ Geoffrey Kott
Name: Geoffrey Kott
Title: Chief Capital Officer

Exhibit 10.5

Certain identified information in this document has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed, and has been marked with "[***]" to indicate where omissions have been made.

SECOND AMENDED AND RESTATED LOAN SALE AGREEMENT
between

CROSS RIVER BANK

and

AFFIRM, INC.,
as Purchaser

Dated as of November 1, 2020

TABLE OF CONTENTS

THIS SECOND AMENDED AND RESTATED LOAN SALE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), dated as of November 1, 2020 (the "Effective Date"), is made by and between CROSS RIVER BANK, a New Jersey state-chartered bank with its principal offices located at 400 Kelby Street, Fort Lee, New Jersey 07024 ("Bank"), and AFFIRM, INC., a Delaware corporation ("Affirm"), with its principal offices located at 650 California St., 12th Floor, San Francisco, California 94108, as purchaser ("Purchaser").

WHEREAS, Bank and Affirm have entered into a Loan Program Agreement, of even date herewith (the "Loan Program Agreement"), pursuant to which Bank engaged Affirm to provide services to Bank in originating loans to Borrowers under the loan program described therein;

WHEREAS, Bank desires to sell to Purchaser, and Purchaser desires to purchase from Bank, the amount of loans specified herein that are originated by Bank under the loan program described in the Loan Program Agreement;

WHEREAS, Purchaser and Bank are parties to that certain Amended and Restated Loan Sale Agreement, dated as of February 1, 2018 (the "Existing Sale Agreement"); and

WHEREAS, Platform Agent and Bank desire to further amend and restate the Existing Sale Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions and mutual covenants and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bank and Purchaser mutually agree as follows:

Section 1. Definitions.

Capitalized terms used in this Agreement shall have the meanings specified in Schedule 1, or if not defined therein, in the Loan Program Agreement. The rules of construction set forth in Section 1.2 of the Loan Program Agreement shall be applicable to this Agreement.

Section 2. Purchase of Loans; Payment to Bank.

(a) Until Bank notifies Purchaser in writing of its intent to cease selling Loans, Bank hereby agrees to sell, assign, set-over, transfer and otherwise convey to Purchaser, without recourse to Bank and with all servicing released, on each Closing Date, each of the Purchaser Allocated Loans and the related Purchaser Loan Assets that is included on the Purchased Loan Schedule. On each Closing Date, Bank shall update the Purchased Loan Schedule to include each of the Purchaser Allocated Loans sold to the Purchaser on such Closing Date and shall deliver such final Purchased Loan Schedule to Purchaser.

(b) In consideration of Bank's agreement to sell, transfer, assign, set-over and convey to Purchaser the Purchaser Allocated Loans, Purchaser agrees to purchase such Purchaser Allocated Loans and the related Purchaser Loan Assets from Bank, and Purchaser shall pay to Bank the Funding Amount related to such Purchaser Allocated Loans by depositing such Funding Amount into the Funding Account by 3:00 pm Eastern Time on the related Closing Date. By 5:00 pm Eastern Time on the Business Day following the related Closing Date, Bank shall provide to Purchaser a reconciliation in a mutually agreed format of each Purchaser Allocated Loan and the related Funding Amount deposited into the Funding Account on the Closing Date related to such Purchaser Allocated Loan.

(c) With respect to any ROFR Loans and any Divested Loans, Bank shall sell, assign, set-over, transfer and otherwise convey to Purchaser such ROFR Loans and such Divested Loans and the related Purchaser Loan Assets.

(d) In consideration of Bank's agreement to sell, transfer, assign, set-over and convey to Purchaser the ROFR Loans and the related Purchaser Loan Assets, Purchaser shall pay to Bank the aggregate ROFR Purchase Price for such ROFR Loans on the related Subsequent Closing Date.

(e) In consideration of Bank's agreement to sell, transfer, assign, set-over and convey to Purchaser the Divested Loans and the Purchaser Loan Assets related thereto, Purchaser shall pay to Bank the aggregate Divested Loan Purchase Price for such Divested Loans on the related Subsequent Closing Date.

Section 3. Right of First Refusal; Securitizations; Sale Restriction.

(a) Bank shall not dispose of, sell or otherwise transfer [***] (or any participation interest therein) to any Person in a Secondary Market Transaction unless (i) Bank shall have given Purchaser [***] prior written notice (a "ROFR Notice") describing the Secondary Market Transaction it wishes to make and the key terms thereof, which shall include the price and proposed Subsequent Closing Date (which shall not be earlier than the end of the ROFR Response Period) and (ii) Purchaser shall have a Right of First Refusal (but shall have no obligation) to agree, within the [***] following receipt of the ROFR Notice (the "ROFR Response Period"), to enter into such Secondary Market Transaction with Bank. If Purchaser fails to exercise such Right of First Refusal within the applicable ROFR Response Period, Bank may consummate such Secondary Market Transaction without the consent of Purchaser; [***].

(b) In the event that Purchaser initiates a Securitization with respect to any Purchased Loan, Purchaser shall offer Bank the right to contribute the Retained Loans that would be eligible for such Securitization to such Securitization at a price and on terms to be determined in connection with such Securitization that are consistent with the terms offered to other third parties; provided that in the event Purchaser and Bank do not agree to the price and terms of such Securitization through good faith negotiations, Purchaser shall not be required to consummate such transaction with Bank.

(c) [***]

Section 4. Ownership of Loans.

(a) Upon receipt by Bank of Purchaser's payment of the Purchase Price for a Purchaser Allocated Loan, the ROFR Purchase Price for a ROFR Loan and the Divested Loan Purchase Price for a Divested Loan, Purchaser shall be the sole owner for all purposes of such Purchaser Allocated Loan, such ROFR Loan or such Divested Loan, respectively. Each of Purchaser and Bank agrees to make entries on its books and records to clearly indicate the sale of each Purchased Loan to Purchaser hereunder. It is expressly agreed and understood that Bank will not assume and shall not have any liability to Purchaser for the repayment by the related Borrower of all or any portion of the Original Borrower Loan Amount, or for the servicing of, any Purchased Loan after the related Subsequent Closing Date.

(b) It is the express intent of the parties hereto that the conveyance of the Purchased Loans by Bank to Purchaser, as contemplated by this Agreement be, and be treated as, a sale by Bank to Purchaser. It is, further, not the intention of the parties that such conveyance be, or be deemed, a pledge of the Purchased Loans by Bank to Purchaser to secure a debt or other obligation of Bank. In the event that, notwithstanding the intention of the parties, the Purchased Loans are held by a court of competent jurisdiction to continue to be property of Bank then (i) this Agreement shall be deemed to be a security agreement within the meaning of Articles 8 and 9 of the applicable Uniform Commercial Code, (ii) the transfer of Loans provided for herein shall be deemed to be a grant by Bank to Purchaser of a first priority security interest in all of Bank's right, title and interest in and to the Purchased Loans and all amounts payable on such Purchased Loans in accordance with the terms thereof and all proceeds of the conversion, voluntary or involuntary, of such Purchased Loans into cash, instruments, securities or other property, (iii) the possession by Purchaser, any of its assigns or an agent or custodian on behalf of Purchaser or any lender to Purchaser or any of its assigns and such other items of property as constitute instruments, money, negotiable documents or chattel paper shall be deemed to be "possession by the secured party" for purposes of perfecting the security interest pursuant to Section 9-313 (or comparable provision) of the applicable Uniform Commercial Code, and (iv) notifications to persons holding such property, and acknowledgments, receipts or confirmations from persons holding such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of Purchaser for the purpose of perfecting such security interest under Applicable Laws. Any assignment of the interest of Purchaser shall also be an assignment of any security interest created hereby. Purchaser and Bank shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Purchased Loans as between the Purchaser and Bank, such security interest would be deemed to be a perfected security interest of first priority under Applicable Laws.

Section 5. Reserve Account.

(a) No later than two (2) Business Days before the Effective Date (the "Reserve Account Funding Date"), Purchaser shall fund the Reserve Account with immediately available funds in an amount at least equal to [***]. The Reserve Account shall at all times be subject to a Control Agreement if the Reserve Account Bank is a bank other than Bank.

(b) [***].

(c) Purchaser shall at all times maintain funds in the Reserve Account at least equal to [***].

(d) To secure the timely payment of the Purchase Price for each Purchaser Allocated Loan sold hereunder, Purchaser hereby conveys, warrants, assigns, transfers, pledges and grants a security interest unto Bank in all right, title, interest, claims and demands of Purchaser, wherever located, whether now or hereafter existing, owned or acquired [***]. In furtherance thereof, Purchaser agrees to take such measures as Bank may reasonably require to perfect or protect such first priority security interest. Bank shall have all of the rights and remedies of a secured party under Applicable Laws [***], and shall be entitled to exercise those rights and remedies in its discretion. Purchaser and Bank shall, to the extent consistent with this Agreement, take such actions as may be necessary [***].

(e) Without limiting any other rights or remedies of Bank under this or any other Agreement, Bank shall have the right to [***]; provided that Purchaser and Bank shall mutually agree with respect to the amount of such obligation of Purchaser under this Agreement, which agreement shall not be unreasonably withheld.

(f) Purchaser shall not have any right to withdraw amounts from the Reserve Account during the term of this Agreement; provided that in the event the amount on deposit in the Reserve Account at any time exceeds [***].

(g) Bank shall release to Purchaser any [***] in the Reserve Account forty-five (45) days after the later of (i) the termination of the Loan Program Agreement or (ii) [***].

(h) The Reserve Account shall be held as a [***] account at Bank [***].

Section 6. Representations and Warranties of Bank.

Bank hereby represents and warrants to Purchaser, as of the Effective Date, each Closing Date and each Subsequent Closing Date that:

(a) This Agreement constitutes a legal, valid and binding obligation of Bank, enforceable against Bank in accordance with its terms except (i) to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect, which may affect the enforcement of creditors' rights in general, and (ii) as such enforceability may be limited by general principles of equity;

(b) Bank is an FDIC-insured New Jersey state-chartered bank, organized, existing, and in good standing under the laws of the State of New Jersey and is qualified and in good standing in each other state where the laws of such state require qualification in order to conduct business of the type conducted by Bank;

(c) Bank has full corporate power and authority to execute, deliver and perform all its obligations under this Agreement;

(d) The execution of this Agreement and the completion of all actions required or contemplated to be taken by Bank hereunder are within the ordinary course of Bank's business and not prohibited by Applicable Laws;

(e) The execution, delivery and performance of this Agreement have been duly authorized by Bank, and do not (i) result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the Purchased Loans (other than the lien created under this Agreement in favor of the Purchaser), or (ii) conflict with and do not violate the terms of the charter or by-laws of Bank and shall not result in a material breach of or constitute a default under, or require any consent under, any indenture, loan or agreement to which Bank is a party;

(f) Bank is not Insolvent;

(g) Bank is in compliance with Applicable Laws;

(h) Bank has the complete and unrestricted right and authority to sell, convey, assign, transfer and deliver to Purchaser, all of the Purchased Loans pursuant to this Agreement; provided that such sale shall be without any recourse to the Bank and without any representation or warranty on the part of the Bank, whether expressed or implied, except as set forth in this Agreement or the Program Agreement;

(i) At all times prior to the transfer and assignment to Purchaser, Bank had good and marketable title to such Purchased Loan and Bank was the sole owner thereof, free and clear of all liens, claims, encumbrances, security interests, and rights of others and had the full right, power and authority to sell, contribute, assign, transfer and pledge its interest in such Purchased Loan, and, immediately upon the transfer thereof to Purchaser, Purchaser will have good and marketable title to such Purchased Loan and shall be the sole equitable and legal owner thereof, free and clear of all liens. Bank has not authorized the filing of and is not aware of any financing statements against Bank that include a description of collateral covering any portion of such Purchased Loans other than any financing statement relating to the security interest granted to Purchaser;

(j) All authorizations, approvals, licenses, consents, registrations and other action by, notices to, and filings with any Person that may be required in relation to the execution, delivery, and performance of this Agreement by Bank have been obtained;

(k) There are no investigations or proceedings pending, or, to the best knowledge of the Bank, threatened against Bank (i) seeking to prevent the completion of any of the transactions contemplated by Bank pursuant to this Agreement, (ii) asserting the invalidity or unenforceability of this Agreement, (iii) seeking any determination or ruling that, in the reasonable judgment of Bank, would adversely and materially affect the performance by Bank of its obligations under this Agreement, (iv) seeking any determination or ruling that would adversely and materially affect the validity or enforceability of this Agreement, or (v) would have a materially adverse financial effect on Bank or its operations if resolved adversely to it;

(l) To the best knowledge of Bank, neither Bank nor any principal thereof has been or is the subject of any of the following that will materially affect Bank's ability to perform its obligations under this Agreement:

(i) an enforcement agreement, memorandum of understanding, cease desist order, administrative penalty or similar agreement concerning lending matters, or participation in the affairs of a financial institution;

(ii) an administrative or enforcement proceeding or investigation commenced by the Securities Exchange Commission, state securities regulatory authority, Federal Trade Commission, any banking regulator or any other state or federal Regulatory Authority, with the exception of routine communications from a Regulatory Authority concerning a consumer complaint and routine examinations of Bank conducted by a Regulatory Authority in the ordinary course of Bank's business; or

(iii) a restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on the part of Bank or any principal thereof.

For purposes of this Section 6(l), the word "principal" of Bank shall include (i) any person owning or controlling [***] or more of the voting power of Bank, (ii) any officer or director of Bank and (iii) any person actively participating in the control of Bank's business;

(m) To the best knowledge of Bank, and as of the respective date of origination and the Closing Date or the Subsequent Closing Date, as applicable to such Purchased Loan, such Purchased Loan has not been satisfied, subordinated or rescinded, and no right of rescission, set-off, counterclaim or defense has been asserted with respect to such Loan;

(n) Each Loan transferred to Purchaser on each respective Closing Date was originated by Bank and constitutes a valid sale, transfer, set-over, assignment and conveyance to Purchaser of all of Bank's right, title, and interest in and to such Loan;

(o) The execution, delivery and performance of this Agreement by Bank complies with all Applicable Laws except where the failure to comply would not reasonably be expected to have a Material Adverse Effect on Bank;

(p) Bank is not transferring any Purchased Loan or the related Purchaser Loan Assets with any intent to hinder, delay or defraud any of its creditors. The Purchase Price received by Bank upon the sale of any Purchased Loan and the related Purchaser Loan Assets constitutes fair consideration and reasonably equivalent value for such Purchased Loan and the related Purchaser Loan Assets;

(q) Bank is not, and is not a subsidiary of a Person that is, required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended;

(r) Bank is not in default under any agreement, contract, instrument or indenture to which it is a party or by which it (or any of its assets) is bound, which default would reasonably be expected to have a Material Adverse Effect with respect to Bank;

(s) Bank is in compliance with all applicable provisions of the AML-BSA Laws and the Foreign Corrupt Practices Act of 1977, as amended, and has adopted policies and procedures reasonably designed to ensure its ongoing compliance with such laws, which policies and procedures are consistent with generally accepted standards within Bank's industry for ensuring such compliance; and

(t) All information supplied by Bank, or on behalf of Bank with its knowledge, to Purchaser in connection with this Agreement or the transactions contemplated hereby is true and accurate in all material respects as of the date thereof stated or certified. No information furnished by Bank, or on behalf of Bank with its knowledge, to Purchaser, in connection with this Agreement or the transactions contemplated hereby contained any untrue statement of material fact or omitted any material fact necessary in order to prevent the statements contained therein in light of the circumstances under which such statements were made from being misleading.

Section 7. Additional Representations, Warranties and Covenants of Bank.

As of the Effective Date, each Closing Date and each Subsequent Closing Date, Bank hereby:

(a) represents and warrants to Purchaser that, with respect to any Purchased Loan, Bank has not altered the terms and conditions or the balance of such Loan or impaired the Loan's enforceability; and

(b) covenants to Purchaser that Bank shall maintain its records in a clear and unambiguous manner to reflect the ownership of Purchaser in each of the Purchased Loans.

Section 8. Representations and Warranties of Purchaser.

Purchaser hereby represents and warrants to Bank, as of the Effective Date, each Closing Date and each Subsequent Closing Date that:

(a) This Agreement constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except (i) to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect, which may affect the enforcement of creditors' rights in general, and (ii) as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity) and Purchaser has received all necessary approvals and consents for the execution, delivery and performance by it of this Agreement;

(b) Purchaser is duly organized, existing, and in good standing under the laws of the state of its organization and is authorized, registered and licensed to do business in each state in which the nature of its activities makes such authorization, registration or licensing necessary or required except where the failure to register or obtain a license would not reasonably be expected to have a Material Adverse Effect on Purchaser;

(c) Purchaser has the full power and authority to execute and deliver this Agreement and perform all of its obligations hereunder;

(d) The execution of this Agreement and the completion of all actions required or contemplated to be taken by Purchaser hereunder are within the ordinary course of Purchaser's business and not prohibited by, and complies with, Applicable Laws except where the failure to comply would not reasonably be expected to have a Material Adverse Effect on Purchaser;

(e) The provisions of this Agreement and the performance of each of its obligations hereunder do not conflict with Purchaser's organizational or governing documents, or any material agreement, contract, lease, order or obligation to which Purchaser is a party or by which Purchaser is bound except where any conflict would not reasonably be expected to have a Material Adverse Effect on Purchaser;

(f) To the best knowledge of Purchaser, neither Purchaser nor any principal thereof has been or is the subject of any of the following:

(i) an enforcement agreement, memorandum of understanding, cease desist order, administrative penalty or similar agreement concerning lending matters, or participation in the affairs of a financial institution;

(ii) an administrative or enforcement proceeding or investigation commenced by the Securities Exchange Commission, state securities regulatory authority, Federal Trade Commission or any other state or federal Regulatory Authority, with the exception of routine communications from a Regulatory Authority concerning a consumer complaint and routine examinations of Purchaser conducted by a Regulatory Authority in the ordinary course of Purchaser's business; or

(iii) a restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices on the part of Purchaser or any principal thereof.

For purposes of this Section 8(f) the word "principal" of Purchaser shall include (i) any person owning or controlling [***] or more of the voting power of Purchaser, (ii) any officer or director of Purchaser; and

(g) Purchaser is not Insolvent.

Section 9. Limitation of Liability.

(a) In no event shall Bank have any liability to Purchaser under this Agreement to the extent such liability arises from Purchaser's breach of any obligations under the Program Agreement [***]. In no event shall any party be liable to any other party for any punitive, exemplary, indirect, special, incidental or consequential damages, including lost profits or savings, damage to business reputation or loss of opportunity. This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any director, officer, employee, agent or shareholder of any party hereto.

Section 10. Conditions Precedent to the Obligations of Bank and Purchaser.

Purchaser's obligations to purchase and Bank's obligations under this Agreement are subject to the satisfaction of the following conditions precedent on or prior to each Closing Date and Subsequent Closing Date, as applicable:

(a) The representations and warranties of Purchaser and Bank set forth in this Agreement shall be true and correct in all respects on each Closing Date or Subsequent Closing Date, as applicable, as though made on and as of such date;

(b) No action or proceeding shall have been instituted or threatened against Bank or Purchaser to impede, prevent or restrain the initiation and completion of the purchase or other transactions contemplated hereby, and, on each Closing Date, there shall be no injunction, decree or similar impediment or restraint preventing or restraining such consummation;

(c) This Agreement and each Program Document shall be in full force and effect (except to the extent the other party causes a termination in order to avoid satisfaction of this condition);

(d) The obligations of Purchaser and Bank under each of the Program Documents to be performed on or before each Closing Date shall have been performed as of such date by Purchaser.

Section 11. Term and Termination.

This Agreement shall expire upon the termination of the Loan Program Agreement in accordance with its terms [***].

Section 12. Successors and Third Parties.

This Agreement and the rights and obligations hereunder shall bind and inure to the benefit of the parties hereto and their successors and assigns. The rights and benefits hereunder are specific to the parties and shall not be delegated or assigned without the prior written consent of the other party. Nothing in this Agreement is intended to create or grant any right, privilege or other benefit to or for any person or entity other than the parties hereto.

Section 13. Notices.

All notices and other communications under this Agreement shall be in writing (including communication by facsimile copy or other electronic means) and shall be deemed to have been duly given when delivered in person, by facsimile or email transmission, by express or overnight mail delivered by a nationally recognized courier (delivery charges prepaid), or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties as follows:

To Bank:	Cross River Bank 400 Kelby Street, Fort Lee, New Jersey 07024 Attention: Gilles Gade, President Telephone: [***] Facsimile No.: [***] Email: [***]
With a copy to:	Cross River Bank 400 Kelby Street, Fort Lee, New Jersey 07024 Attention: Arlen Gelbard, Esq., General Counsel Telephone: [***] Facsimile No.: [***] Email: [***]
To Purchaser:	Affirm, Inc. 650 California St., 12th Floor] San Francisco, CA 94108 Attention: Max Levchin, Chief Executive Officer Email: [***]

With a copy to: Affirm, Inc.
650 California St., 12th Floor
San Francisco, CA 94108
Attention: Sharda Caro, Chief Legal Officer
Email: [***]

Section 14. Relationship of the Parties.

It is agreed and understood that that in performing their responsibilities pursuant to this Agreement, both parties are acting as independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a partnership or joint venture or any other common association for profit between Bank and Purchaser.

Section 15. Loan Documents.

Purchaser hereby acknowledges receipt from Bank of all Loan Documents related to the Purchased Loans. Purchaser shall retain all Loan Documents in accordance with Section 3.3(f) of the Loan Program Agreement.

Section 16. Expenses.

(a) Except as set forth herein, each of Bank and Purchaser shall bear the costs and expenses of performing their respective obligations and duties under this Agreement.

(b) Each of Bank and Purchaser shall be responsible for payment of its own federal, state or local taxes or assessment associated with the performance of their respective obligations and duties under this Agreement.

(c) Within thirty (30) days after receipt of an invoice from Bank, Purchaser shall reimburse Bank for all reasonable and documented fees, costs, expenses and other incurrences in respect of any Secondary Market Transaction consummated by Purchaser in which Bank is not participating; provided that, Bank shall (x) give notice to Purchaser of its intent to engage counsel or incur expenses and (y) obtain the prior written consent (which may be by email) of Purchaser (which shall not be unreasonably withheld) for any fees and expenses that would be paid by Purchaser [***]. For any Secondary Market Transaction in which Bank is participating, Purchaser and Bank will each be responsible for its own legal fees, costs, expenses and other incurrences. To the extent such fees, costs, and expenses apply to the Secondary Market Transaction as a whole, Purchaser and Bank will be responsible for their ratable share in the same proportion as the aggregate Borrower Amortized Cost Basis of the loans each party contributed to such Secondary Market Transaction.

(d) Within thirty (30) days after receipt of an invoice from Bank, Purchaser shall reimburse Bank for the reasonable and documented monthly costs associated with any required transfer of funds from the Reserve Account to Purchaser if Reserve Account Bank is a bank other than Bank.

Section 17. Examination and Reports

(a) Purchaser agrees to cooperate with any audit of Platform Agent set forth in Section 3.2(f) of the Loan Program Agreement. Both parties agree to submit to any examination that may be required by a Regulatory Authority having jurisdiction over the other party, during regular business hours and upon reasonable prior notice, and to otherwise reasonably cooperate with the other party in responding to such Regulatory Authority's examination and requests related to this Agreement.

(b) Purchaser agrees that should an examination report, audit or investigation of, or supervisory letter from, a relevant Regulatory Authority reveal noncompliance with this Agreement or Applicable Laws, Purchaser shall notify Bank as soon as reasonably practicable.

(c) After [***], Purchaser shall deliver a loan tape related to monthly originations for the prior month no later than the 10th day of each month (or if such day is not a Business Day, the following Business Day) to Bank setting forth the information mutually agreed between the parties.

Section 18. Inspection.

Upon reasonable prior notice from the other party, each party agrees to submit to an inspection or audit of its respective books, records, accounts and facilities related to this Agreement, from time to time, during regular business hours subject to the duty of confidentiality each party owes to its customers and banking secrecy and confidentiality requirements otherwise applicable to each party under the Program Documents or under Applicable Laws; provided that [***]; provided further that for each inspection of Purchaser by Bank that is not in connection with an audit of Platform Agent set forth in Section 3.2(f) of the Loan Program Agreement, Bank and Purchaser shall mutually agree upon the necessity of such inspection and determine the scope and resources required to complete such inspection. Purchaser shall store all documentation and electronic data related to its performance under this Agreement in accordance with its document retention policy and shall make such documentation and data available during any inspection or audit by Bank or its agents. As mutually agreed by the parties, Purchaser shall report to Bank regarding the performance of its obligations and duties under this Agreement.

Section 19. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, INCLUDING GENERAL OBLIGATIONS LAW §5-1401 AND §5-1402, BUT OTHERWISE WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF.

EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN NEW YORK CITY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND EACH PARTY HERETO HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURTS OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT NOT SUBJECT TO FURTHER APPEAL, IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

Section 20. Manner of Payments.

Unless the manner of payment is expressly provided herein, all payments under this Agreement shall be made by ACH or wire transfer. Notwithstanding anything to the contrary contained herein, neither party shall fail to make any payment required of it under this Agreement as a result of a breach or alleged breach by the other party of any of its obligations under this Agreement or any other agreement; provided that the making of any payment hereunder shall not constitute a waiver by the party making the payment of any rights it may have under the Program Documents or by Applicable Law.

Section 21. Referrals.

Neither party has agreed to pay any fee or commission to any agent, broker, finder, or other person for or on account of such person's services rendered in connection with this Agreement that would give rise to any valid claim against the other party for any commission, finder's fee or like payment.

Section 22. Entire Agreement.

The Program Documents, including this Agreement and its schedules and exhibits (all of which schedules and exhibits are hereby incorporated into this Agreement) and the documents executed and delivered pursuant hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof, and supersede any prior or contemporaneous negotiations or oral or written agreements between the parties hereto with respect to the subject matter hereof or thereof, except where survival of prior written agreements is expressly provided for herein.

Section 23. Amendment and Modifications.

Alterations, modifications or amendments of a provision of this Agreement, including all exhibits attached hereto, shall not be binding and shall be void unless such alteration, modification or amendment is in writing and executed by authorized representatives of Purchaser and Bank.

Section 24. Waivers.

The delay or failure of either party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of any right of that party. All waivers must be in writing and signed by both parties.

Section 25. Severability.

If any provision of this Agreement shall be held illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

Section 26. Interpretation.

The parties acknowledge that each party and its 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 amendments thereto, and the same shall be construed neither for nor against either party, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

Section 27. Headings.

Captions and headings in this Agreement are for convenience only, and are not to be deemed part of this Agreement.

Section 28. Counterparts.

This Agreement may be executed and delivered by the parties in any number of counterparts, and by different parties on separate counterparts, each of which counterpart shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same instrument. The parties agree that this Agreement and signature pages may be transmitted between them by electronic mail and that PDF signatures may constitute original signatures.

Section 29. No Solicitation.

Neither Bank nor any Affiliate or agent of Bank shall solicit in any manner any of the Borrowers related to a Loan for the sale of any other products or services. Notwithstanding the foregoing, none of Bank, an Affiliate of Bank or any agent of Bank shall be precluded from soliciting any Borrower whom Bank, an Affiliate of Bank or any agent of Bank learns about from any source other than Platform Agent. Bank shall not sell, rent, lease or otherwise provide to any Person a list including any Borrower or assist any Person in soliciting any Borrower in any manner to the extent that Bank learns about such Borrower from the Platform Agent.

Section 30. Amendment and Restatement.

As of the Effective Date, this Agreement shall amend and restate the Existing Sale Agreement in its entirety and all rights and obligations under the Existing Sale Agreement are hereby terminated and the relationship of the parties shall be governed exclusively by the terms set forth in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

PURCHASER:

AFFIRM, INC.

By: /s/ Geoffrey Kott
Name: Geoffrey Kott
Title: Chief Capital Officer

BANK:

CROSS RIVER BANK

By: /s/ Gilles Gade
Name: Gilles Gade
Title: Chief Executive Officer

By: /s/ Arlen Gelbard
Name: Arlen Gelbard
Title: General Counsel

SCHEDULE 1

Definitions

"AML-BSA Laws" means, collectively: (i) the Bank Secrecy Act of 1970, as supplemented by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, and any rules and regulations promulgated thereunder; (ii) OFAC's rules and regulations regarding the blocking of assets and the prohibition of transactions involving Persons or countries designated by OFAC; and (iii) any other Applicable Laws relating to customer identification, anti-money laundering or preventing the financing of terrorism and other forms of illegal activity, each as amended.

"APR" means, with respect to a Loan, the annual percentage rate disclosed in the final truth-in-lending statement included in the related Loan Documents and calculated in accordance with the federal Truth in Lending Act.

"Bank Allocation Percentage" means, with respect to any Bank Origination Month occurring [***] of the aggregate Original Borrower Loan Amount originated by Bank in such Bank Origination Month.

"Bankruptcy Code" means Title 11 of the United States Code. 11 U.S.C. §§ 101 *et. seq.*, as amended from time to time.

"Borrower Amortized Cost Basis" means, as of any date of determination with respect to a Loan, the outstanding principal balance of such Loan, calculated by amortizing the Original Borrower Loan Amount as the initial amount and reduced by the amount of any Collections received by or on behalf of the related Borrower.

"Borrower Interest Rate" means, with respect to a Loan, the risk-based annualized interest rate used to accrue interest payable by the Borrower.

"Closing Date" means, the date upon which Purchaser shall purchase Purchaser Allocated Loans pursuant to Section 2 of this Agreement; provided that, Purchaser shall specify a Closing Date that is the later of (a) two (2) calendar days and one (1) Business Day following the related Funding Date for such Loan and (b) the date mutually agreed to by Bank and Purchaser.

"Collections" means all cash collections, distributions, payments and other amounts of principal received by Bank from time to time from the Borrower.

"Control Agreement" means, with respect to the Reserve Account, the deposit account control agreement in effect from time to time with respect thereto, in each case in form and substance acceptable to Bank, among Bank, Purchaser and the Reserve Account Bank, pursuant to which Bank obtains "control" (within the meaning of Section 9-104 or Section 8-106, as the case may be, of the applicable UCC) of the Reserve Account.

"Cumulative Default Amount" means, with respect to any Quarterly Vintage, the aggregate of the Borrower Amortized Cost Basis of each Retained Loan in such Quarterly Vintage that became Defaulted Loans at any time after the related Closing Date.

"Cumulative Default Ratio" means, with respect to any Quarterly Vintage, the ratio expressed as a percentage of (i) the Cumulative Default Amount for such Quarterly Vintage to (ii) the aggregate of the initial Borrower Amortized Cost Basis of all Retained Loans included in such Quarterly Vintage.

"Debtor Relief Laws" means (i) the Bankruptcy Code and (ii) all other applicable liquidation, conservatorship, bankruptcy, moratorium, arrangement, receivership, insolvency, reorganization, suspension of payments, adjustment of debt, marshaling of assets or similar debtor relief laws of the United States, any state or any foreign country from time to time in effect affecting the rights of creditors generally.

"Defaulted Loan" means, as of any date of determination, a Loan (i) for which the related Borrower is more than 120 calendar days past due on any portion of any payment required to be made under the terms of the related Loan Documents in an amount greater than [***], (ii) for which the related Borrower has become the subject of a proceeding under a Debtor Relief Law and Bank or Purchaser has actual knowledge of such proceeding, or (iii) which the Servicer has charged-off and has an Borrower Amortized Cost Basis of more than [***].

"Divested Loans" means each of the Retained Loans with respect to which (a) a Regulatory Authority has directed Bank to sell and (b) Purchaser is able to purchase and is otherwise permitted to purchase pursuant to Applicable Laws.

"Divested Loan Purchase Price" means, with respect to a Divested Loan and as of the related Subsequent Closing Date, an amount equal to the aggregate Borrower Amortized Cost Basis of such Divested Loan plus the amount of accrued and unpaid interest at the Effective Yield through such Subsequent Closing Date.

"Effective Yield" means the percentage equal to (i) with respect to Loans with respect to which the Borrower Interest Rate is greater than zero, the Borrower Interest Rate related to such Loan and (ii) with respect to Loans with respect to which the Borrower Interest Rate is equal to zero, the Equivalent Rate.

"Equivalent Rate" means [***].

"FICO" means Fair Isaac Corporation.

"Funding Account" means any account designated by Bank by written notice to Purchaser after the Effective Date; provided that Bank shall give Purchaser at least five (5) Business Days prior written notice of any change to the Funding Account.

"Funding Amount" means, with respect to any Closing Date, the aggregate Purchase Price of all Purchaser Allocated Loans to be sold to Purchaser by Bank on such Closing Date.

"Grade A Loan" means a Purchased Loan with a Borrower Interest Rate equal to zero that has been given an "A" grade by Affirm, based on Affirm's internal loan grading methodology.

"Grade B Loan" means a Purchased Loan with a Borrower Interest Rate equal to zero that has been given a "B" grade by Affirm, based on Affirm's internal loan grading methodology.

"Insolvent" means, with respect to any specified Person, the failure by such Person to pay its debts in the ordinary course of business, the inability of such Person to pay its debts as they come due or the condition whereby the sum of such Person's debts is greater than the sum of its assets.

"Loan Program Agreement" means the Second Amended and Restated Loan Program Agreement, of even date herewith, between Purchaser and Bank.

"Purchase Price" means, with respect to a Purchaser Allocated Loan and the related Closing Date, the Borrower Amortized Cost Basis as of such Closing Date, plus any interest accrued at the Effective Yield of such Purchaser Allocated Loan from the date the related Loan was originated by Bank until the related Closing Date.

"Purchased Loan Schedule" means the schedule of Purchased Loans substantially in the form attached as Schedule III.

"Purchased Loans" means, collectively, each of the Purchaser Allocated Loans, the ROFR Loans and the Divested Loans, and, in each case, the Purchaser Loan Assets related thereto, purchased by Purchaser in accordance with Section 2(a).

"Purchaser Allocated Loans" means, [***].

"Purchaser Loan Assets" means, with respect to a Purchaser Allocated Loan, a Divested Loan or a ROFR Loan, (1) the related Loan Documents and all rights, remedies, powers, privileges, and claims thereunder; (2) all payments applicable to such Purchaser Allocated Loan, Divested Loan or ROFR Loan, respectively, that are received or receivable and all other amounts due or to become due on or after the related Closing Date or Subsequent Closing Date except for all other fees, charges and other amounts that have been or may be assessed against the related Borrower by, and payable for the account of the Servicer in accordance with the related Loan Documents; (3) any and all servicing rights associated with such Purchaser Allocated Loan, Divested Loan or ROFR Loan, respectively; (4) all books and records and other rights, interests (whether whole, fractional or otherwise), benefits, proceeds, remedies and claims arising from or relating to such Purchaser Allocated Loan, Divested Loan or ROFR Loan, respectively; (5) all Investment Property, Instruments, Chattel Paper, Money, Documents, Supporting Obligations, General Intangibles or Accounts (as each term is defined in Article 9 of the Uniform Commercial Code) at any time evidencing or relating to any of the foregoing; and (6) all Proceeds (as defined in Article 9 of the Uniform Commercial Code) of any of the foregoing.

"Quarterly Vintage" means, for any quarter, all Loans that were originated during such quarter.

"Required Balance" means, with respect to each month after the Effective Date, the product of (i) [***], (ii) [***] and (iii) [***].

"Reserve Account" means a deposit account in Purchaser's name established by Purchaser.

"Reserve Account Bank" means the bank, agreed to by Bank, that will maintain the Reserve Account.

"Reserve Account Funding Date" shall have the meaning set forth in Section 5(a).

"Reserve Account Property" means (a) the Reserve Account, (b) all property (including all cash, financial assets, investment property and security entitlements) from time to time deposited in, carried in or credited to, or required to be deposited in, carried in or credit to, the Reserve Account, (c) all funds from time to time deposited in or credited to, or required to be deposited in or credited to, the Reserve Account, (d) all credit balances related to the Reserve Account, (e) all rights, claims and causes of action of Purchaser with respect to the Reserve Account and (f) all proceeds of the foregoing.

"Retained Loan" means each Loan allocated to Bank in accordance with the Retained Loan Allocation Method that is (a) not sold, transferred or otherwise conveyed to Purchaser and (b) not a Purchaser Allocated Loan.

"Retained Loan Allocation Method" means, with respect to each Bank Origination Month [***], the method under which Loans are allocated to Bank as set forth on Schedule 2.

"Retained Loan Limits" means, with respect to a Loan, the limits that would be exceeded if such Loan were retained by Bank because such Loan would cause (a) the aggregate Original Borrower Loan Amount of the Retained Loans originated in the same Bank Origination Month to exceed the Bank Allocation Percentage, (b) more than [***] of all Retained Loans related to [***], (c) the Borrower Amortized Cost Basis of all Retained Loans related to [***] to exceed [***] or (d) the Borrower Amortized Cost Basis of all Retained Loans to exceed [***].

[***]

[***]

[***]

"[***]Purchaser Allocated Loans" means each of (a) the Loans that are initially allocated to Purchaser in accordance with the Retained Loan Allocation Method and (b) the Loans that are initially allocated to Bank in accordance with the Retained Loan Allocation Method but that would, if retained by Bank, exceed the Retained Loan Limits.

"Right of First Refusal" means [***].

"ROFR Loans" means each of the Retained Loans with respect to which Purchaser has agreed to exercise its Right of First Refusal as set forth in the related ROFR Notice.

"ROFR Notice" shall have the meaning set forth in Section 3.

"ROFR Purchase Price" means, with respect to a ROFR Loan, an amount equal to the purchase price set forth in the related ROFR Notice for the related Secondary Market Transaction with respect to which Purchaser has accepted its Right of First Refusal.

"Secondary Market Transaction" means any sale of a participation in any one or more Loans, or any Securitization or other similar transaction or transfer of all or a portion of the Loans to a party other than Bank or Purchaser.

"Securitization" means any transaction involving either (1) a sale or other transfer of some or all of the Purchased Loans directly or indirectly to an issuing entity in connection with an issuance of publicly offered or privately placed, rated or unrated Securitization Transaction or (2) an issuance of publicly offered or privately placed, rated or unrated Securitization Transaction, the payments on which are determined primarily by reference to one or more portfolios of loans consisting, in whole or in part, of some or all of the Purchased Loans.

"Servicer" means Affirm, Inc., a Delaware corporation, in its capacity as servicer under the Servicing Agreement.

"Subsequent Closing Date" means the date upon which Purchaser purchases ROFR Loans or Divested Loans.

Exhibit 10.7

Certain identified information in this document has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed, and has been marked with "[***]" to indicate where omissions have been made.

CUSTOMER INSTALLMENT PROGRAM AGREEMENT

This Customer Installment Program Agreement ("**Agreement**") is entered into as of the 16th day of July, 2020 (the "**Effective Date**") by and between Shopify Inc., a Canadian corporation ("**Shopify**"), and Affirm, Inc., a Delaware corporation ("**Affirm**"). Shopify and Affirm may be referred to collectively as the "**Parties**" or individually as a "**Party**."

The Agreement is made up of the attached Terms and Conditions applicable to the Program and services as well as any schedules, addenda, and exhibits that are attached. The additional specifics of the Program and services to be provided under this Agreement are included in an exhibit, and the Parties may amend this Agreement though an additional exhibit, addendum or other amendment to this Agreement that is mutually agreed upon by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their authorized representatives below.

Shopify Inc.	**Affirm, Inc.**
Signature: /s/ Amy Shapero	**Signature**: /s/ Max Levchin
Name: Amy Shapero	**Name**: Max Levchin
Title: Chief Financial Officer	**Title**: Chief Executive Officer
Date: July 16, 2020	**Date:** July 16, 2020

Notices. Notices required under this Agreement shall be delivered pursuant to Section 23 (Notice), and addressed as set forth below:

If to Shopify:

Shopify
150 Elgin Street, 8th Floor
Ottawa, ON
K2P 1L4
Canada
[***]

If to Affirm:

Affirm, Inc.
650 California Street, 12th Floor
San Francisco, CA 94108
Attention: Chief Legal Officer
[***]

TERMS AND CONDITIONS

1. Introduction. Affirm offers, administers and/or provides access to certain consumer/buyer installment financial products and services issued or originated in a manner that complies with Applicable Law. Affirm and Shopify are entering into this Agreement for Affirm to make the Financial Product available to Customers and Eligible Merchants. The purpose of this Agreement is to establish the framework and Program pursuant to which the Financial Product is developed, marketed and implemented for use on the Shopify Platform for the benefit of Shopify Merchants and their customers.

2. Definitions. All capitalized terms used in this Agreement and not otherwise defined shall have the meaning as set forth below.

"**Affiliates**" means any entity that directly or indirectly controls, is controlled by or is under common control with a Party.

"**Affirm Materials**" means any content, information, materials and items provided or made accessible by Affirm pursuant to this Agreement, including the Affirm API, links, text, images, audio, video and other copyright works, and software, tools, technologies and other functional items.

"**Affirm Pre-Existing IP**" means Affirm's concepts, data, designs, developments, documentation, drawings, hardware, improvements, information, inventions, processes, software, techniques, technology, tools, and any other Intellectual Property Rights, and any third-party licenses or other rights to use any of the foregoing, that are developed entirely independently by Affirm (or a third party, as applicable), at any time without any use of Shopify's Confidential Information.

"**Affirm's Systems**" means Affirm's hardware, network, computing environment and/or systems.

"**Applicable Law**" means all federal, state, and local laws and regulations, directives and any other relevant authorities, guidance and requirements, including those of Regulatory Authorities or payment networks, applicable to the Parties' performance under this Agreement or the Program, including, but not limited to, as may be applicable, compliance with the Gramm-Leach-Bliley Act ("**GLBA**") (including privacy and safeguarding of Customer Information), fair lending and any other applicable consumer protection laws and regulations, and any amendments and regulations promulgated therefrom, privacy and data protection laws and regulations, Bank Secrecy Act ("**BSA**")/anti-money laundering ("**AML**"), Office of Foreign Assets Control ("**OFAC**"), and applicable anti-bribery and anti-corruption laws including the Foreign Corrupt Practices Act.

"**Application**" means the action or document by which a Customer requests or applies for a Financial Product from Affirm in connection with the Program.

"**Application Processing**" means those services necessary, in connection with an Application, to originate and establish a Financial Product in accordance with Applicable Law and the terms of the Program and Program Outline. Such services shall include but are not to be limited to: application of Affirm's underwriting standards to incoming Applications, OFAC screening, customer service, statement preparation and issuance, regulatory compliance, security and fraud control, and activity reporting.

"**Confidential Information**" of the Disclosing Party means all data and information, regardless of the form or media, relating to the Disclosing Party of which the Receiving Party becomes aware as a consequence of, or in relation to, the performance of its obligations or rights under this Agreement, which (i) is not generally known by the public, and (ii) is reasonably identified as confidential at the time of disclosure or which, under the circumstances surrounding disclosure, ought to be reasonably considered as confidential. Confidential Information includes (a) any information about Disclosing Party's and its Affiliates' (1) employees, (2) business plans, methods and practices, (3) marketing plans, method and practices, including data flows, product processes and security features, (4) financial information, (5) price lists and pricing policies, (6) contracts and contractual relations with customers, (7) customer names and lists, and (8) personally identifiable information (as defined under Applicable Law); (b) technical information and requirements, drawings, engineering data, performance specifications; (c) the existence and terms and conditions of this Agreement; and (d) confidential information of third parties. In addition to the above, Confidential Information of Shopify includes Merchant Information and Program Information. For the avoidance of doubt, GLBA NPI, as defined in Section 14.2, shall not include Customer Information or Confidential Information that Shopify has or collects for any purposes other than for an Eligible Merchant to participate in the Program or to make the Financial Product available to Customers.

"**Conflict"** means any dispute, controversy, or claim arising out of or relating to this Agreement, the Program Outline or the Warrant Agreement.

"**Customer**" or **"Buyer"** means any third party that applies for, accesses or receives a Financial Product from an Eligible Merchant pursuant to the Program

"**Customer Information**" means all information provided by a Customer, whether personally identifiable or in aggregate, that is submitted and/or obtained by or on behalf of Affirm or Shopify about a Customer or an Application (whether or not completed) for products or services offered pursuant to the Program, including demographic data, and transaction data. "Customer Information" does not include information about a Customer provided by a non-Customer third party to Affirm or Shopify, including but not limited to consumer reports about Customers provided by credit bureaus. For the avoidance of doubt, GLBA NPI shall not include Customer Information or Confidential Information that Shopify has or collects for any purposes other than for an Eligible Merchant to participate in the Program or to make the Financial Product available to Customers.

"**Customer Losses**" means any amounts or losses resulting from (i) Customer fraud; or (ii) Customer failure to make loan payments or meet any other obligation to Affirm in accordance with any applicable Customer Agreement, as defined in Section 5.2.

"**Disclosing Party**" means the Party providing Confidential Information to the other Party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the Disclosing Party).

"**Eligible Merchant**" means any Merchant approved by Shopify (in compliance with this Agreement) to participate in the Program and makes the Financial Product available to Customers.

"**Excluded Customer**" means any customer of Affirm who has obtained a product or service from Affirm outside of or unrelated to the Program.

"**Excluded Customer Information**" means all information, whether personally identifiable or in aggregate, obtained by Affirm about an Excluded Customer independently of the Program.

"**Excluded Merchant**" means any Merchant who, both prior to the Program launch and independent of the Program, has obtained a product or service from Affirm and who Affirm has not migrated to the Program in accordance with Affirm's obligation to do so as set forth in the relevant Program Outline.

"**Excluded Merchant Information**" means all information, whether personally identifiable or in aggregate, obtained by Affirm about an Excluded Merchant.

"**Financial Product**" means a consumer/buyer installments financial product or service offered by Affirm to Customers pursuant to or in connection with the Program and as further described in the Program Outline.

"**Force Majeure Event**" as used in this Agreement will mean an unanticipated event that is not reasonably within the control of the affected Party or its subcontractors, such as (i) acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, (ii) unforeseeable pandemics or epidemics that are officially declared by the U.S. Centers for Disease Control or the World Health Organization, combined with labor force quarantines that are officially declared as such by an applicable governmental authority, as a result of such U.S. Centers for Disease Control or World Health Organization declaration, or (iii) any other event similar to those enumerated above and which by exercise of reasonable due diligence, such affected Party or its subcontractors could not reasonably have been expected to avoid, overcome or obtain, or cause to be obtained, a commercially reasonable substitute therefore. For the avoidance of doubt, the current COVID-19 pandemic is expressly carved out of this Force Majeure Event and neither party expresses a position whether it would meet the criteria set forth in subclause (ii) above.

"**Intellectual Property Rights**" means (i) inventions, improvements, patents (including all reissues, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof) and patent applications, (ii) trademarks, service marks, trade names and trade dress, together with the goodwill associated therewith, (iii) works of authorship and copyrights, including copyrights in computer software, databases and television programming and all rights related thereto, (iv) confidential and proprietary information, including trade secrets and know-how, (v) processes, methods, procedures and materials, (vi) data, databases and information, (vii) software, tools and machine-readable texts and files, (viii) literary work or other work of authorship, including documentation, reports, drawings, charts, graphics, and other written documentation, together with all copyrights and moral rights, (ix) all other proprietary rights, and (x) all registrations and applications for registration and other intellectual property rights in or appurtenant to the foregoing items described in clauses (i) through (ix) above.

"**Materials**" or "**Program Materials**" means, individually and collectively, Affirm Materials and/or Shopify Materials.

"**Merchant**" means any Shopify customer on the Shopify platform that is in the business of selling goods and/or services unless otherwise expressly excluded from this definition as mutually agreed by the Parties.

"**Merchant Information**" means any information or data obtained during the Term about Merchants specifically including, but not limited to, the following: the fact that someone is a Merchant; all lists of Merchants; and all information relating to and identified with such Merchants or its owners. "Merchant Information" does not include (i) information about a Merchant provided by a non-Merchant third party to Affirm or Shopify, including but not limited to credit reports about Merchants provided by credit bureaus; or (ii) Excluded Merchant Information.

[***] means [***] (i) [***]; (ii) [***]; or (iii) [***] set forth in the applicable Merchant Agreement, as defined in Section 5.2.

"**Migrated Merchant**" means any Eligible Merchant that has participated in an Affirm product prior to the date of this Agreement and has moved over to the Program in accordance with Affirm's migration obligations as set forth in the Program Outline.

"**Non-Employee Personnel**" means any person, whether legal or natural, who is not an employee of a Party, but who may act on behalf of, or otherwise represent, such Party.

"**Person**" means any natural or legal person, including any individual, corporation, partnership, limited liability company, trust or unincorporated association, or other entity.

"**Personnel**" means a Party's employees, representatives, agents, subcontractors, consultants, third-party advisors, Non-Employee Personnel or any other persons, whether legal or natural, who may act on behalf of, or otherwise represent, a Party.

"**Program**" means the system of services under which Affirm shall make the Financial Product available to Eligible Merchants and Customers pursuant to the Program Outline as set out in Exhibit A hereto.

"**Program Information**" means any information and data related to the Program or any information or data provided by or on behalf of Shopify or its Eligible Merchants (including any Migrated Merchants) to Affirm in connection with the Program that is not considered to be Merchant Information or Customer Information; provided that "Program Information" shall not include (i) GLBA NPI, (ii) Affirm Confidential Information, (iii) Affirm Materials, (iv) Affirm Pre-Existing IP, (v) Intellectual Property Rights that Affirm or its Affiliates solely create, author, develop or otherwise acquire (as further described in Section 8.4), (vi) Intellectual Property Rights that the Parties jointly create, author or develop (as further described in Section 8.4), or (vii) information or data related to the Program that is not unique to the Program or that was created, authored or developed by Affirm for use outside of the Program (e.g., existing Affirm products that are similar to the Financial Product).

"**Program Outline**" means the document agreed to by the Parties outlining the Program. The Program Outline is fully described and set forth in Exhibit A.

"**Protected Information**" means any one or more of the following categories of information or data: (i) Customer Information; (ii) Application data; (iii) any other information or data covered by Applicable Law, including applicable privacy laws; (iv) all information about a Party's information security and its applied information security measures; and (v) any information designated as Protected Information under this Agreement.

"**Receiving Party**" means the Party receiving Confidential Information from the Disclosing Party directly or indirectly (via one or more third parties acting on behalf of and at the direction of the Disclosing Party).

"**Regulatory Authority**" means any federal, state or local regulatory agency or other governmental agency or authority having jurisdiction over Affirm or Shopify.

"**Security Breach**" means any act or omission that materially compromises either the security, confidentiality or integrity of data or the physical, technical, administrative or organizational safeguards put in place by a Party or a third-party service provider that relate to the protection of the security, confidentiality or integrity of data relating to the Program. Without limiting the foregoing, a material compromise shall include any unauthorized access to, unauthorized disclosure of or unauthorized acquisition of nonpublic personal information or Customer Information, and, in the case of Affirm, Merchant Information.

"**Security Complaint**" means receipt of a credible complaint in relation to privacy and data security practices of the applicable Party or the applicable Party's third-party service provider of a material breach or alleged material breach of this Agreement relating to such privacy and data security practices.

"**Security Breach Costs**" means (a) costs, expenses (including reasonable attorney and expert witness fees), damage awards, fines and penalties resulting from claims, investigations, litigation, arbitration and mediation arising from or related to a Security Breach; (b) Merchant Losses or Customer Losses arising from or related to such Security Breach; (c) costs and expenses of responding to the Security Breach (for example, the cost of notifying Customers, Regulatory Authorities and others affected directly by the Security Breach); and (d) costs and expenses of mitigation and remediation of the Security Breach, including the provision of monitoring service, credit protection service, credit fraud alert and/or similar services that the non-breached Party deems reasonably necessary to protect itself or its affected Customers in light of risks posed by the actual or potential Security Breach.

"**Shopify Materials**" means any content, information, materials and items provided or made accessible by Shopify pursuant to this Agreement, including the Shopify API, links, text, images, audio, video and other copyright works, and software, tools, technologies and other functional items.

"**Shopify Pre-Existing IP**" means Shopify's concepts, data, designs, developments, documentation, drawings, hardware, improvements, information, inventions, processes, software, techniques, technology, tools, and any other Intellectual Property Rights, and any third-party licenses or other rights to use any of the foregoing, that are developed entirely independently by Shopify (or a third party, as applicable), at any time without any use of Affirm's Confidential Information.

"**Shopify's Systems**" means Shopify's hardware, network, computing environment and/or systems.

"**Specifications**" means the criteria, requirements, applicable performance capabilities, characteristics, and other descriptions and standards for each Party's services and deliverables set forth in this Agreement or the Program Outline.

"**Strategic Operating Committee"** means the Committee formed by the Parties as set forth in Section 7.2.

"**Warrant Agreement**" means warrant agreement attached hereto as Schedule 1.

3. Scope of Arrangement.

3.1 This Agreement contains the sole and exclusive terms and conditions between the Parties with respect to the subject matter hereof. The Parties agree that this Agreement is not intended to create an exclusive relationship of any type between the Parties except where and to the extent specifically indicated herein.

3.2 For the purposes of this Agreement, the term "Affirm" is used in connection with any indemnity, obligation, representation, warranty, covenant or undertaking of Affirm, irrespective of whether such item is or must be supported or fulfilled in whole or part for Affirm or other third party financial institution with whom Affirm has contracted as determined by Affirm. For the avoidance of doubt and without limiting the generality of the foregoing, any failure by Affirm to include such third party financial institution in connection with its undertakings under this Agreement is Affirm's obligation and it bears the sole risk for failure to do so. Shopify will look solely to Affirm to enforce the performance of the duties and obligations of any third party financial institution that has partnered with Affirm.

4. Shopify Obligations.

4.1 Shopify shall, for the term of this Agreement, as directed by Affirm as the Customer underwriter and servicer of the Program(s), host the user experience/interface for Eligible Merchants and Customers (the "**Platform**") and the customer portal through Shopify's website (the "**SHOP App**"). Shopify's role will be limited to developing and maintaining the Platform and SHOP App and providing the Platform/SHOP App to its Eligible Merchants and Customers for Affirm to offer the Financial Product to Customers through the Platform and SHOP App. Shopify agrees to configure and maintain the Platform and SHOP App in a manner that will allow Affirm to perform its obligations in a legally compliant manner through the Platform and SHOP App, including without limitation, distribution of Customer Agreements and servicing of loans. Shopify shall enable Affirm to distribute, or shall distribute in accordance with requirements from Affirm, the Customer Agreements, disclosures, amendments and Customer communications referenced in Sections 5.2 and 5.4.

4.2 Shopify, at its sole expense, may from time-to-time market the Program and Financial Products to Merchants in accordance with this Agreement; such requirements may be modified if required to ensure continued compliance with Applicable Law or if required in writing by a Regulatory Authority. Shopify agrees to work in good faith with Affirm on all marketing-related activities and mutually agree where possible on marketing programs and practices. Shopify further agrees to work in good faith with Affirm to modify marketing materials if Affirm believes such modification is necessary or advisable to avoid reputational damage to Affirm or Shopify or to reduce risk to Affirm or Shopify.

4.3 Unless otherwise provided in the Program Outline, in the event a Merchant desires to enroll in the Program to offer Customers the ability to use the Financial Product, the Parties have agreed that [***], and if such applicant Merchant is approved, such applicant may then be added as an Eligible Merchant to the Program and may commence referring Customers to Affirm for purposes of obtaining Financial Products. As agreed by the Parties, these Merchant obligations shall be performed [***] at such time as set forth in the Program Outline.

4.4 Shopify shall execute (or cause to be executed) any and all necessary agreements with Eligible Merchants that will be participating in the Program. Shopify will monitor Eligible Merchants and use commercially reasonable efforts to ensure that Eligible Merchants are not engaged in prohibited businesses, as set forth in Exhibit D (the "**Prohibited Business Policy**"), which may be updated by Affirm from time to time in consultation with Shopify. Shopify shall maintain a log of material violations of the Prohibited Business Policy that Shopify becomes aware of, and provide such log upon request to Affirm [***]. Shopify will work in good faith with Affirm to ensure that the necessary agreements with Eligible Merchants address any marketing restrictions required by Affirm based on Applicable Law.

4.5 Shopify agrees to work with Affirm in good faith to [***] as soon as commercially reasonable and as discussed and mutually agreed by the Parties.

4.6 Shopify shall provide Eligible Merchants all reasonably requested support and documentation related to the Program, subject to Section 5 (Affirm Obligations).

4.7 Shopify shall require Eligible Merchants to furnish to Shopify any information reasonably requested by Affirm or any information required to be provided by or to any applicable Regulatory Authority.

4.8 [***]

4.9 Unless otherwise prohibited by law, Shopify will promptly forward to Affirm any complaints, including supporting documentation as necessary, received from a Customer or Eligible Merchant pertaining to: (a) Affirm's performance; (b) claims or allegations about the Parties' violations of Applicable Laws with respect to the Program; (c) material threats of lawsuits relating to the Program; or (d) the Financial Product (collectively, "**Complaints**"). Shopify shall maintain a record and log of all such Complaints and provide such log to Affirm on a monthly basis at its request.

4.10 The Parties agree to work with in good faith to make commercially reasonable efforts to:

4.10.1. Develop and implement improvements to Program functionality to better serve both Merchants and Customers and to [***].

4.10.2. Cooperate and prioritize changes to the Platform and SHOP App if such changes are deemed necessary (i) to prevent a violation of Applicable Law or to comply with a directive from a Regulatory Authority; (ii) to avoid a material risk to Affirm or the Program; or (iii) to avoid a material adverse impact to Customers or prospective Customers.

4.10.3. Help respond and/or resolve any complaints related to the Program.

5. Affirm Obligations.

5.1 Affirm, at its sole expense, shall be responsible for all Customer eligibility for the Program. Affirm shall be responsible for all Application Processing, for all Customer underwriting, accepting, and processing Applications in accordance with Applicable Law. Affirm's Customer AML compliance program shall at all times comply with Applicable Law, including, but not limited to, OFAC regulations and guidance. Affirm is responsible for determining and modifying underwriting criteria in its sole discretion in compliance with Applicable Laws. Notwithstanding the foregoing, Affirm agrees in good faith where possible to notify Shopify in advance of any material changes to its underwriting criteria that could have the impact of reducing the number of Customers and to consult with Shopify about such changes.

5.2 Affirm, at its sole expense and in consultation with Shopify, shall: (i) develop all Customer agreements and disclosures governing or related to the Financial Product(s) ("**Customer Agreements**"); (ii) develop all Merchant agreements governing or related to the Financial Product ("**Merchant Agreements**"); and (iii) be responsible for ensuring Customer Agreements comply with Applicable Law. At Program Launch, the Parties shall distribute Customer Agreements and Merchant Agreements that are substantially similar to, and no less protective than, those included in Exhibit E. The terms and conditions of the Customer Agreements must set forth, at a minimum, the following terms: (a) the contracting party under each Customer Agreement; (b) the lender or provider of the Financial Product; and (c) all disclosures required by Applicable Law. All Customer Agreements shall be drafted in consultation with Shopify, provided that to the extent such Customer Agreement contains language required by Applicable Law or Regulatory Authority, such language shall not be subject to negotiation; and provided further that, Affirm shall have the final right of approval over any such Customer Agreements. The relationship with each Customer in connection with the Program shall be jointly owned by Affirm and Shopify. The Parties acknowledge and agree that the content of all Customer communications provided or developed by Affirm, as mutually agreed by the Parties shall be so provided/developed, in connection with the Program, including, without limitation, any statements or disclosures and Customer Agreement, shall be the responsibility of Affirm, and shall include each Party's Marks (use of Shopify's Marks shall be subject to Shopify's approval). For the avoidance of doubt, Affirm shall be responsible for ensuring all Program Materials and Customer communications provided or developed by Affirm, including, without limitation, any statements or disclosures and Customer Agreements, comply with Applicable Law and any policies and procedures required by Regulatory Authority. The channel and means of distributing Customer Agreements shall be via email, on Shopify's Platform, through Shopify's SHOP App, or as otherwise required pursuant to Applicable Law; provided that, if Shopify fails to distribute Customer Agreements, Affirm shall have a right to do so using any means available under Applicable Law.

5.3 Affirm, at its sole expense (subject to Addendum A-2 to Exhibit A), shall provide for fund settlement from Customers, collection of payments due from Customers, processing of any Customer transaction related to the Financial Product or contemplated by the Customer Agreement, and distribution of funds to or from a Customer in connection with a Financial Product, in each case, as outlined in the Program Outline. Affirm acknowledges and agrees that it is responsible for Customer Losses.

5.4 Affirm shall be responsible for all customer service and communications that it provides to Customers, as agreed by the Parties, including in connection with any Customer-related complaints, questions or requests it receives. Affirm shall develop, in consultation with Shopify, standardized communications to Customers for servicing of the Financial Product; provided that to the extent such communications contain language required by Applicable Law, such language shall not be subject to negotiation; and provided further that Affirm shall have the final right of approval over any such communications. Affirm shall develop and maintain an internet website or portal that performs customer service functions, such as taking payments and account maintenance, for Customers in connection with the Financial Product, to be branded with the marks of Affirm and Shopify. Affirm will provide Shopify with its complaint policy and procedure documents (the "**Complaint Policy**"). Affirm agrees to notify Shopify of any material updates to such Complaint Policy. The Complaint Policy will include provisions for tracking and reporting Customers' complaints from initial contact to resolution, regardless of the recipient of the complaint (i.e., complaint received by Affirm or by Shopify). Affirm shall promptly (within [***] business days) notify Shopify when Affirm receives a written or verbal Customer complaint that is directed or referred to any state attorney general, Regulatory Authority, or governmental figure (including a state or federal legislator) relating to the Program and that specifically refers to the actions or inactions of Shopify. Affirm shall maintain a record and log of all such Customer-related complaints, questions, or requests and, unless otherwise prohibited by Applicable Law, provide such log to Shopify on a monthly basis at its request.

5.5 Affirm shall have the right to terminate or suspend any Eligible Merchant's participation in the Program in accordance with terms of the applicable Merchant Agreement, including the right to terminate or suspend such Eligible Merchant in connection with elevated fraud or loss activity; provided that Affirm shall use commercially reasonable efforts to provide Shopify with at least [***] notice of such termination or suspension, so that Shopify can communicate directly with the Merchant. Any such termination or suspension shall be effectuated by Shopify promptly in accordance with the SLAs set forth in this Agreement.

6. Service Level Agreement (SLA) Standards.

6.1 Each Party shall provide all services contemplated by this Agreement with promptness and diligence and in a professional and workmanlike manner (unless some other time frame or manner is set forth herein, in which case such other time frame or manner shall apply). As applicable, each Party shall provide services contemplated by this Agreement in accordance with the service levels set forth in the Program Outline (each, an "**SLA**"). Affirm and Shopify shall periodically review and measure overall performance against the SLAs to ensure consistency with the goals and objectives of this Agreement, and the Parties shall reasonably cooperate to update such SLAs as necessary.

6.2 If any services are not provided in accordance with the SLAs (each instance, a "**Failed SLA**"), for each Failed SLA: (i) the failing Party shall promptly investigate and report to the non-failing Party on the causes of the problem; (ii) the failing Party shall provide a root-cause analysis of such failure as soon as practicable after such failure or non-failing Party's request; (iii) the Parties shall undertake the mutual support obligations set forth in the SLAs for the Program Outline initiate remedial action to correct the Failed SLA and resume meeting the relevant SLA(s) as soon as practicable but, in the event of a P0 or P1 incident, within [***] business days of the date of the occurrence of the Failed SLA; and (iv) advise the non-failing party, as and to the extent requested, of the status of remedial efforts being undertaken with respect to such problem and, within [***] business days, provide the non-failing party reasonable evidence that the causes of such problem will be corrected on a permanent basis (such steps, an "**SLA Corrective Action Plan**"), using commercially reasonable efforts. A Party's failure to provide services in accordance with its SLAs shall not be deemed a Failed SLA if such Party's failure resulted from (a) a breach of the other Party's obligations under this Agreement or (b) the inability to prepare adequate resources to meet its SLAs because of materially inaccurate reports or forecasts provided by the other Party.

6.3 For any given month in which a Party suffers any Failed SLA, such month shall be considered to be a "**Failed Month**." If there are [***] consecutive Failed Months or [***] Failed Months during any [***] period, the non-failing party may, at its option, either terminate the specific subject service(s) or terminate this Agreement in its entirety by giving written notice of termination to the failing party, in which case the date of termination shall be as set forth in such notice.

6.4 Each Party shall implement measurement and monitoring tools and metrics as well as standard reporting procedures to measure and report such Party's performance of the services against the applicable SLAs and shall provide the other Party with monthly reports detailing service standards performance (each, an "**SLA Report**"). Each Party shall also provide the other Party with information for purposes of audit verification.

6.5 Each Party may schedule planned outages of its services upon not less than [***] business days' prior written notice to the other Party, and during such planned outage, the affected services shall be exempt from being deemed a Failed SLA for purposes of the calculations for the time period of the outage identified by the first Party in the prior written notification to the other Party. In no event shall such planned outages occur except between the hours of [***] (Pacific Standard Time). Each Party shall use commercially reasonable efforts to minimize any adverse impact to the Program and the Customers as a result of any such planned outages.

7. Relationship Management.

7.1 **Relationship Manager**. Each Party will designate a "**Relationship Manager**" to act on its behalf in matters arising under this Agreement; provided, however, that the Relationship Managers may not alter or amend any term, condition or provision of this Agreement. Either Party may change its Relationship Manager at any time by providing the other Party with written notice. Each Party reserves the right to request to change its Relationship Manager if the Party determines in good faith that the current Relationship Manager is not working effectively with one another or such Relationship Manager is otherwise detrimental to the Program. Each Party shall reasonably consider all such requests based on the facts and circumstances and make reasonable efforts to comply with any request to change.

7.2 **Committees**.

7.2.1. Establishment of Strategic Operating Committee.

The Parties will establish an operating committee ("**Strategic Operating Committee**") to oversee and review all aspects of the Program.

7.2.2. Composition of Strategic Operating Committee.

The Strategic Operating Committee will consist of persons with sufficient enterprise responsibility and knowledge of a business unit integral to the performance or supervision of the Program, as applicable, within each Party (e.g., engineering, relationship management, product). The Parties envision the Strategic Operating Committee to be comprised of approximately 6 members, half of whom will be nominated by Shopify (each, a "**Shopify Designee**") and half of whom will be nominated by Affirm (each, an "**Affirm Designee**" and collectively with the Shopify Designees, "**Designees**"). Each Party may change its Designees upon informing the other Party. Each Designee will have one vote to approve Strategic Operating Committee actions requiring a vote; however, if the Parties have an unequal number of Designees, then each Party will be deemed to have a total of one vote.

7.2.3. Certain Functions of the Committee.

The Strategic Operating Committee will:

7.2.3.1. evaluate proposed new and existing services, products, functionality and additional features in accordance with the terms of this Agreement, including Section 36 (Exclusivity; Additional Products, Services, Geographies);

7.2.3.2. evaluate, discuss and resolve operational aspects of any ongoing compliance issues, including any operational changes required by changes in Applicable Law;

7.2.3.3. review actual and projected performance by the Parties;

7.2.3.4. propose and evaluate any operational implementation of material changes to the Program Outline, and any material changes to pricing or fees in the Program Outline or Schedule;

7.2.3.5. evaluate and respond to any notice of breach given by a Party with respect to the Agreement;

7.2.3.6. evaluate and respond to any request for additional reporting, access to data or changes in current reporting or access requirements or practices;

7.2.3.7. review and approve any project collaboration, marketing or promotional activities;

7.2.3.8. review fraud metrics and fraud prevention measures with the goal of continuing to mitigate fraud;

7.2.3.9. evaluate Financial Product charge-offs and defaults with the goal of minimizing such losses;

7.2.3.10. evaluate Customer repeat-purchase rates and average Merchant Fees (as defined in Exhibit A) across the Merchant Base, with the goal of improving both metrics;

7.2.3.11. discuss the Product Construct and make any adjustments to the First Product as mutually agreed and evidenced by an amendment to the Program Outline;

7.2.3.12. carry out all other tasks the Parties agree in writing will be done by the Strategic Operating Committee;

7.2.3.13. review and measure overall performance against the SLAs to ensure consistency with the goals and objectives of this Agreement, and reasonably cooperate to update such SLAs as necessary; and

7.2.3.14. review Shopify rolling 12-month forecast (provided to Affirm on a quarterly basis) and discuss whether any Affirm SLA failures were directly caused by material misstatements, omissions or errors in the 12-month forecast.

7.2.4. meet regularly, but no less often than quarterly, in a manner or at a place mutually agreed by the Parties;

7.2.5. resolve any Conflict, including with respect to the amount and payment of Fees for Services, in accordance with Section 9 (Conflict Resolution); and

7.2.6. submit all unresolved disputes and matters for expedited resolution to the Escalation Executives as provided for in Section 9.2 (Escalation Executives).

7.2.7. Effect of Actions.

All actions taken or approved by the Strategic Operating Committee will be set forth in writing and binding on the Parties and their Affiliates, as applicable; provided that the Strategic Operating Committee may not take any action or approve any matter that would conflict with or otherwise expand the obligations or curtail the rights set forth in this Agreement.

7.2.8. Additional Committees and Personnel.

The Parties may create from time to time other committees and for other purposes as they deem appropriate or include other persons, in addition to the Designees, with relevant subject matter or other expertise, to attend Strategic Operating Committee meetings.

7.3 **Annual Executive Meeting**.

The Parties will organize an executive meeting to be held on an annual basis between "VP-level" executives from each respective corporate organization to ensure continued strategic alignment, assess progress against common goals, discuss any issues identified by the Strategic Operating Committee as appropriate for their discussion, and explore further collaboration.

7.4 **Independent Contractors**.

7.4.1. Affirm and Shopify agree that they are independent contractors to each other in performing their respective obligations hereunder. This Agreement will not be construed as creating a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither Party has any power to bind the other Party or to assume or to create any obligation or responsibility on behalf of the other Party or in the other Party's name.

7.4.2. Each Party's Personnel are not eligible for, nor may they participate in, any employee benefit plans of the other Party, and the non-employing Party will not insure the employing Party for workers' compensation coverage or for unemployment insurance. Each Party is solely responsible for, and agrees to comply with all federal and state laws and regulations with respect to: (i) hire, tenure, and conditions of employment; (ii) hours of work, salaries and compensation (including unemployment compensation); (iii) deductions and withholdings; (iv) payment of any and all contributions, taxes and assessments, with respect to all Party Personnel who provide services hereunder; and (v) the keeping of records and making of reports.

8. Intellectual Property Rights.

8.1 **Shopify Materials**. To the extent that Shopify provides any Shopify Materials to Affirm pursuant to this Agreement, the following shall apply:

8.1.1. License. Shopify hereby grants to Affirm a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to the Shopify Materials during the Term, solely as necessary for Affirm fulfill its obligations under this Agreement and for no other purpose.

8.1.2. Ownership. Subject to Section 8.4 hereof, the Shopify Materials are owned by Shopify and licensed to Affirm and not sold to Affirm. Shopify owns and reserves all right, title and interest in and to the Shopify Materials and all Intellectual Property Rights therein.

8.1.3. Risk of Loss. To the extent that Shopify provides any Shopify Materials to Affirm for the performance of its obligations under this Agreement, Affirm will: (i) take all reasonable precautions to protect such property against loss, damage, theft or disappearance; (ii) take no actions that affect Shopify's title or interest; (iii) abide by specifications and use instructions; (iv) not give access to any third party without Shopify's prior written consent; and (v) not reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the Shopify Materials.

8.2 **Affirm Materials**. To the extent that Affirm provides any Affirm Materials to Shopify pursuant to this Agreement, the following shall apply:

8.2.1. License. Affirm hereby grants to Shopify a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to the Affirm Materials during the Term, solely as necessary for Shopify to fulfill its obligations under this Agreement and for no other purpose.

8.2.2. Ownership. Subject to Section 8.4 hereof, the Affirm Materials are owned by Affirm and licensed to Shopify and not sold to Shopify. Affirm owns and reserves all right, title and interest in and to the Affirm Materials and all Intellectual Property Rights therein.

8.2.3. Risk of Loss. To the extent that Affirm provides any Affirm Materials to Shopify for the performance of its obligations under this Agreement, Shopify will: (i) take all reasonable precautions to protect such property against loss, damage, theft or disappearance; (ii) take no actions that affect Affirm's title or interest; (iii) abide by specifications and use instructions; (iv) not give access to any third party without Affirm's prior written consent; and (v) not reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the Affirm Materials.

8.3 **Pre-Existing Intellectual Property Rights**. Notwithstanding anything else contained in this Agreement, Affirm shall retain ownership of Affirm Pre-Existing IP, and Shopify shall retain ownership of Shopify Pre-Existing IP; provided, however, Affirm grants to Shopify a limited, non-exclusive, non-transferable, non-sublicensable and revocable license, during the Term and through the end of the Orderly Transition as set forth in Section 11.7, to the Affirm Pre-Existing IP that the Parties mutually agree is to be included in or otherwise used in connection with a Program.

8.4 **Developed Intellectual Property Rights**.

8.4.1. Each Party will exclusively own and retain ownership of all right, title, and interest in and to all Intellectual Property Rights that such Party or its Affiliates solely creates, authors, develops, or otherwise acquires pursuant to or in furtherance of this Agreement, and no Intellectual Property Rights of any kind are assigned by one Party to either Party pursuant to this Agreement. Except as expressly provided in Section 8.4.2, the Parties will jointly own, without a duty of accounting, all Intellectual Property Rights that are jointly created, authored, or developed by the Parties pursuant to or in furtherance of this Agreement that does not constitute Affirm Pre-Existing IP or Shopify Pre-Existing IP, provided, however, that neither Party shall have the right to license, transfer, assign or grant rights to such jointly owned Intellectual Property Rights to a third party without the prior written consent of the other Party. The Parties agree to cooperate in good faith to identify and document any jointly owned Intellectual Property Rights. For the avoidance of doubt, the Affirm API and all related documentation and specifications are and will be deemed to be exclusively owned by Affirm, and the Shopify API is and will be deemed to be exclusively owned by Shopify.

8.4.2. Notwithstanding Section 8.4.1, any new software, other than software constituting Affirm Pre-Existing IP, that is jointly created, authored or developed by the Parties pursuant to or in furtherance of this Agreement that is developed on top of Affirm's API, including but not limited to the Customer interface, shall belong to Shopify; provided that the concept of the embedded user portal shall be jointly owned by both Parties. For the avoidance of doubt, any Intellectual Property Rights that are created, authored or developed by Affirm and relate to Affirm backend systems or that are a modification, enhancement, or derivative work of the Affirm API, shall be solely and exclusively owned by Affirm.

8.4.3. Upon termination of this Agreement, the Parties shall cooperate in good faith to identify, as set forth in Section 8.4.1 above, and document any jointly owned Intellectual Property Rights. Affirm shall not prevent Shopify from using any such jointly developed Intellectual Property Rights or prevent, hinder or in any manner prevent Shopify from entering into agreements to provide and market the same or similar services as provided hereunder. It is understood that following termination, (a) each Party shall continue to jointly own and have the right to use the jointly owned Intellectual Property Rights as of the date of termination in accordance with Section 8.4.1, and (b) neither Party shall have any rights in or ownership of any intellectual property related to any derivatives, enhancements or improvements to such Intellectual Property developed by the other Party following the termination of this Agreement. For the avoidance of doubt, the Financial Product name and its branding on the Shopify platform and SHOP App/SHOP Portal, excluding any Affirm trademarks, belongs to Shopify.

8.5 **Reservation of Intellectual Property Rights**. Nothing in this Agreement shall be construed as granting either Party a license to use in any way the Intellectual Property Rights of the other Party, except as provided in this Agreement. Neither Party shall take any action that interferes with the other Party's Intellectual Property Rights or attempt to copyright or patent any part of the other Party's Intellectual Property Rights or attempt to register any trademark, service mark or trade name that is identical or confusingly similar to the other Party's Marks.

8.6 **Feedback**. Each Party may, from time to time, provide the other Party with suggestions or comments for enhancements or improvements, new features or functionality or other feedback (collectively, "**Feedback**") with respect to the Materials of the other Party or the Program. The Party receiving such Feedback will have the full, unencumbered right, without any obligation to compensate or reimburse the providing Party, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with the receiving Party's Materials, products, and services. Feedback shall not be deemed to be the Confidential Information of either Party.

9. Conflict Resolution

9.1 **Good-Faith Negotiation**. The Parties shall cooperate and attempt in good faith to resolve any Conflict promptly by negotiating between persons who have authority to settle the Conflict. Subject to Section 9.3 (Preliminary, Provisional, Injunctive Judicial Relief), if Parties are unable to resolve the Conflict, the Party raising the Conflict shall provide written notice thereof to the other Party (the "**Initial Notice**"), and within [***] days of the delivery of the Initial Notice, the Conflict shall be submitted to the Strategic Operating Committee to negotiate a resolution of the Conflict. The negotiations shall be conducted by executives who hold, at a minimum, the title of senior vice president or general counsel and who have authority to settle the Conflicts. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve the Conflict within [***] days after the delivery of such notice or if a Party reasonably concludes that the other Party is not willing to negotiate as contemplated by the preceding sentences of this Section 9.1 (Good-Faith Negotiation), the Conflict shall be submitted to both Escalation Executives.

9.2 **Escalation Executives**. Each Party will each appoint [***] full-time employee who is a senior executive, or his/her designee, with enterprise-wide responsibility within his or her organization ("**Escalation Executive**") to review and resolve all matters on which the Strategic Operating Committee is deadlocked and any Conflicts otherwise referred to him or her by the Strategic Operating Committee. Each Party may change its Escalation Executive upon informing the other Party. The Escalation Executives will meet at least annually and will make a good faith effort to promptly (and in any event within [***] days of the dispute being referred to the Escalation Executives) resolve all Conflicts referred to them. The Escalation Executives decisions will be binding on the Parties. If the Escalation Executives do not agree to a resolution of a Conflict within the [***] period following the referral of such Conflict to the Escalation Executives, the Parties may initiate legal proceedings as applicable.

9.3 **Preliminary, Provisional, Injunctive Judicial Relief**. Notwithstanding the foregoing, a Party may seek preliminary provisional or injunctive judicial relief with respect to a Conflict without first complying with the procedures set forth in this Section 9 (Conflict Resolution) if permitted under Section 13.6 (Remedies) or as otherwise necessary to prevent immediate and irreparable harm to a Party for which money damages might not constitute an adequate remedy.

10. Compensation, Expenses and Taxes.

10.1 **Compensation**. All fees not expressly set forth in this Agreement must be expressly and mutually agreed to in the Program Outline. Shopify will have no other payment obligations for fees to Affirm.

10.2 **Expenses**. Except as otherwise set forth in this Agreement, each Party shall be responsible for its costs and expenses incurred in performance of its obligations under this Agreement. Unless otherwise stated in the Program Outline, Shopify shall be responsible for advertising and other expenses associated with the marketing of the Program to Merchants. Unless otherwise stated in the Program Outline, Affirm shall be responsible for its own costs and overhead generated from its review, assessment and development of the Program, and costs associated with or required to establish and maintain the Financial Product.

10.3 **Taxes**. [***] Notwithstanding the preceding sentence, any [***]. Shopify hereby represents that Shopify, Inc. is a resident of Canada. [***].

11. Term and Termination.

11.1 **Term**. The term of this Agreement begins on the Effective Date and will remain in effect for an initial term of 3 years ("**Initial Term**"), unless otherwise terminated as permitted herein. After the Initial Term, this Agreement shall automatically renew for successive 1-year periods (each, a "**Renewal Term**") unless a Party provides the other Party with written notice of its election to terminate this Agreement at least 180 days prior to the expiration of the Initial Term or the then-current Renewal Term as applicable. The Initial Term together with all Renewal Terms and any wind-down or transition period shall be collectively referred to herein as the "**Term**." Any Program Outline(s) still in effect will terminate on the date that termination of the Agreement takes effect, subject in each case to Affirm's obligations in Section 11.6 (Orderly Transition).

11.2 **Termination for Cause; Notification of Significant Events**.

11.2.1. In addition to any other termination rights set forth in the Agreement (including those set out in Sections 6.3 and Section 26 (Force Majeure)) or the Program Outline, either Party ("**Terminating Party**") may terminate this Agreement or the Program Outline immediately upon notice to the other Party ("**Non-Terminating Party**") (subject to the cure periods and notices noted below, if any) if:

11.2.1.1. Non-Terminating Party breaches any material provision relating to its security or confidentiality obligations of this Agreement;

11.2.1.2. Non-Terminating Party materially breaches any provision of this Agreement and the breach is capable of cure but Non-Terminating Party fails to cure such breach within [***] days following written notice to Non-Terminating Party from Terminating Party specifying in reasonable detail the nature of the claimed breach;

11.2.1.3. Non-Terminating Party materially breaches the Agreement in a manner that cannot be remedied;

11.2.1.4. Shopify has the right to terminate the Agreement if, (i) there is a change of control in which [***] or their affiliates acquire a majority interest of the voting power or voting capital or other equity interest of Affirm sufficient to exercise control over Affirm that occurs without the prior, express written consent of Shopify; or (ii) Max Levchin is no longer an executive officer of Affirm or the chairman of the Board of Directors of Affirm for more than 90 days (collectively, a "**Change of Control**");

11.2.1.5. Non-Terminating Party generally fails to pay its debts as they become due, admits in writing its inability to pay its debts generally, makes a general assignment for the benefit of creditors or any proceedings or filing of any petition seeking relief under Title 11 of the United States Code or if any other federal, state or foreign bankruptcy, insolvency, liquidation or similar law is instituted by or against Non-Terminating Party or Non-Terminating Party takes any corporate action to authorize any of the actions set forth in this subsection; provided that this termination right shall only apply to an involuntary petition or proceeding under Title 11 of the United States Code or any other federal, state or foreign bankruptcy, insolvency, liquidation or similar law if such involuntary petition or proceeding is not dismissed within [***] days;

11.2.1.6. A court of competent jurisdiction (or other administrative body or Regulatory Authority empowered to issue such orders) issues a final order or judgment holding that this Agreement or the services and deliverables offered hereunder are in violation of or are prohibited by Applicable Law;

11.2.1.7. There is any obligation placed on Terminating Party by a Regulatory Authority or any other third party after the Effective Date that the Terminating Party determines, in its sole and reasonable discretion, would materially diminish the economic value of the Program or this Agreement to the Terminating Party, make performance infeasible, or otherwise have a material and adverse effect on the Terminating Party;

11.2.1.8. With immediate effect, if so required by a Regulatory Authority or Applicable Law, or Non-Terminating Party is issued a warning or any other form of reprimand by a Regulatory Authority, and if the Regulatory Authority permits a cure, Non-Terminating Party then fails to remedy or cure such situation within 90 days or the cure period designated by Applicable Law or Regulatory Authority, whichever is earlier, following written notice to Non-Terminating Party specifying in reasonable detail the nature of the cause. In the event the non-Terminating Party does not comply with such requirement, the non-Terminating Party shall be responsible for all Losses to the Terminating Party arising from or related to such non-compliance; or

11.2.1.9. Upon [***] days' prior written notice to the Non-Terminating Party if the Financial Product is not made available to all merchants on the Shopify Platform in the United States as mutually determined by the Parties within [***] after the Program Effective Date, and such failure was caused by the action or inaction of the Non-Terminating Party.

11.3 **Termination for Convenience**. Either Party may immediately terminate this Agreement after the first year of the Initial Term for convenience by providing [***] prior written notice to the other Party.

11.4 **Shopify Notification of Significant Events**. Shopify shall notify Affirm in writing promptly of any material adverse catastrophic events that adversely affect Shopify's performance of its obligations under this Agreement or of regulatory enforcement actions or investigations that will or reasonably could adversely affect its performance of its obligations under this Agreement. Unless prohibited by law, Shopify shall also notify Affirm promptly of any communications from a Regulatory Authority, other bona fide third party with regulatory or other legitimate authority over Shopify, or nationally-recognized industry groups (such as the Better Business Bureau) that Shopify responds to or deems influential enough to warrant its attention related to the Program and alleging Shopify's violation of federal or state lending laws.

11.5 **Affirm Notification of Significant Events.** Affirm shall notify Shopify in writing:

11.5.1. as soon as possible and with, at a minimum, at least [***] notice before making significant changes to its services necessary to satisfy its obligations under this Agreement, or implementing new or revised policies, processes and information technology that materially affects services necessary to satisfy its obligations under this Agreement; provided that Affirm shall provide notice as soon as possible in conjunction with making significant changes where [***] notice is not feasible, such as objectively reasonable significant changes necessary to prevent fraud or to ensure data security. In addition, Affirm shall notify Shopify of any management or key Personnel changes or other business activities that could affect materially the services necessary to satisfy its obligations under this Agreement following the implementation of such Personnel change or other business activity;

11.5.2. as soon as possible (as permitted under Applicable Law or applicable agreements) prior to a Change of Control; and

11.5.3. [***] of any Affirm significant financial distress, material adverse catastrophic events affecting Affirm and significant incidents, including: service or Affirm's Systems interruptions, material compliance lapses, regulatory enforcement actions or investigations that will or reasonably could adversely affect its performance of its obligations under this Agreement.

11.6 **Effect of Termination**. In the event either Party terminates this Agreement for any reason whatsoever, then each Party will return or destroy, as requested by the Disclosing Party, all Confidential Information of the other Party, except to the extent (i) this Agreement requires or permits the express retention of the Confidential Information; (ii) in accordance with the Receiving Party's record retention policy; (iii) such Confidential Information is retained in automated backups provided that the Receiving Party does not access such Confidential Information; or (iv) as otherwise required by Applicable Law and in which case, such Confidential Information will remain subject to the confidentiality provisions of this Agreement until such time that such obligations expire and the applicable Party certifies the return or destruction of such Confidential Information in accordance with this Section 11.5 (Effect of Termination) and Section 13 (Confidential Information).

11.7 **Orderly Transition**.

11.7.1. In the event of the termination or expiration of the Program or the termination of this Agreement, for any reason, the Parties will cooperate to transition or wind down such Program in accordance with Applicable Law pursuant to this Section 11.6 (Orderly Transition). Each Party acknowledges that the goals of any transition or wind-down are to benefit the Customers by minimizing any possible burdens or confusion and to protect and enhance the names and reputations of the Parties, each of whom have invested their names and reputations in the Program. Unless otherwise required by Applicable Law or any Regulatory Authority, upon the expiration or termination of this Agreement for any reason, the Parties agree to cooperate in good faith to transition or wind down the Program in a commercially reasonable way as soon as reasonably possible but, in any event for at least [***], to provide for a smooth and orderly transition or wind-down. Such cooperation will include continued provision of customer service to all outstanding Customers in accordance with the terms of this Agreement until the expiration, termination or assignment of the Customer Agreement and shall include Affirm transferring any and all Customer Information, Merchant Information and Program Information in its possession to Shopify unless prevented from doing so under Applicable Law.

11.7.2. **Transition**. Shopify shall have the right to cause any terminated or expired Program and all associated Customer accounts, Customer Information, Merchant Information and Program Information to be transferred by or on behalf of Affirm to Shopify at its sole cost. Shopify shall notify Affirm upon any termination or expiration of this Agreement whether it intends to transfer the Program and all associated Customer Information, Merchant Information and Program Information to Shopify, and Affirm shall cause such transfer in accordance with the terms set forth herein. No later than[***] after exercising its option hereunder, Shopify will provide to Affirm in writing a proposed transition plan detailing a proposed timeline that shall designate a schedule of dates as of which the Program will be transferred. The Parties shall meet promptly thereafter to review such proposed plan and to determine a mutually acceptable transition plan (a "**Transition Plan**"), such Transition Plan not to exceed [***] to complete. The Transition Plan shall include a detailed outline of the Parties' intentions in connection with the transfer of the Program and Customer accounts, including timeframes for continuation of the Program during the period of transition, and target dates for transition milestones, such as development of the transition procedures for the transfer of the Program and any other information reasonably requested by a Party. In the event that Shopify elects to transition the Program pursuant to a Transition Plan, Affirm shall use commercially reasonable efforts to: (i) take all commercially reasonable actions and execute such other documents as necessary to transfer the Program; and (ii) transfer all Customer Information, Merchant Information and Program Information in its possession to Shopify, subject to Applicable Law and any required third-party (e.g., customer) consents, which Affirm shall in good faith attempt to obtain. For the avoidance of doubt, if Affirm is party to an agreement with a Merchant or Customer for whom the Program Information, Merchant Information or Customer Information relates and such agreement explicitly permits retention of such Program Information, Merchant Information or Customer Information, Affirm may retain a copy of such Program Information, Merchant Information or Customer Information, subject to all of the restrictions on use set forth in this Agreement. Also for the avoidance of doubt, nothing in this Section 11.7.2 requires Affirm to license or transfer Affirm Pre-Existing IP or Affirm Confidential Information to any successor provider. Shopify shall be responsible for all costs associated with its election to transition the Program.

11.7.3. **Wind down**. In the event that Shopify provides written notice of its intention to wind down the Program or in the event that Shopify does not exercise its option for transition as provided for under Section 11.7.2 (Transition) above, the Parties will cooperate to provide a smooth and orderly wind-down of the Program involved. Such wind-down shall include the following:

11.7.3.1. Affirm or Shopify, as applicable, will provide to the other Party in writing a proposed wind-down plan detailing a proposed timeline that shall designate a schedule of dates as of which the Program will be wound down and an allocation of associated cost among the Parties. The Parties shall meet promptly thereafter to review such proposed plan and to determine a mutually acceptable wind-down plan (a "**Wind-Down Plan**"); provided, however, that if the Parties fail to reach mutual agreement on a wind-down plan within [***] of either Party's written notice of its intention to wind down the Program, the Parties shall select as promptly as practicable thereafter an independent third party to establish a wind-down plan that is appropriate for the affected Program and that is, to the extent practicable, in which case such wind-down plan so established by such independent third party shall constitute the "Wind-Down Plan" hereunder as to the Program and shall be deemed to be approved by the Parties, and the Parties shall comply with the terms thereof.

11.7.3.2. Unless otherwise contemplated by the Wind-Down Plan, the Parties shall continue to be bound by and perform and comply with the terms of this Agreement and perform all of their obligations hereunder during the wind-down period (regardless of whether the Term has expired or been terminated) until such time as all Financial Products expire or are canceled pursuant to and consistent with the Customer Agreements or, to the extent permitted by Applicable Law, until such earlier time as mutually agreed upon by the Parties. For the avoidance of doubt, Shopify shall continue to provide Affirm with all information necessary for Affirm to continue to service the Financial Product and Affirm shall retain the ability to service such Financial Product using communication methods determined by Affirm in good faith consultation with Shopify.

11.7.4. During any wind-down or transition period, Affirm agrees to continue to provide customer service to the affected Customers in accordance with the terms of this Agreement. Also during such period, the Parties shall mutually agree whether to offer the Program to new Customers, such Customers to then be considered "affected Customers" as noted above. Except as required by Applicable Law (including applicable securities laws and the rules promulgated thereunder), in no event will any Party make any public statement or customer communication regarding the termination or wind-down of this Agreement or the Program without the express prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, (i) Affirm agrees that Shopify may communicate the termination or expiration of this Agreement with any party with which Shopify has contracted to provide any marketing or other service in support of the Program; and (ii) Shopify agrees that Affirm may communicate the termination or expiration of this Agreement with any party with which Affirm has contracted to provide services in support of the Program.

11.8 **Survival**. Those provisions of this Agreement that, by their nature, are intended to survive the termination or expiration of this Agreement, will remain in full force and effect following the termination or expiration of this Agreement, which may include (but are not limited to): Definitions (Section 2), Independent Contractors (Section 7.4), Pre-Existing Intellectual Property Rights (Section 8.3), Developed Intellectual Property Rights (Section 8.4), and Reservation of Intellectual Property Rights (Section 8.5), Compensation, Expenses, Taxes (Section 10), Term and Termination (Section 11), Representations, Warranties and Covenants (Section 12), Confidential Information (Section 13), Customer Information, Merchant Information and Program Information (Section 14), Affirm Data Security (Section 15), Shopify Data Security (Section 16), Indemnification (Section 17), Exclusion of Damages and Limitation of Liability (Section 18), Claims Made Coverage (Section 20.6), Notices (Section 23), Sections 27 to 35 (inclusive), Warrant Agreement (Section 39) and Entire Agreement (Section 40).

11.9 **Mandated Changes to Services**. If (a) either Party has been advised in writing by objective, outside legal counsel, with both expertise and experience regarding the Program that are the subject of this Agreement, of a change in Applicable Law or any judicial decision of a court having jurisdiction over such Party or any interpretation of a Regulatory Authority that, in the view of such legal counsel, would have a material adverse effect on the Program, the rights or obligations of such Party under this Agreement or the financial condition of such Party; (b) either Party receives a lawful written request of any Regulatory Authority having jurisdiction over such Party, including any letter or directive of any kind from any such Regulatory Authority, that prohibits or materially restricts such Party from carrying out its obligations under this Agreement; (c) either Party has been advised by legal counsel (as described above) in a written legal opinion that there is a material risk that such Party's or the other Party's continued performance under this Agreement would violate Applicable Law in any material respect; (d) any Regulatory Authority will have determined and notified either Party that the arrangement between the Parties contemplated by this Agreement constitutes an unsafe or unsound banking practice or is in violation of Applicable Law; or (e) a Regulatory Authority has commenced a formal action against a Party that the other Party, in its reasonable judgment, determines threatens such Party's ability to perform its obligations under this Agreement in any material respect, then, in each case, the Parties will meet and consider in good faith any modifications, changes or additions to the Program or this Agreement that may be necessary to eliminate such result. Notwithstanding any other provision of this Agreement, if the Parties, after using best efforts, are unable to reach agreement regarding modifications, changes or additions to the Program or this Agreement within [***] after the Parties initially meet, either Party may terminate this Agreement upon [***] prior written notice to the other Party and without payment of a termination fee or other penalty. A Party will be able to suspend performance of its obligations under this Agreement, or require the other Party to suspend its performance of its obligations under this Agreement, if (i) any event described in clauses (b), (c), or (d) of this Section occurs and (ii) such Party reasonably determines that continued performance hereunder may result in a fine, penalty or other sanction being imposed by the applicable Regulatory Authority, or in material civil liability, unless with regards to civil liability, the other Party agrees to indemnify the Party. For the avoidance of doubt, nothing in this Section will obligate a Party to disclose, share or discuss any information to the extent prohibited by Applicable Law or a Regulatory Authority.

12. Representations, Warranties and Covenants.

12.1 **Affirm Representations, Warranties and Covenants**. Affirm represents, warrants and covenants to Shopify that:

12.1.1. Entering into and carrying out of the terms and conditions of this Agreement will not violate or constitute a breach of any obligation binding Affirm;

12.1.2. Affirm is duly organized, validly existing and in good standing under the laws of the state of jurisdiction of its formation and has full corporate power and authority to carry on its business as currently conducted;

12.1.3. When executed and delivered by Affirm, this Agreement will constitute the legal, valid and binding obligation of Affirm, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other Applicable Laws of general application relating to or affecting creditors' rights and general principles of equity;

12.1.4. Affirm has obtained and is in compliance with all licenses, permits, memberships, consents and authorizations required to perform all its obligations under this Agreement and other agreements that must be executed to effect the services provided by Affirm as expressly set forth herein, and which shall be maintained at all times during the term of this Agreement; provided that, in the event a Regulatory Authority requires Affirm to obtain an additional lending, brokering or servicing license, permit or authorization to provide a Financial Product solely because of Shopify's activities, Affirm shall not be considered to be in violation of this Section 12.1.4;

12.1.5. To Affirm's knowledge, any Intellectual Property Rights it may provide to Shopify do not violate the Intellectual Property Rights of any third party;

12.1.6. There is no pending, nor to the knowledge of Affirm, threatened, suit, action, arbitration or other proceedings of a legal, administrative or regulatory nature, or any governmental investigation, against it or any of its affiliates or any officer, director or employee that has not been previously disclosed in writing and that would materially or adversely affect its financial condition or its ability to perform services under or in connection with this Agreement;

12.1.7. Affirm shall at all times comply with and conduct its activities in connection with this Agreement in accordance with Applicable Law;

12.1.8. The Program shall comply in all material respects with Applicable Law unless Shopify's acts or omissions prevent Affirm from making the Program, or causes the Program to not, comply with Applicable Law;

12.1.9. Affirm shall perform all obligations hereunder in a timely, skillful, professional and workman-like manner by qualified personnel exercising care, skill and diligence consistent with good practices in the financial services industry, and will devote adequate resources to meet its obligations hereunder, in accordance with the terms and conditions of this Agreement;

12.1.10. Affirm has established and is maintaining (i) a Security Program which is sufficient to satisfy the requirements of Section 15 (Affirm Data Security) hereof and (ii) disaster recovery, business resumption and contingency plans appropriate for the nature and scope of the activities of and the obligations to be performed by Affirm hereunder that are sufficient to satisfy the requirements of Section 19 (Disaster Recovery and Business Continuity) hereof; that will enable Affirm to continue to comply with such requirements during the Term and any wind-down or transfer period. Affirm has, within the last [***], tested such Security Program, has determined it is sufficient and will enable Affirm to continue to comply with the requirements herein during the Term and any wind-down period;

12.1.11. Affirm shall perform all obligations hereunder in a timely, skillful, professional and workman-like manner by qualified personnel exercising care, skill and diligence consistent with good practices in the financial services industry, and will devote adequate resources to meet its obligations hereunder, in accordance with the terms and conditions of this Agreement;

12.1.12. Affirm has implemented and will maintain an enterprise governance, third-party risk management, and a compliance program that includes legal and regulatory training requirements related to its services contemplated under this Agreement; and

12.1.13. Affirm's services and deliverables, including Affirm Materials, will be free from all viruses, worms, Trojan horses, and malicious code.

12.2 **Shopify Representations, Warranties and Covenants**. Shopify represents, warrants, and covenants to Affirm that:

12.2.1. Entering into and carrying out of the terms and conditions of this Agreement will not violate or constitute a breach of any obligation binding Shopify;

12.2.2. Shopify is duly organized, validly existing and in good standing under the laws of the state of jurisdiction of its formation and has full corporate power and authority to carry on its business as currently conducted;

12.2.3. Shopify has obtained and is in compliance with all licenses, permits, memberships, consents and authorizations required to perform all its obligations under this Agreement;

12.2.4. To Shopify's knowledge, any Intellectual Property Rights it may provide to Affirm do not violate the Intellectual Property Rights of any third party; and

12.2.5. When executed and delivered by Shopify, this Agreement will constitute the legal, valid and binding obligation of Shopify, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other Applicable Laws of general application relating to or affecting creditors' rights and general principles of equity.

12.2.6. There is no pending, nor to the knowledge of Shopify, threatened, suit, action, arbitration or other proceedings of a legal, administrative or regulatory nature, or any governmental investigation, against it or any of its affiliates or any officer, director or employee that has not been previously disclosed in writing and that would materially or adversely affect its ability to perform its obligations under or in connection with this Agreement;

12.2.7. Shopify shall at all times comply with and conduct its activities in connection with this Agreement in accordance with Applicable Law;

12.2.8. Shopify shall perform all obligations hereunder in a timely, skillful, professional and workman-like manner by qualified personnel exercising care, skill and diligence consistent with good practices in the financial services industry, and will devote adequate resources to meet its obligations hereunder, in accordance with the terms and conditions of this Agreement;

12.2.9. Shopify has (i) a Security Program appropriate for the nature and scope of its obligations hereunder (including any transition or wind-down period); (ii) disaster recovery, business resumption and contingency plans appropriate for the nature and scope of its obligations hereunder (including any transition or wind-down period) or as required in a Program outline; and (iii) adequate insurance coverage for the nature and scope of its obligations hereunder (including any transition or wind-down period); and

12.2.10. Shopify's services and deliverables, including Shopify Materials, to the extent applicable or as required for the Program, will be free from all viruses, worms, Trojan horses, and malicious code.

12.2.11. Shopify shall use good faith efforts to render, provide and distribute Customer communications in accordance with Affirm's reasonable instructions including but not limited to: (i) the Customer Agreement; (ii) any disclosures required by Applicable Law; (iii) any amendments to the Customer Agreement or disclosures, including amendments; (iv) any amendments to the Customer Agreement or disclosures that are required by Applicable Law or Regulatory Authority and (v) any other information provided by Affirm that is to be rendered, provided or distributed by Shopify, as agreed upon between the Parties.

13. Confidential Information.

13.1 **Obligations for Confidential Information**. Each Party shall hold the Confidential Information of the other Party in confidence and the Receiving Party will disclose such information only to its Personnel who reasonably require access to such Confidential Information. Disclosing Party will be liable for all damages arising out of such third parties' disclosure of Confidential Information. A Receiving Party may use the Confidential Information only as necessary for Receiving Party's performance under or pursuant to rights granted in this Agreement and for no other purpose. A Receiving Party shall protect or be required to protect, in the case of Receiving Parties that are third parties so authorized to receive Confidential Information pursuant to this Agreement, the Disclosing Party's Confidential Information using at least the same degree of care it uses to protect its own Confidential Information, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems or to carry out the purpose of the Agreement) of such Confidential Information.

13.2 **Compelled Disclosure**. If a court or governmental agency having proper jurisdiction over the Parties requires a Receiving Party to disclose any Confidential Information, then Receiving Party will promptly provide the Disclosing Party notice of such requirement (to the extent permissible under Applicable Law) to enable the Disclosing Party to seek an appropriate protective order.

13.3 **Authorized Disclosure**. A Receiving Party may disclose the Disclosing Party's Confidential Information with the written authorization of the Disclosing Party.

13.4 **Exclusions**. Subject to the last sentence of this Section 13.4 (Exclusions), the term "Confidential Information" excludes any portion of such information that a Receiving Party can establish by clear and convincing evidence to have been: (i) publicly known without breach of this Agreement; (ii) known by the Receiving Party prior to its receipt from the Disclosing Party; (iii) received in good faith from a third-party source that to Receiving Party's reasonable knowledge rightfully disclosed such information without an obligation of confidentiality; or (iv) developed independently by Receiving Party without use or reference to the Disclosing Party's Confidential Information.

13.5 **Filings**. Neither Party shall file the Agreement (including any addendum, schedule, supplement or attachment), or any future amendment or supplement hereto, with the U.S. Securities and Exchange Commission (the "**SEC**") or with the Canadian securities regulators unless such filing is required under Item 601 of Regulation S-K or applicable law. In the event that a Party determines that the Agreement (or amendment or supplement) must be filed with the SEC under Regulation S-K or with the Canadian securities regulators under applicable law, it shall take all actions necessary to obtain confidential treatment to the extent possible for the Agreement and all exhibits, addenda, schedules, supplements and attachments (including all pricing attachments).

13.6 **Remedies**. If Receiving Party or its representatives or agents breach the obligations set forth in this Section 13 (Confidential Information), then irreparable injury may result to the Disclosing Party or third parties entrusting Confidential Information to the Disclosing Party. Therefore, the Disclosing Party's remedies at law may be inadequate and the Disclosing Party will be entitled to seek an injunction to restrain any continuing breach. Notwithstanding any limitation on Receiving Party's liability, the Disclosing Party will further be entitled to any other rights and remedies that it may have at law or in equity.

14. Customer Information, Merchant Information and Program Information.

14.1 **General**. The purpose of this Section 14 is to ensure that this Agreement conforms to Applicable Law, including but not limited to GLBA, and otherwise sets forth the Parties' agreement with respect to the use, ownership rights, and disclosure of Customer Information, Merchant Information, and Program Information. All use and disclosure of Customer Information, Merchant Information, and Program Information under this Agreement shall be subject to the provisions of this Section 14.

14.2 **Ownership and Use of Customer Information**. As between the Parties, the Customer Information shall be [***], except for that portion of Customer Information deemed to be [***] in accordance with [***]. Excluded Customer Information and GLBA NPI shall be [***]. Subject to Section 14.4, [***] agrees that, during and after the Term, it shall not use, nor permit any Personnel to use, any Customer Information or GLBA NPI other than [***]; provided that the limitations set forth in this Agreement (including with respect to Customer Information) shall [***]. In addition to [***] obligations with respect to Customer Information in the preceding sentence, each Party may only use the Customer Information in accordance with Applicable Law, its agreements with the Customer or Merchant (as the case may be), and its privacy policy, each of which is attached hereto as Exhibit E. Each Party may only use GLBA NPI in accordance with Applicable Law, its agreements with the Customer or Merchant (as applicable), and Affirm's privacy policy. Upon the termination or expiration of this Agreement and any applicable wind-down or transition period, or at any time upon [***]. Any GLBA NPI separately maintained in an electronic format shall be returned to [***] in an industry standard and secure format or, at the option of [***], as is possible, deleted and removed from all computers, electronic databases and other media. Compliance by [***] with this Section shall be certified in writing by an appropriate officer of [***] within [***] of the end of the Term or the wind-down period or transition, whichever is later, which certification shall include a statement that no GLBA NPI has been retained. In the event that [***], [***] shall use commercially reasonable efforts [***] in accordance with that Section and subject to Applicable Laws. Neither Party will change its agreements with the Customer or Merchant or its privacy policy in an effort to expand its data use rights as between the Parties beyond what is currently contemplated by this Agreement and the Program, or to evade the obligations set forth in this Section 14 (Customer Information, Merchant Information and Program Information). Neither Party may sell personally identifiable Customer Information and neither Party may use or grant rights to Customer Information to any third party for marketing and solicitation purposes.

14.3 **Ownership and Use of** [***]. As between the Parties, all [***] and all [***] shall be owned exclusively by [***] unless otherwise expressly stated herein in this Section 14. [***] shall be owned by [***]; provided that [***] shall [***] to the extent [***] independently possesses or obtains [***] from [***]. Subject to Section 14.4 (Exceptions and Additional Obligations), [***] agrees that, during Term, it shall not use, nor permit any Non-Employee Personnel to use, any [***] or [***] other than as necessary [***]. [***] shall have all rights and interest with respect to the sharing, use and disclosure of [***] or [***] during the Term and following the expiration or termination of this Agreement in its entirety. Upon the termination or expiration of this Agreement and any applicable transition or wind-down period, or at any time upon the reasonable request of [***] shall return (or destroy if so directed by [***]) all [***] and [***] in its/their possession subject only to any limitations on the return or destruction of [***] or [***] as provided under this Agreement or Applicable Law. Any [***] or [***] separately maintained in an electronic format shall be returned to [***] in an industry standard and secure format or, at the option of [***], as is possible, deleted and removed from all computers, electronic databases and other media. Compliance by [***] with this Section shall be certified in writing by an appropriate officer of [***] within [***] of the end of the Term or the wind-down period, whichever is later, which certification shall include a statement that no [***] or [***] has been retained except as described in this Section 14.

14.4 **Exceptions and Additional Obligations**. Without waiving any of its rights under Sections 11, 13, 14.2 and 14.3, [***] may retain and use: (a) [***] (b) [***]. For the avoidance of doubt, [***] is not required to change its hard-coded underwriting, other models, automated backups, [***] Systems or records that may contain Customer Information, [***] added/embedded into them, but it has no right to use any such information independently or separate from such models. Without limiting anything set forth in this Section 14, to the extent [***] does not have access to Customer Information, [***] directly, during the term of Agreement or post-termination of the Agreement, [***] shall provide all such Customer Information (excluding GLBA NPI, except as permitted under Applicable Laws), [***] to [***] in accordance with Applicable Law and [***] privacy policy. Notwithstanding the limitations and rights set forth in this Section 14, and only as expressly stated herein and as expressly agreed to by the Parties, the Parties commit to support, and will work in good faith to (a) enable growth initiatives designed to enhance the consumer brand and consumer experience of each of Shopify and Affirm, respectively; (b) optimize the Customer's onboarding and user experience for the Financial Product and, upon Affirm agreeing to move to a fully API-hosted experience for Customers in the SHOP App (as per Affirm instructions on applicable servicing activities), [***]), provided that any action the Customer wishes to take with respect to the Financial Product must be handled by directing the Customer to the SHOP App/SHOP Portal; and (c) optimize the Customer's onboarding and user experience for any other installments products the Parties mutually agree to launch consistent with Section 36.

15. Affirm Data Security.

15.1 **Security Plan**. Affirm shall establish and maintain appropriate administrative, technical and physical safeguards designed to (i) protect the security, confidentiality and integrity of the Protected Information in the possession or control of Affirm or its Personnel; (ii) ensure against any anticipated threats or hazards to its security and integrity; (iii) protect against unauthorized access to or use of such Protected Information or associated records which could result in substantial harm or inconvenience to any Customer or applicant; and (iv) ensure the proper disposal of Protected Information (collectively, the "**Security Program**"). At all times during the Term, and during any wind-down or transition period, (x) Affirm shall use the same degree of care in protecting the Protected Information against unauthorized disclosure as it accords to its other confidential customer or consumer information, but in no event less than a reasonable standard of care, and (y) the Security Program shall be in compliance with all information and data security requirements promulgated by the Applicable Law. Upon request, Affirm shall provide Shopify a copy of its Security Program. Any material change to the Security Program by Affirm, which change would cause Affirm to not be in compliance with this Section 15.1, shall be approved in advance by Shopify.

15.2 **Security Measures**. Affirm shall also comply with the security measures in Exhibit B to the Agreement (the "**Security Measures**") applicable to Program or Affirm's obligations and undertakings under this Agreement. Shopify may amend and update the Security Measures from time to time, provided such updates may be no more onerous than those required by the then prevailing good industry practices and changes in Applicable Law. Affirm shall review any such amendments and updates and will use reasonable commercial efforts to adjust its security practices to comply with any such amendment and updates within [***] if feasible or as soon as practicable in the event [***] is not feasible following Affirm's receipt of such amendments and updates from Shopify. Notwithstanding the foregoing, if Affirm fails to adjust its security practices to comply with any such amendment or updates within [***] or the time period mutually agreed upon by the Parties in writing if [***] is not feasible, then Shopify may terminate this Agreement.

15.3 **Access**. Affirm shall ensure its Personnel, when working with or accessing Shopify's Systems, comply at all times with all applicable instructions, policies and procedures provided by Shopify to Affirm or Affirm's Personnel from time to time, including safety and security policies and procedures and information security policies and procedures. Affirm will execute, and ensure each of its Personnel execute, all applicable documents generally required by Shopify for access to Shopify's Systems. Affirm will not: (i) alter or disable any hardware or software security programs residing on Shopify's hardware, networks, computing environments or systems; (ii) allow unauthorized traffic to pass into Shopify's networks, computing environments or systems; or (iii) resell or assign Shopify's Confidential Information or access to Shopify's Systems to another entity or person. If Affirm or Affirm's Personnel allow unauthorized access to, or traffic to (as applicable) Shopify's systems, Shopify may immediately terminate Affirm's access to Shopify's Systems.

15.4 **Network Connections**. If a network connection is established between Shopify Systems and the computing environment(s) used by Affirm or Affirm Personnel in connection with this Agreement or the Program, Affirm agrees, for itself and all Affirm Personnel, to maintain an alert status regarding the security of such computing environments, including all vulnerabilities and security patches or corrective actions, by subscribing to an industry recognized service. Affirm understands that, should a Shopify review reveal any non-compliance with the Security Measures, Shopify may, in addition to other remedies it may have, remove access by Affirm Personnel to Shopify Systems until Affirm Personnel satisfactorily comply with the Security Measures.

15.5 **Data Security Compliance**. Affirm will permit Shopify to review Affirm's documents and records confirming its compliance with this Section 15 (Affirm Data Security) and provide Shopify with the relevant portions of audits and system test results acquired by Affirm in relation to the data security policies and procedures designed to meet the requirements of this Section 15 (Affirm Data Security). Affirm shall submit to [***] assessments of Affirm's security policies, standards and practices by Shopify, make reasonable efforts to resolve deficiencies noted as a result of these assessments in a manner commensurate to the risk those deficiencies represent and promptly notify Shopify of any material changes to Affirm's security policies, standards and practices. Affirm shall also comply with the Data Protection Agreement set forth on Exhibit B, which may be amended from time to time by Shopify, subject to Section 15.2. In the event of a conflict or contradiction between this Section 15 (Affirm Data Security) and the Data Protection Agreement, the Data Protection Agreement will take precedence over Section 15 (Affirm Data Security) to the extent necessary (subject to the provisions set forth in Section 15.2 relating to updates and amendments).

15.6 **Security Breach**

15.6.1. If Affirm maintains, processes or otherwise is permitted access to Protected Information, Affirm will maintain and, upon request, produce copies of incident response policies and procedures and evidence of incident response testing conducted within the last year. Notwithstanding the foregoing, initial evidence of incident response testing will be provided as soon as possible after the execution of this Agreement.

15.6.2. In the event Affirm suffers or learns of any actual Security Breach (including any unauthorized acquisition, accessing, use, alteration, disclosure, compromise or loss of any Protected Information or Merchant Information), then, as soon as practicable but within no more than [***] (except that notice to Shopify may be delayed if required by law enforcement or other Regulatory Authority), Affirm will notify its primary Shopify contact and provide an estimate of the Security Breach's effect on Shopify. Affirm will diligently investigate the cause of the Security Breach and promptly create and enact a corrective action plan to prevent future breaches.

15.6.3. In the case of a Security Breach involving Protected Information, Affirm will cooperate fully with Shopify to correct any Security Breach and notify each Customer as to the facts and circumstances of the breach of the Customer's particular information. Affirm agrees not to notify any Regulatory Authority, nor any Customer, on behalf of Shopify unless Shopify specifically requests Affirm to provide such notification (such notification to be in a form approved by Shopify in writing). If Affirm reasonably determines that Regulatory Authority or Customer notification is required by it under Applicable Law, then Affirm must provide Shopify prior notice, and if Shopify disagrees, Shopify and Affirm will then negotiate in good faith to make a final determination regarding what action, if any, is to be taken. To the extent requested by Shopify, Affirm will cooperate fully with all Regulatory Authorities investigating a Security Breach and any known or suspected criminal activity. Affirm shall be responsible for all Security Breach Costs associated with its Security Breach.

15.6.4. In the event of a Security Complaint directed at Affirm, then, as soon as practicable but within no more than [***], Affirm will notify its primary Shopify contact and the Parties shall promptly work in good faith to determine the appropriate actions to be taken in connection with such Security Complaint.

16. **Shopify Data Security** Section 15.1 (Security Plan) of the Agreement applies equally to Shopify, *mutatis mutandis*. Sections 15.2 (Security Measures), Section 15.3 (Access), 15.4 (Network Connections), 15.5 (Data Security Compliance), and 15.6 (Security Breach) apply equally to Shopify, *mutatis mutandis*, provided that such sections shall apply to Shopify only (i) to the extent required by Regulatory Authority or (ii) in relation to the SHOP Portal, SHOP App or GLBA NPI.

17. Indemnification

17.1 **Affirm Indemnification**. Subject to the provisions of Section 18 (Exclusion of Damages and Limitation of Liability), Affirm will defend, indemnify and hold harmless Shopify and its Affiliates, and the employees, agents, service providers, representatives, officers and directors of Shopify and its Affiliates (each, a "**Shopify Indemnified Party**") against all third party claims, damages, liabilities, assessments, losses, costs and expenses ("**Losses**") of the Shopify Indemnified Party (including reasonable attorney's fees) to the extent the Losses arise out of, are in connection with, or relate to: (i) Affirm's breach of Applicable Law; (ii) Affirm's breach of any representation, warranty, obligation or covenant under this Agreement; (iii) Affirm's gross negligence or willful misconduct; (iv) any third-party claim that Affirm's products or services infringe the Intellectual Property Rights of a third party; (v) Affirm's material breach of the Data Protection Agreement or any Security Breach to Affirm Systems; (vi) any claims brought by an employee, personnel, agent, consultant or vendor of Affirm; (vii) any claims or actions by a Customer or Merchant related to the Financial Product or any obligation of Affirm under this Agreement; (viii) any claims by a Merchant for which Affirm is liable pursuant to the terms of this Agreement or (ix) a Regulatory Authority fining or penalizing Shopify as a direct result of Affirm's violation of law with respect to the Program and Financial Product (collectively, the "**Affirm Covered Claims"**). Notwithstanding the foregoing, it is agreed that any claims that the Affirm Materials, Affirm Systems or the Financial Product, as modified under the Program or in combination with any other Shopify products or services, infringe the intellectual property or other rights of a third party do not constitute Affirm Covered Claims. For the avoidance of doubt, Affirm will have no indemnification obligation to any Shopify Indemnified Party for any Losses pursuant to this Section 17.1 to the extent such Losses arise out of (A) an act of fraud, embezzlement or criminal activity by such Shopify Indemnified Party, (B) the gross negligence, willful misconduct or bad faith by such Shopify Indemnified Party, (C) the failure of such Shopify Indemnified Party to materially comply with, or to perform its obligations under, this Agreement, or (D) violations of Applicable Law by a Shopify Indemnified Party.

17.2 **Shopify Indemnification**. Subject to the provisions of Section 18 (Exclusion of Damages and Limitation of Liability), Shopify will defend, indemnify and hold harmless Affirm and its Affiliates, and the employees, officers and directors of Affirm and its Affiliates (each, an "**Affirm Indemnified Party**") against all third party Losses of the Affirm Indemnified Party (including reasonable attorney's fees) to the extent the Losses arise out of, are in connection with, or relate to: (i) Shopify's breach of Applicable Law; (ii) Shopify's breach of any representation, warranty, obligation or covenant under this Agreement; (iii) Shopify's gross negligence or willful misconduct; (iv) a Security Breach to Shopify Systems impacting the SHOP Portal, SHOP App or GLBA NPI; (v) any claims, other those claiming a violation of Intellectual Property Rights, by a Customer or a Merchant relating to the Platform or the SHOP App; (vi) Merchant claims for which Shopify is liable pursuant to the terms of this Agreement; (vii) a Regulatory Authority fining or penalizing Affirm as a direct result of Shopify's violation of the law in rendering of items or other actions Shopify undertakes with respect to the Program and Financial Product (collectively, the "**Shopify Covered Claims**," and together with the Affirm Covered Claims, the "**Claims**"). Notwithstanding the foregoing, it is agreed that any claims that the SHOP App, as modified under the Program or in combination with any other Affirm products or services, infringe the intellectual property or other rights of a third party do not constitute Shopify Covered Claims. For the avoidance of doubt, Shopify will have no indemnification obligation to any Affirm Indemnified Party for any Losses pursuant to this Section 17.2 to the extent such Losses arise out of (A) an act of fraud, embezzlement or criminal activity by such Affirm Indemnified Party, (B) the gross negligence, willful misconduct or bad faith by such Affirm Indemnified Party, (C) the failure of such Affirm Indemnified Party to comply with, or to perform its obligations under, this Agreement, or (D) violations of Applicable Law by a Affirm Indemnified Party.

17.3 **Indemnification Procedure**. If any Claim is commenced with respect to which an indemnified party is entitled to indemnification under this Section, the applicable indemnified party will provide notice thereof to the indemnifying party. The indemnifying party will be entitled, if it so elects in a notice promptly delivered to the indemnified party, to immediately take control of the defense, settlement and investigation of the Claim and to engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost. The indemnified party will cooperate in all reasonable respects, at the indemnifying party's cost and request, in the investigation, trial and defense of such Claim and any appeal arising therefrom. The indemnifying party will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the indemnified party's prior written consent, which consent shall not unreasonably be withheld. The indemnified party may also, at its own cost, participate through its attorneys or otherwise in such investigation, trial and defense of any Claim and related appeals. If the indemnifying party does not timely assume full control over the defense of a Claim as provided in this Section 17.3 (Indemnification Procedure), the indemnified party will have the right to defend the Claim in such manner as it may deem appropriate, at the reasonable cost and expense of the indemnifying party.

17.4 **Additional Terms for Intellectual Property Indemnification**. If any Materials, the Program, or any part thereof, or any services in each case that are provided by a Party under this Agreement, becomes, or in the providing Party's reasonable opinion may become, the subject of any claim, suit or proceeding for infringement of any Intellectual Property Rights, or are held or otherwise determined to infringe any Intellectual Property Rights, the providing Party may, at its option and sole expense: (i) secure for the other Party the right to continue using the affected Materials, Program or services; (ii) replace or modify the affected Materials, Program or services so as to make such Materials, Program or services non-infringing without degrading the performance or utility thereof; or (iii) modify the affected Materials, Program or services to make it non-infringing without materially reducing the Program's functionality or performance; or, if (i) - (iii) are not commercially feasible, then the providing Party may cease providing or making available the affected Materials, Program or services to the other Party and, in such case, such other Party may elect to terminate the Agreement without cause. The rights and obligations set forth in this Section 17 are the providing Party's sole obligations and liability, and the other Party's exclusive remedies, with respect to any Losses arising out of or related to any infringement of any Intellectual Property Rights of a third party.

18. Exclusion of Damages and Limitation of Liability.

18.1 EXCEPT FOR A PARTY'S CONFIDENTIALITY OBLIGATION HEREUNDER OR OBLIGATION TO MAKE PAYMENT TO THE OTHER PARTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

18.2 The cumulative aggregate liability of either Party for all losses, claims, suits, controversies, breaches or damages of any manner whatsoever and for any cause whatsoever, including indemnification, and regardless of the form or action or legal theory, shall be limited to the actual direct losses that are incurred by such other Party and shall not exceed [***] (the "**Liability Cap**"); provided that, notwithstanding anything in the Agreement to the contrary, the Liability Cap shall not apply to the following (and amounts owed thereunder shall not be taken into account for purposes of calculating the Liability Cap):

18.2.1. Ordinary course payments owed by one Party to the other Party pursuant to this Agreement;

18.2.2. Breach of confidentiality obligations under Section 13 (Confidential Information);

18.2.3. Affirm's indemnification obligations under Section 17.1(i) (Breach of Applicable Law); Section 17.1(iii) (Gross Negligence or Willful Misconduct); Sections 17.1(iv) (Intellectual Property Infringement) and 17.4 (Additional Terms for Intellectual Property Indemnification[***].

18.2.4. Shopify's indemnification obligations under Section 10.3 (Taxes); Section 17.2 (i) (Breach of Applicable Law); Section 17.2(iii) (Gross Negligence or Willful Misconduct); [***].

18.3 THE REMEDIES SPECIFIED IN THIS AGREEMENT ARE CUMULATIVE AND IN ADDITION TO ANY REMEDIES AVAILABLE AT LAW OR IN EQUITY.

19. Disaster Recovery and Business Continuity.

19.1 At all times during the Term and for so long as this Agreement remains in effect, each Party shall prepare and maintain disaster recovery, business resumption and contingency plans appropriate for the nature and scope of the activities of and the obligations to be performed by such Party hereunder. The Party shall ensure that such plans comply with Applicable Law and are sufficient to enable it to promptly resume the performance of its obligations hereunder in the event of a natural disaster, destruction of facilities or operations, utility or communication failures or similar interruption in operations and shall ensure that all material records, including, but not limited to, Protected Information, are backed up in a manner sufficient to survive any disaster or business interruption. These plans shall ensure that such resumption takes place no later than [***] after the interruption. Upon written request, each Party shall make available to the other Party summaries of relevant disaster recovery, business resumption and contingency plans. Any changes to the disaster recovery, business resumption, or contingency plans must comply with the terms herein. Further, any changes to the policies, taken collectively as a whole, must be no less protective than the policies it has in place on the Effective Date.

19.2 If a Party suffers a disruption, disaster or failure and implements the disaster recovery, business resumption and contingency plans in relation to the Program, the affected Party will promptly notify the other Party.

20. Insurance.

20.1 **Required Insurance**. Without limiting Affirm's liability to Shopify, Affirm, at its sole cost and expense, will maintain adequate insurance coverage to protect Shopify from any losses or claims that may arise out of the Program or performance of its services hereunder during the Term. Such coverage will include:

20.1.1. workers' compensation (statutory limits) and employer's liability insurance $[***] limits to the extent required by the laws of the state(s) in which the Services are performed;

20.1.2. commercial general liability and property damage insurance with combined bodily injury and property damage limits of at least $[***] combined single limit for bodily injury, death, property damage, including personal injury, and products and completed operations coverage, naming Shopify as an additional insured;

20.1.3. fidelity bonding of at least $[***] for claims based upon and damages arising out of or relating to such Party's employees' fraudulent or dishonest acts;

20.1.4. errors and omissions insurance or comparable coverage of at least $[***] for claims based and damages arising out of or relating to negligence, omissions or errors of such Party's Personnel; and

20.1.5. network security and privacy liability insurance with a minimum of $[***] per claim/ $[***] aggregate covering described services contained within the Agreement to include, but not be limited to, business interruption, data recovery, hardware replacement at $[***], incident responses, data breach, security and privacy violations, third-party liability, crisis management costs, which include Customers notification expenses and credit monitoring.

20.2 **Shopify Insurance**. Shopify will maintain adequate insurance coverage to protect Affirm from any losses or claims that may arise out of the Program or its performance hereunder during the Term. Such insurance shall be commensurate with the risk posed by the services provided by Shopify under this Agreement.

20.3 **Insurance Ratings**. All the insurance policies required to be obtained pursuant to this Agreement will be with companies rated an A.M. Best Financial Strength Rating of A- or better. The foregoing requirements as to the types and limits of insurance coverage to be maintained by a Party and any approval or waiver of said insurance by the other Party are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by the first Party pursuant to this Agreement, including the provisions concerning the indemnification obligations of the first Party. The general liability policy will be primary and noncontributory to any insurance or self-insurance maintained by the other Party (required for commercial general liability only).

20.4 **Certificates of Insurance**. Upon the request of a Party, the other Party will deliver certificates of insurance for the applicable policies to the first Party.

20.5 **Cancellation or Lapse of Insurance**. Each Party will give the other Party 30 days' prior written notice of cancellation, except that the first Party will give the other Party 10 days' prior written notice for cancellation for nonpayment of premium, or non-renewal.

20.6 **Claims Made Coverage**. To the extent that any insurance coverage required under this Section is purchased on a "claims-made" basis, such insurance will be continuously maintained until at least [***] beyond the expiration or termination of this Agreement, or the applicable Party will purchase "tail" coverage, effective upon termination of any such policy or such termination or expiration of this Agreement, to provide coverage for at least [***] from the occurrence of either such event.

21. Records and Reporting.

21.1 **Records**. Each Party shall retain or cause to be retained, and shall require that all Personnel engaged by such Party to retain or cause to be retained, full and accurate records (in a form capable of satisfying an audit) relating to the Program, including, without limitation, the performance of its obligations under the Agreement and the security of the Party's information and systems as well as any other records a Regulatory Authority may require from time to time or that the Party is required to maintain under Applicable Law ("**Records**"). Each Party shall retain copies of the Records the longer of 5 years after the termination or expiration of the Agreement or as otherwise required by Applicable Law. Affirm shall provide to Shopify any Records (that can be reasonably obtained or compiled by Affirm) relating to specific Program metrics or performance data, including but not limited to data or other information in its possession or in the possession of its subcontractors, affiliates or partners, which may be reasonably requested by Shopify. For the avoidance of doubt, Affirm shall not be obligated to provide to Shopify (i) any Records containing Affirm Confidential Information; or (ii) Records that might compromise Affirm Intellectual Property Rights.

21.2 **Reporting**. Each Party shall deliver to the other Party certain agreed-upon reports, as set forth in the Program Outline. The Parties shall work in good faith to provide additional reports reasonably requested by the other Party for use solely in support of the Program. To the extent either Party reasonably determines that the sharing of any such information does not comply with Applicable Law, then the Parties agree to negotiate in good faith to share such other information that is legally permitted to achieve the anticipated practical benefits intended by the information sharing.

22. Right to Audit.

22.1 During the Term and no more than [***] unless agreed upon by the Parties or required by or any Regulatory Authority, each Party (the "**Audited Party**") agrees that the other Party and/or its authorized representatives and agents (collectively the "**Auditing Party**") shall have the right, at any time during normal business hours and upon reasonable prior notice, to inspect, audit and examine all of Audited Party's facilities, Records, personnel, books, accounts, data, reports, papers and computer records relating to the activities contemplated by this Agreement; provided that such audit is conducted utilizing a certified public accountant or other reputable auditing firm selected by the Audited Party (that is reasonably acceptable to the Auditing Party).

22.2 In addition to the obligations set forth under Section 22.1, each Party agrees to cooperate with any examination, inquiry, audit, information request, site visit or the like, which may be required by any Regulatory Authority with audit examination or supervisory authority over any Party under this Agreement, to the fullest extent requested by such Regulatory Authority. Each Party shall also provide to the other Party any information that may be required by any Regulatory Authority in connection with their audit or review of such Party or the Program and shall cooperate with such Regulatory Authority in connection with any audit or review of such Party or the Program. All rights under this Section 22.2 are subject to the Party seeking to exercise rights hereunder providing the other Party reasonable prior notice and complying with reasonable requests by and conditions of such other Party related to access to facilities and records (including on-site security requirements) and to audit scope and timing.

22.3 Affirm shall prepare a written response to Shopify (a "**Response to Audit Letter**") to all criticisms, recommendations, deficiencies and violations of Applicable Law identified in reviews conducted by Shopify or any Regulatory Authority ("**Audit Findings**"). The Response to Audit Letter shall be delivered to Shopify within [***] of Affirm's receipt of such Audit Findings, unless directed otherwise by a Regulatory Authority. The Response to Audit Letter shall include, at a minimum, a detailed discussion of the following: the planned corrective action to address the Audit Findings ("**Audit Corrective Action Plan**"); employee(s) of Affirm tasked to remedy the Audit Findings; remedial actions proposed to be directed to current or past Customers negatively impacted by the Audit Findings (provided no such action shall be taken without express written approval from Shopify); steps to be taken to prevent any recurrence of the Audit Findings; a specific timeframe, not to exceed [***] unless otherwise approved by Shopify in advance, to implement the Audit Corrective Action Plan ("**Corrective Action Plan Deadline**"); documentation evidencing that the Audit Corrective Action Plan has been implemented; if additional time is needed to implement the Audit Corrective Action Plan or deviations from the Audit Corrective Action Plan are necessary, a written request shall be submitted to Shopify detailing the extenuating circumstances that necessitate an extension of the Corrective Action Plan Deadline and such extension request shall be subject to the reasonable approval of Shopify; and identification of any Audit Findings disputed by Affirm or where corrective action is not possible or necessary, supported by a detailed explanation of Affirm's position.

23. **Notices**. Unless otherwise noted in the Agreement, all written notices required pursuant to this Agreement will be deemed sufficiently given when personally delivered or 3 business days after being mailed via certified or first-class U.S. mail or a nationally recognized courier to a Party at its address set forth on the cover signature page of this Agreement, or at such other address as a Party may from time to time specify by written notice to the other Party.

24. **Assignment**. Except for an assignment or delegation to an Affiliate of either Party, neither Party will transfer or assign this Agreement without the other Party's prior written consent, which may not be unreasonably withheld, delayed or conditioned.

25. **Use of Content, Branding and Publicity.**

25.1 Neither Party will use the other Party's or its Affiliates' names, trademarks, trade names, service marks, logos or other brand marks (including those of its partners and collaborators, collectively, the "**Marks**") without prior written approval by an authorized representative of the other Party. Any usage of the Marks of either Party shall be in accordance with the usage guidelines and policies that may be provided by the applicable Party in writing to the other Party from time to time. In addition to any other usage guidelines and policies provided by Shopify in connection with its Marks, Affirm shall also comply with the guidelines available at www.shopify.com/brand-assets (or any replacement or successor URL).

25.2 Each Party will not include the other Party on any client list or make any "case study," testimonial, press release or other public announcement regarding this Agreement or any activities performed hereunder without the prior written consent of an authorized representative of the other Party. Notwithstanding the foregoing, Shopify will in good faith consider developing with Affirm a case study, sales and marketing content, testimonials, and quotations that could be used by the Parties for marketing purposes.

25.3 If either Party requires the use of the other Party's Marks in order to fulfill its obligations under this Agreement, the Marks-using Party shall first obtain the Marks-owning Party prior written approval. If the Marks-owning Party provides such approval, then the Marks-owning Party hereby grants to the Marks-using Party a limited, revocable, non-sublicensable, non-transferable, non-exclusive license to use the Marks-owning Party Marks solely for the purposes of fulfilling its obligations under this Agreement and for the term of this Agreement, unless such term is earlier terminated in accordance with the terms of the Agreement. The Marks-using Party acknowledges that the Marks-owning Party Marks and all rights therein belong, as between the Parties, exclusively to the Marks-owning Party and that this Agreement does not confer upon the Marks-using Party any rights, goodwill or other interest in the Marks-owning Party Marks. Any goodwill that derives from the Marks-using Party's use of the Marks-owning Party Marks will inure to the benefit of the Marks-owning Party.

25.4 **Branding**. The Program shall be branded in accordance with the branding standards set forth in Exhibit C.

25.5 **Public Releases**. All media releases, public announcements and public disclosures by Shopify or Affirm or their representatives, employees, partners or agents, relating to this Agreement, the Program or the name or Marks of Shopify or Affirm, including, without limitation, promotional or marketing material, but not including any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing Party, shall be coordinated with and approved by both Parties in writing prior to the release thereof. Notwithstanding the foregoing, the Parties commit to publicly announcing the Program in a mutually agreed upon fashion.

26. Force Majeure. If any Party will be unable to carry out the whole or any part of its obligations under this Agreement by reason of a Force Majeure Event, then the performance of the obligations under this Agreement of such Party as they are affected by such cause will be excused during the continuance of the inability so caused, except that should such inability not be remedied within [***] after the date of such cause, the Party not so affected may at any time after the expiration of such [***] period, during the continuance of such inability, terminate this Agreement on giving written notice to the other Party. No Party will be relieved of its obligations hereunder if its failure of performance is due to removable or remediable causes that such Party fails to remove or remedy using commercially reasonable efforts within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event will give prompt notice of such fact to the other Party, followed by written confirmation of notice, and will exercise due diligence to remove such inability with all reasonable dispatch.

27. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality or enforceability of the remaining provisions will in no way be affected or impaired thereby.

28. Governing Law. All matters arising out of or related to this Agreement will be governed by and construed in accordance with the laws of the state of Delaware, without giving effect to its choice-of-law rules. The Parties irrevocably and unconditionally submit to the exclusive personal jurisdiction of the courts of the state of Delaware and irrevocably waive any and all rights to object to such jurisdiction for the purposes of litigation to enforce or interpret any provision of this Agreement. The Parties hereby expressly and irrevocably waive their rights to any other jurisdiction that may apply by virtue of their present or future domiciles or for any other reason. The parties hereby expressly and irrevocably waive their rights to a trial by jury in any action, suit, counterclaim or other proceeding (whether based on contract, tort or otherwise) arising out of, connected with or relating to this Agreement.

29. Interpretation. The headings of Sections of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of this Agreement in any way. This Agreement will not be presumptively construed for or against either Party. Section titles are for convenience only. As used in this Agreement, “will” means the same thing as “shall,” and the words “include,” “includes” and “including,” shall always be construed as if followed by the words “without limitation.”

30. **Modification and Waiver**. No modification of this Agreement and no waiver of any breach of this Agreement will be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the Parties will be construed as a waiver of any subsequent breach of this Agreement.

31. **Waiver; Consent**. Failure by either Party to exercise or enforce any right under this Agreement, no matter how long the same may continue, shall not be deemed a waiver of such right by such Party. No waiver of any provision of, or consent to any breach of, this Agreement shall be deemed a waiver of any other provision of, or consent to any subsequent breach of, this Agreement. A Party's consent to or approval of an act or omission on any one occasion shall not be deemed a consent to or approval of said act or omission on any subsequent occasion, or a consent to or approval of any other act or omission on the same or any subsequent occasion. To be effective, a Party's waiver of any right or remedy will be documented in a writing signed by the waiving Party.

32. **No Third-Party Beneficiaries**. Nothing in this Agreement will confer any right, remedy or obligation upon anyone other than Shopify, the Shopify Affiliates, Affirm and the Affirm Affiliates.

33. **Counterparts; Electronic Signature**. This Agreement may be executed in duplicate counterparts, each of which is deemed an original, and all of which taken together constitute one and the same instrument. For purposes of execution and delivery, each Party may rely upon the electronic (e.g., via e-mail/PDF) signature of the other Party.

34. **Order of Precedence**. Unless otherwise specifically mutually agreed to in writing by the Parties, if there is any conflict or inconsistency between these Terms and Conditions or the Program Outline, such conflict or inconsistency will be resolved by giving precedence: (a) first, the Program Outline, and (b) second, to the Terms and Conditions, including its Exhibits.

35. **Non-Solicitation**. Unless otherwise expressly permitted under Section 14, during the term of this Agreement and for [***] following termination or expiration of the Agreement, Affirm will not directly solicit any Merchant or Customer for any Affirm financial products or services using Merchant Information or Customer Information; provided that such prohibition shall not apply to: (a) [***]; (b) [***]; and (c) [***]. Notwithstanding the foregoing, and in addition to the above, [***], respectively. Each Party also agrees that, during the term of the Agreement and for one year following its termination or expiration, it will not seek out or induce any person who is an employee of the other Party to terminate their employment; provided that such prohibition shall not apply to general employment advertising made in the ordinary course of business that is not targeted at a specific individual.

36. **Exclusivity; Additional Products, Services, Geographies**. Until the termination of this Agreement, Shopify agrees that Affirm will be its exclusive provider in the United States of the Financial Product (or any substantially similar financial product) and the Program (or any substantially similar program) and, to the extent Parties mutually decide to offer the Financial Product (or any substantially similar financial product) or the Program (or any substantially similar program) in [***], [***]. Shopify further agrees that Affirm will be its exclusive provider in the United States and its territories of interest-bearing loan installment programs, contingent upon the following: (a) such programs are mutually developed and approved; and (b) the negotiation of a mutually acceptable agreement by the Parties for such programs. Subject to the Parties' mutual agreement, the Parties may [***]. Any exclusivity as to any products or service beyond the Financial Product (or any substantially similar financial product) under the Program and Agreement are contingent on the negotiation of a mutually acceptable agreement by the Parties. The Parties agree that the "Transaction Pricing Terms" in Appendix A of the "Non-Binding Term Sheet for Buyer Installment Program" executed on April 3, 2020 shall apply to clause (a) above and shall be incorporated into the Program Outline for clause (a) as applicable. Shopify also agrees that it will explore in good faith the possibility of [***]. Affirm agrees it will use reasonable efforts to build new products and features as requested by Shopify. [***].

37. **Non-Exclusive**. Except as specifically set forth in Section 36 (Exclusivity; Additional Products, Services, Geographies), above, each Party acknowledges and agrees that the rights granted to and obligations due to the other Party in this Agreement are intended to be non-exclusive, and therefore that nothing in this Agreement will be deemed or construed to prohibit either Party from engaging in or participating itself or with one or more third parties in business arrangements similar to or competitive with those described herein.

38. **Subcontractors**. Each Party may use subcontractors in the performance of its obligations under the Program, provided that each Party shall be fully responsible for the acts and omissions of its subcontractors, including its subcontractors' compliance with the terms of the Agreement and all applicable laws. Upon reasonable request, each Party will provide the other Party with a list of critical subcontractors used by such Party in support of the Program.

39. **Warrant Agreement**. At the time of execution of this Agreement, the Parties shall enter into the Warrant Agreement.

40. **Entire Agreement**. This Agreement, including any attached exhibits, schedules, appendices, and addenda, constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, and arrangements, oral or written, between the Parties with respect to the subject matter hereof.

Exhibit A

PROGRAM OUTLINE

This Program entered into and effective on the Effective Date noted in the below signature block (the "**Program Effective Date**"), is made pursuant to, and is a part of, that certain Customer Installment Program Agreement between Shopify Inc., a Canadian corporation ("**Shopify**") and Affirm, Inc., a Delaware corporation ("**Affirm**") with an effective date of July [__], 2020 (the "**Agreement**"). For purposes of the Program, Affirm Loan Services LLC, a Delaware limited liability company, is a party and signatory and use of "**Affirm**" herein (Exhibit A and all addendums to Exhibit A) refers collectively to Affirm, Inc. and Affirm Loan Services. All capitalized terms not defined in this Program Outline shall take their respective meanings as set forth in the Agreement.

This Program Outline describes the Customer Installment Program (as described below) to be incorporated into the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Program Outline to be duly executed by their authorized representatives below.

Affirm, Inc.	**Affirm Loan Services LLC**	**Shopify Inc.**
Signature:	**Signature**:	**Signature**:
Printed Name: Max Levchin	**Printed Name**: Sharda Caro-del-Castillo	**Printed Name**: Amy Shapero
Title: Chief Executive Officer	**Title**: Secretary	**Title**: Chief Financial Officer
Date: July 16, 2020	**Date**: July 16, 2020	**Date**: July 16, 2020

1) **Program Description**. The Program will be offered only in the United States, and (at the option of Affirm with Shopify consent) [***]. The Financial Product associated with the Program ("**First Produc**t") shall be a closed-end installment loan product that will bear an interest rate of [***]%, will have no Customer fees of any kind (including late fees), and will have a repayment term of either (i) [***] biweekly (every other week) payments if a partial payment is made by a Customer at the time of purchase; or (ii) [***] biweekly (every other week) payments if a partial payment is not made by a Customer at the time of purchase. The First Product may be utilized only for orders that are not less than $[***] USD and not greater than $[***] USD, unless otherwise approved by Affirm in its sole discretion.

2) **Product Construct.** For purposes of the First Product only, and regardless of any provisions to the contrary in the Agreement, the Parties have agreed to the following "Product Construct":

a) Once Affirm has finalized Customer Agreements, Shopify shall [***] render as a payment option for Customers within Shop Pay [***] to be called a mutually agreed upon Program name. In the event a Customer selects the Program option to pay for goods or services, it shall be directed [***] for the [***]. Shopify is responsible to [***] and to [***]. [***]. In addition, Affirm shall have the right to [***].

b) With respect to data collection [***], Affirm may [***]. To the extent additional GLBA NPI is needed by Affirm from the Customer to provide the First Product, Affirm shall [***]. Shopify is also responsible to provide Affirm monthly reporting [***].

c) Any Customer electronic mail ("email") and SMS text communications regarding the terms or repayments of the Financial Product shall be sent [***] from the "[***]" email address with "Shop Pay" as the sender. As to [***] communications to Customers[***] (i) welcome messages, (ii) general Program information, (iii) general account creation, (iv) general Shop Pay information (check account, update information, etc.), Shopify [***].

d) With respect to the post-purchase user/Customer portal, the Parties agree [***]. Shopify is responsible [***]. The Parties agree [***] to optimize the Customer's user experience for the Financial Product as set forth in Section 14 of the Agreement.

3) **Launch**. Shopify will launch the First Product on its Platform in three (3) phases: (i) with between [***] to [***] Eligible Merchants ("**Alpha Phase**"); (ii) promptly following the Alpha Phase, with between [***] and [***] Eligible Merchants ("**Beta Phase**"); and (iii) promptly following the Beta Phase, with all Eligible Merchants on its Platform (the "**GA Phase**"). The Parties will work together in good faith to launch the GA Phase as soon as practicable. Prior to the launch of the First Product with each potential Eligible Merchant, Shopify shall cause such Merchant to enter into a merchant agreement, substantially in the form attached as Exhibit E to the Agreement, between Affirm and such Merchant (each, a "**Merchant Agreement**").

4) **Merchant Engagement and Marketing**. With respect to Merchant engagement and marketing, Shopify agrees to: (i) [***]; (ii) to use [***]; (iii) to use [***]; (iv) work with Affirm in good faith to develop a marketing plan for the Program; and (v) work with Affirm in good faith to drive repeat purchases for the program.

5) **First Product Placement**. Shopify [***]. Notwithstanding the preceding sentence, product placement shall ultimately be determined in Shopify's and its Merchants' discretion.

6) **Merchant Fees and Payout.**

a) Merchant Fees. Each Eligible Merchant that makes the First Product available to its customers shall pay fees to Affirm as set forth in the applicable Merchant Agreement and as determined by Shopify. Generally, fees to be paid by an Eligible Merchant to Affirm ("**Merchant Fees**") shall equal the sum of (i) a percentage of the [***] amount (including any [***] made by a Customer at the time of purchase) of each sale approved by Affirm and captured by an Eligible Merchant (each, a "**Successful Transaction**"), plus (ii) $[***] per Successful Transaction, in each case, in accordance with the applicable Merchant Agreement. The [***] Merchant Fees that may be offered to a Merchant are set forth on Addendum A-2 to Exhibit A-1[***].

b) Payouts to Eligible Merchants.

Affirm and/or its Affiliates shall disburse funds in connection with the Program to each Eligible Merchant in accordance with this Section 6(b). Each Eligible Merchant shall establish and maintain a U.S. depository account in good standing (each, a "**Bank Account**") in accordance with the Merchant Agreement. Within [***] (with commercially reasonable efforts to do so within[***]) following a Successful Transaction, Affirm shall provide to the Eligible Merchant a report setting forth all Successful Transactions, and shall also initiate a transfer of Settlement Funds (which shall include the [***] amount of the Successful Transaction, less Merchant Fees as applicable, refunds and any items held in suspense as dispute items, as further defined in each Merchant Agreement) for all Successful Transactions to the Eligible Merchant's Bank Account in accordance with the Merchant Agreement (each, a "**Payout**"). Eligible Merchants shall receive [***] settlements (aggregated to the extent possible) from Affirm and its Affiliates with respect to all Successful Transactions occurring on [***]. Any amounts due from Merchants to Affirm in accordance with the Merchant Agreements shall be deducted by Affirm from Payouts to the Eligible Merchant's Bank Account. [***].

7) Shopify Fees and Payout.

a) Shopify Fees. With respect to each Successful Transaction, Affirm shall pay to Shopify a fee ("**Shopify Fee**") equal to (i) the [***] amount of such Successful Transaction multiplied by (ii) the applicable [***] set forth under column "Y1" (for Alpha Phase, Beta Phase and the first year following the launch of the GA Phase) or "Y2&Y3" (for the second and third years following the launch of the GA Phase). With respect to each Merchant, the Shopify Fee shall not be duplicative of any commissions, revenue sharing or other fees due from Affirm to Shopify under any other agreements.

b) Payouts to Shopify. No later than [***] business days following the end of each[***], Affirm shall transfer, in U.S. dollars via wire transfer or ACH, to Shopify's U.S. bank account (the "**Shopify Account**") the aggregate amount of Shopify Fees due for such calendar month. [***]. Affirm shall also provide Shopify with a statement accompanying each payment, detailing the amount of the Shopify Fees due to Shopify for the applicable month, [***] as to be mutually agreed by Parties, in sufficient detail to permit Shopify to validate the amount of such payment. To validate revenue earned by Shopify on a monthly basis, payouts to Shopify shall be accompanied by a report that contains total [***].

8) **Customer Installment Program Delay**. The Parties will use reasonable efforts to launch the Alpha phase of the First Product no later than July 15, 2020. Any delay in the launch date caused solely by Affirm will require Affirm to pay Shopify a one-time, lump sum launch penalty as follows:

Delay Penalty	Payment (non-cumulative)
[***]weeks	$[***]
[***]weeks	$[***]
[***]weeks	$[***]
[***]weeks	$[***]

For the avoidance of doubt, the Parties agree that the Alpha Phase launch date and associated penalty do not require that the Parties launch without a mutually acceptable Agreement. Further, the Alpha Phase launch date and associated penalty do not apply to any launch delays related to product development and features that must be mutually agreed upon in the Agreement and thus, delay the Alpha Phase launch date.

9) [***]. Upon the Alpha Phase launch date, [***]. Additionally, while each Party retains [***], upon Alpha Phase launch, [***] (the "[***]"). Shopify [***] within [***] following the Program Launch. Affirm shall provide Shopify with guidance around existing workflows, processes and requirements; and Shopify [***]. As applicable[***]. Shopify agrees in good faith to notify Affirm in advance of any material changes to its [***] that [***], and to consult with Affirm about such changes. In addition, Affirm shall have the right to [***].

10) **Affirm Application Programming Interface ("Affirm API")**. Affirm shall develop software that allows the Platform to communicate automatically via the Affirm APIs with the Platform for the purpose of initiating Applications and otherwise supporting the First Product, and Affirm will disclose the portion of the Affirm APIs to Shopify necessary for Shopify to allow its Platform to integrate with the Affirm API. The Affirm API and all modifications, enhancements and derivative works thereof, and all documentation and specifications related thereto, shall be deemed Affirm Pre-Existing IP.

11) [***] **Obligations**. At such time as the [***], [***]: (a[***]. [***].

12) **Affirm Resource Commitment**. Affirm will dedicate the following resources to develop the First Product for launch in all phases (Alpha Phase, Beta Phase, and GA Phase):

a) [***] software developers;

b) [***] engineering managers

c) [***] product managers

d) [***] implementation manager

e) [***] program manager

f) Dedicated team for ongoing program management and maintenance (engineering, product, marketing, buyer operations, finance, regulatory compliance).

13) **Reports**. Affirm shall deliver to Shopify on a [***] basis, or on such basis as mutually agreed upon by the Parties, a [***][***]. Shopify shall deliver to Affirm on a [***] basis, or on such basis as mutually agreed upon by the Parties, a [***] report [***]. On at least a[***] basis, Shopify shall [***]. Shopify further agrees in good faith [***]. Any [***] failures [***] will be discussed by the Strategic Operating Committee.

14) **Program Modifications**. To the extent Shopify requests a modification of the First Product that requires development beyond that contemplated by this Agreement, the Parties will review the incremental cost of any such development. If the Parties agree to such modification, the incremental costs will be shared equally between the Parties unless the Parties mutually agreed to a different allocation of costs.

15) **Service Levels**. In addition to the SLAs set forth in the Agreement, Affirm shall provide its services in connection with the Program in accordance with the SLAs set forth on Addendum A-1 to Exhibit A and Shopify shall comply with the SLAs applicable to Shopify as set forth on Addendum A-1 to Exhibit A.