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

FORM 8-K

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

Date of report (Date of earliest event reported): November 1, 2021

VMWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-33622
(Commission
File Number)

94-3292913
(IRS Employer
Identification Number)

3401 Hillview Avenue

Palo Alto
(Address of Principal Executive Offices)

CA

94304
(Zip code)

Registrant's telephone number, including area code: (650) 427-5000

N/A

(Former Name or Former Address, if changed since last report)

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock	VMW	New York Stock Exchange

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

Emerging growth company ☐

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

Introductory Note.

This Current Report on Form 8-K is being filed in connection with the closing on November 1, 2021 of the transactions contemplated by that certain Separation and Distribution Agreement, dated as of April 14, 2021 and amended as of October 7, 2021 and November 1, 2021 (the “Separation and Distribution Agreement”) and the exhibits thereto (the “Transactions”), by and among VMware, Inc. (“VMware”) and Dell Technologies Inc. (“Dell” and, together with VMware, the “Parties”). The Parties completed the Transactions pursuant to the terms of the Separation and Distribution Agreement through a series of transactions resulting in (i) the separation of VMware from Dell, (ii) the payment by VMware of an \$11.5 billion, one-time special cash dividend pro-rata to all VMware stockholders as of the close of business on October 29, 2021 (the “Special Dividend”), (iii) the distribution by Dell of all issued and outstanding shares of Class A common stock of VMware, par value \$0.01 per share (the “Class A Common Stock”), and Class B common stock of VMware, par value \$0.01 per share (“Class B Common Stock” and, collectively with the Class A Common Stock, the “Common Stock”) then owned by Dell (representing approximately 80.5% of the total issued and outstanding Common Stock and approximately 97.4% of the outstanding voting power of the issued and outstanding Common Stock) pro-rata to all Dell stockholders as of the close of business on October 29, 2021 (the “Distribution”) and (iv) immediately following, and automatically as a result of the Distribution, and prior to receipt thereof by Dell’s stockholders, the automatic conversion of each share of Class B Common Stock into one fully paid and non-assessable share of Class A Common Stock (the “Conversion”).

As a result of the Transactions, the pre-transaction stockholders of Dell now own shares of two separate public companies: (1) VMware, which will continue to own the businesses of VMware and its subsidiaries, and (2) Dell, which will continue to own Dell’s other businesses and subsidiaries. Upon completion of the Transactions, the Class A Common Stock became the sole outstanding class of Common Stock and will continue to trade on the New York Stock Exchange under the symbol “VMW”.

Item 1.01 Entry into a Material Definitive Agreement.

On November 1, 2021, VMware entered into several agreements with Dell, its affiliates and certain stockholders of Dell in connection with the consummation of the Transactions, including the following agreements:

- A Commercial Framework Agreement, by and between VMware and Dell (the “CFA”);
- A Stockholders Agreement, by and among VMware, Michael S. Dell, Susan Lieberman Dell Separate Property Trust, SL SPV-2, L.P., Silver Lake Partners IV, L.P., Silver Lake Technology Investors IV, L.P., Silver Lake Partners V DE (AIV), L.P., Silver Lake Group, L.L.C. and Silver Lake Technology Investors V, L.P. (the “SHA”);
- A Registration Rights Agreement, by and among VMware, Michael S. Dell, Susan Lieberman Dell Separate Property Trust, SL SPV-2, L.P., Silver Lake Partners IV, L.P., Silver Lake Technology Investors IV, L.P., Silver Lake Partners V DE (AIV), L.P., Silver Lake Group, L.L.C. and Silver Lake Technology Investors V, L.P. (the “RRA”);
- A Covenant Not to Sue and Release Agreement, by and between VMware and Dell (the “CNTS Agreement”);
- A Governance Letter Agreement Amendment, by and between VMware and Dell (the “Governance Letter”); and
- A letter agreement, by and between VMware and Dell (the “SDA Letter Agreement”).

Summaries of the principal terms of each of the CFA, the SHA, the RRA, the CNTS Agreement and the Governance Letter are set forth under Item 1.01 of VMware’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on April 14, 2021 (the “April 14 8-K”) and are incorporated by reference herein.

SDA Letter Agreement

The SDA Letter Agreement provides for the survival of certain provisions of that certain Amended and Restated Master Transaction Agreement, dated January 9, 2018 (the “MTA”), by and among VMware, Dell and EMC Corporation (“EMC”), including the cross-release of pre-IPO claims. The SDA Letter Agreement also amends the Separation and Distribution Agreement to extend the settlement date for certain intercompany accounts and sets the effective time of the Distribution as 4:01 p.m., Eastern Time, on the date of the Distribution.

The summaries contained herein and in the April 14 8-K do not purport to be complete and are qualified in their entirety by reference to the full text of each of the CFA, the SHA, the RRA, the CNTS Agreement, the Governance Letter and the SDA Letter Agreement, which are attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5 and 10.6, respectively, and are incorporated herein by reference.

Item 1.02 Termination of a Material Definitive Agreement.

On November 1, 2021, in connection with the consummation of the Transactions, VMware entered into an Amendment and Termination of 2007 Intellectual Property Agreement, by and between VMware and EMC, which terminated the Intellectual Property Agreement, dated as of August 13, 2007, by and between VMware and EMC.

Also on November 1, 2021, in accordance with the terms of the Separation and Distribution Agreement, VMware and Dell or their respective affiliates terminated (i) that certain Amended and Restated Real Estate License Agreement, dated September 21, 2015, between EMC and VMware and all underlying documents executed in connection therewith and (ii) the MTA, subject to the survival of certain provisions of the MTA pursuant to the SDA Letter Agreement.

As a result of the Distribution, that certain Amended and Restated Insurance Matters Agreement, dated as of January 9, 2018, by and between VMware, Dell and EMC, will terminate effective December 16, 2021 in accordance with its terms.

Item 3.02. Unregistered Sales of Equity Securities.

As a result of the Conversion, VMware issued 307,221,836 shares of Class A Common Stock in respect of the converted shares of Class B Common Stock. The Class A Common Stock issued upon consummation of the Conversion was issued pursuant to the exemption from the registration requirements afforded by Section 3(a)(9) of the Securities Act of 1933, as amended. The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note of this Current Report with respect to the Conversion and Item 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.01. Changes in Control of Registrant.

As a result of the Distribution, Dell no longer beneficially owns a majority of the Common Stock and a majority of the voting power of the Common Stock, as all Common Stock beneficially owned by Dell was distributed to the holders of Dell common stock as part of the Distribution.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

As previously disclosed in the Information Statement on Schedule 14C filed by VMware with the SEC on August 23, 2021 and mailed to VMware's stockholders on or about August 24, 2021 (the "Information Statement"), in connection with the Transactions, on April 13, 2021, certain wholly owned subsidiaries of Dell executed and delivered written consents in accordance with Section 228 of the Delaware General Corporation Law approving, contingent upon, and following, the Distribution, an Amended and Restated Certificate of Incorporation of VMware (the "A&R Charter") and an Amended and Restated Bylaws of VMware (the "A&R Bylaws" and, together with the A&R Charter, the "Amendments"), each in the forms attached as exhibits to the Separation and Distribution Agreement.

On November 1, 2021, following the consummation of the Distribution, VMware amended and restated its existing certificate of incorporation in its entirety by filing the A&R Charter with the Secretary of State of the State of Delaware. Concurrently with filing the A&R Charter, VMware amended and restated its existing bylaws in the form of the A&R Bylaws. The Amendments reflect, among other things, the removal of the Class B Common Stock and rights specific to Dell and EMC. The Amendments also provide that directors on the VMware Board of Directors may be removed only for cause.

The foregoing description of the A&R Charter and the A&R Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the A&R Charter and A&R Bylaws, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

Item 8.01 Other Events.

On November 1, 2021, VMware issued a press release announcing the consummation of the Transactions and the spin-off from Dell.

A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

- 3.1 [Amended and Restated Certificate of Incorporation of VMware, Inc.](#)
- 3.2 [Amended and Restated Bylaws of VMware, Inc.](#)
- 10.1* [Commercial Framework Agreement, dated as of November 1, 2021, by and between VMware, Inc. and Dell Technologies Inc.](#)
- 10.2 [Stockholders Agreement, dated as of November 1, 2021, by and among VMware, Inc., Michael S. Dell, Susan Lieberman Dell Separate Property Trust, SL SPV-2, L.P., Silver Lake Partners IV, L.P., Silver Lake Technology Investors IV, L.P., Silver Lake Partners V DE \(AIV\), L.P., Silver Lake Group, L.L.C. and Silver Lake Technology Investors V, L.P.](#)

-
- 10.3 [Registration Rights Agreement, dated as of November 1, 2021, by and among VMware, Inc., Michael S. Dell, Susan Lieberman Dell Separate Property Trust, SL SPV-2, L.P., Silver Lake Partners IV, L.P., Silver Lake Technology Investors IV, L.P., Silver Lake Partners V DE \(AIV\), L.P., Silver Lake Group, L.L.C. and Silver Lake Technology Investors V, L.P.](#)
 - 10.4 [Covenant Not to Sue and Release Agreement, dated as of November 1, 2021, by and between VMware, Inc. and Dell Technologies Inc.](#)
 - 10.5 [Governance Letter Agreement Amendment, dated as of November 1, 2021, by and between VMware, Inc. and Dell Technologies Inc.](#)
 - 10.6* [Letter Agreement, dated as of November 1, 2021, by and between VMware, Inc. and Dell Technologies Inc.](#)
 - 99.1 [Press Release of VMware, Inc. dated November 1, 2021](#)

* Certain schedules and exhibits to the CFA and the SDA Letter Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. VMware hereby agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

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

Date: November 1, 2021

VMware, Inc.

By: /s/ Craig Norris

Craig Norris

Vice President, Deputy General Counsel and Assistant Secretary

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
VMWARE, INC.**

VMWARE, INC., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is VMware, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 10, 1998 under its current name, an Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 8, 2017 under its current name and that certain Certificate of Amendment was filed with the Secretary of State of the State of Delaware on September 13, 2021.
2. This Amended and Restated Certificate of Incorporation (this “Certificate of Incorporation”) was duly adopted in accordance with Section 245 of the General Corporation Law of the State of Delaware. Pursuant to Sections 242 and 228 of the General Corporation Law of the State of Delaware, the amendments and restatement herein set forth have been duly adopted by the Board of Directors and the stockholders of the Corporation.
3. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Certificate of Incorporation amends and integrates and restates the provisions of the Amended and Restated Certificate of Incorporation of this Corporation.

The text of this Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

NAME

The name of the Corporation is VMware, Inc.

ARTICLE II

REGISTERED OFFICE AND AGENT

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, 19801, County of New Castle. The name of the Corporation’s registered agent at such address is The Corporation Trust Company.

ARTICLE III

PURPOSE

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware (the “**DGCL**”), subject to the limitations and other restrictions contained herein.

ARTICLE IV

CAPITAL STOCK

A. The Corporation shall be authorized to issue 2,600,000,000 shares of capital stock, of which (i) 2,500,000,000 shares shall be shares of Class A Common Stock, par value \$0.01 per share (the “**Common Stock**”), and (ii) 100,000,000 shares shall be shares of Preferred Stock, par value \$0.01 per share (the “**Preferred Stock**”).

B. Shares of Preferred Stock may be issued from time to time in one or more series. The board of directors (the “**Board of Directors**”) of the Corporation is hereby authorized, by resolution or resolutions, to provide for series of Preferred Stock to be issued and, by filing a certificate pursuant to the DGCL (a “**Certificate of Designations**”), to fix the number of shares constituting such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding), and with respect to each such series, to fix the voting powers, if any, designations, preferences and the relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of any such series. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

- (i) the designation of the series, which may be by distinguishing number, letter or title;
- (ii) the number of shares of the series, which number the Board of Directors may thereafter increase or decrease (but not below the number of shares thereof then outstanding);
- (iii) whether dividends, if any, shall be cumulative or noncumulative and the dividend rate of the series;
- (iv) dates at which dividends, if any, shall be payable;
- (v) the redemption rights and price or prices, if any, for shares of the series;
- (vi) the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
- (vii) the amounts payable on, and the preferences, if any, of, shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
- (viii) whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other entity, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible and all other terms and conditions upon which such conversion may be made;
- (ix) restrictions on the issuance of shares of the same series or of any other class or series;

(x) the voting rights, if any, of the holders of shares of the series; and

(xi) such other powers, privileges, preferences and rights, and qualifications, limitations and restrictions thereof, as the Board of Directors shall determine.

C. The voting powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(i) Subject to the other provisions of this Certificate of Incorporation and the provisions of any Certificate of Designations, the holders of Common Stock shall be entitled to receive such dividends and other distributions, in cash, stock of any entity or property of the Corporation, when and as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor, and shall share equally on a per share basis in all such dividends and other distributions.

(ii) (a) Except as may be otherwise required by law or by this Certificate of Incorporation and subject to any voting rights that may be granted to holders of Preferred Stock pursuant to the provisions of a Certificate of Designations, all rights to vote and all voting power of the capital stock of the Corporation, whether for the election of directors or any other matter submitted to a vote of stockholders of the Corporation, shall be vested exclusively in the holders of Common Stock.

(b) Except as may be otherwise required by law or by this Certificate of Incorporation, at every meeting of the stockholders of the Corporation, in connection with the election of directors and on all other matters submitted to a vote of stockholders of the Corporation, every holder of Common Stock shall be entitled to one vote in person or by proxy for each share of Common Stock standing in such holder's name on the transfer books of the Corporation.

(iii) In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment in full of the amounts required to be paid to the holders of Preferred Stock pursuant to the provisions of a Certificate of Designations, the remaining assets and funds of the Corporation shall be distributed pro rata to the holders of Common Stock. For purposes of this clause (iii) of this Section C, the voluntary sale, conveyance, lease, license, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other entities (whether or not the Corporation is the entity surviving such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary.

(iv) The holders of Common Stock shall not be entitled to convert any share of Common Stock into any other security of the Corporation or any other property.

(v) The holders of shares of Common Stock are not entitled to any preemptive right to subscribe for, purchase or receive any part of any new or additional issue of stock of any class or series of the Corporation, whether now or hereafter authorized, or of bonds, debentures or other securities convertible into or exchangeable for stock of the Corporation.

(vi) No stockholder shall be entitled to exercise any right of cumulative voting.

ARTICLE V

BOARD OF DIRECTORS

A. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors. The Board of Directors shall consist of no less than six directors. Subject to the limitation in the preceding sentence, the number of directors shall be determined from time to time solely by resolution adopted by affirmative vote of a majority of the entire Board of Directors which the Corporation would have if there were no vacancies at the time such resolution is adopted (the “**Entire Board of Directors**”).

B. Elections of the members of the Board of Directors shall be held annually at the annual meeting of stockholders and each member of the Board of Directors shall hold office until such director’s successor is elected and qualified, subject to such director’s earlier death, resignation, disqualification or removal. Elections of the members of the Board of Directors need not be by written ballot unless the bylaws of the Corporation (the “**Bylaws**”) shall so provide.

C. Subject to any rights of any series of Preferred Stock to elect directors as provided for or fixed pursuant to the provisions of Article IV hereof, the holders of Common Stock shall be entitled to elect the members of the Board of Directors. In the event that the rights of any series of Preferred Stock to elect directors would preclude the holders of Common Stock from electing at least one director, the Board of Directors shall increase the number of directors prior to the issuance of such Preferred Stock to the extent necessary to allow such holders of Common Stock to elect at least one director in accordance with the provisions of this Article V.

D. The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the Entire Board of Directors. The class designation and term of office of each director in office at the time of filing of this Amended and Restated Certificate of Incorporation (the “**Effective Time**”) shall remain unchanged following the Effective Time. At each annual meeting of stockholders following the Effective Time, successors to the members of the class of directors having a term expiring at such annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class to be as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. If an additional director could be added to more than one class, such director shall be added to the class with the shortest remaining term.

E. Any vacancy on the Board of Directors that results from an increase in the number of directors may be filled by the affirmative vote of a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may be filled by the affirmative vote of a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. No decrease in the number of directors shall shorten the term of any incumbent director.

F. Any director may be removed from office only for cause and only by the affirmative vote of holders of at least a majority of the votes entitled to be cast to elect any such director.

G. Advance notice of stockholder nominations for the election of directors and stockholder proposals for business to be conducted at any meeting of stockholders shall be given in the manner provided in the Bylaws.

H. The books and records of the Corporation may be kept (subject to any mandatory requirement of law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or by the Bylaws.

I. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any vote required by applicable law, the affirmative vote of at least 67% of the votes entitled to be cast thereon shall be required to amend, alter, change or repeal, or to adopt any provision of this Certificate of Incorporation in a manner inconsistent with the purpose and intent of this Article V.

ARTICLE VI

STOCKHOLDER ACTION

A. Except with respect to actions required or permitted to be taken solely by holders of Preferred Stock pursuant to the provisions of Article IV hereof, no action that is required or permitted to be taken by the stockholders of the Corporation may be effected by consent of stockholders in lieu of a meeting of stockholders.

B. Except as otherwise required by law or provided by a Certificate of Designations, special meetings of stockholders of the Corporation may be called only by (1) the Chairman of the Board of Directors or (2) the Board of Directors or the Secretary of the Corporation pursuant to a resolution adopted by a majority of directors then in office. No business other than that stated in the notice of a special meeting of stockholders shall be transacted at such special meeting.

ARTICLE VII

AMENDMENT OF BYLAWS AND CERTIFICATE OF INCORPORATION

In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized and empowered to, by the affirmative vote of a majority of the Entire Board of Directors, adopt, amend and repeal the Bylaws at any regular or special meeting of the Board of Directors or by written consent, subject to the power of the stockholders of the Corporation to adopt, amend or repeal the Bylaws as set forth in this Article VII. The stockholders shall have the power to adopt, amend or repeal the Bylaws by the affirmative vote of the holders of shares representing at least a majority of the votes entitled to be cast by the holders of Common Stock; *provided, however*, that Section 2.8, Section 3.2 and Section 3.11 of the Bylaws shall not be amended, altered or repealed by the stockholders other than by the affirmative vote of 67% of the votes entitled to be cast thereon. Notwithstanding any other provision of this Certificate of Incorporation or the Bylaws, and in addition to any vote required by applicable law, the affirmative vote of the holders of at least 67% of the votes entitled to be cast thereon shall be required to adopt, amend, alter or repeal any provision part of Article V, this Article VII and Article VIII of this Certificate of Incorporation in a manner inconsistent with the purpose and intent of such Articles.

ARTICLE VIII

LIMITATIONS ON LIABILITY AND INDEMNIFICATION

A. A director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists at the Effective Time or may hereafter be amended. Any repeal or modification of this Section A shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

B. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a “**Covered Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**proceeding**”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation, or has or had agreed to become a director of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a limited liability company, partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including attorneys’ fees and expenses, judgments, fines, amounts to be paid in settlement and excise payments or penalties arising under the Employee Retirement Income Security Act of 1974 (“**ERISA**”)) reasonably incurred by such Covered Person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the preceding sentence, except as otherwise provided in this Article VIII, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors. The Corporation may, by the action of the Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

C. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees and expenses) incurred by a Covered Person in defending any proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VIII or otherwise. The rights contained in this Section C shall inure to the benefit of a Covered Person’s heirs, executors and administrators.

D. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article VIII is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expenses of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

E. The rights conferred on any Covered Person by this Article VIII shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Bylaws of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

F. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such individual, corporation, partnership, joint venture, trust or other enterprise against such expense, liability or loss under the DGCL.

G. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person is entitled to collect and is collectible as indemnification or advancement of expenses from such other corporation, limited liability company, partnership, joint venture, trust, enterprise or non-profit enterprise.

H. Any repeal or modification of the foregoing provisions of this Article VIII shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

I. This Article VIII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons, to a greater extent or in a manner otherwise different than provided for in this Article VIII when and as authorized by appropriate corporate action.

J. If this Article VIII or any portion hereof will be invalidated on any ground by any court of competent jurisdiction, then the Corporation will nevertheless indemnify each Covered Person entitled to indemnification under Section B of this Article VIII as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such Covered Person and for which indemnification is available to such Covered Person pursuant to this Article VIII to the fullest extent permitted by any applicable portion of this Article VIII that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE IX

AMENDMENTS TO CERTIFICATE OF INCORPORATION

Except as otherwise provided in this Certificate of Incorporation, the Corporation reserves the right to amend and repeal any provisions contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware, and all rights of stockholders shall be subject to this reservation.

IN WITNESS WHEREOF, the Corporation has executed this Amended and Restated Certificate of Incorporation on this 1st day of November, 2021.

By: /s/ Craig Norris

Name: Craig Norris

Title: Vice President and Assistant Secretary

**AMENDED AND RESTATED
BYLAWS
OF
VMWARE, INC.**
Incorporated under the Laws of the State of Delaware

ARTICLE I

OFFICES AND RECORDS

Section 1.1 **Offices.** VMware, Inc. (the “**Corporation**”) may have such offices, either within or without the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

Section 1.2 **Books and Records.** The books and records of the Corporation may be kept inside or outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

ARTICLE II

STOCKHOLDERS

Section 2.1 **Annual Meeting.** The annual meeting of the stockholders of the Corporation shall be held on such date and at such place, if any, and time as may be fixed by resolution of the Board of Directors.

Section 2.2 **Special Meeting.** Except as otherwise required by law or provided by the resolution or resolutions adopted by the Board of Directors designating the rights, powers and preferences of any series of Preferred Stock and the Certificate of Designations filed by the Corporation with respect thereto (collectively, a “**Certificate of Designations**”), and except as set forth in the Corporation’s Certificate of Incorporation, as amended or restated (the “**Certificate of Incorporation**”), special meetings of stockholders of the Corporation may be called only by (1) the Chairman of the Board of Directors or (2) the Board of Directors or the Secretary of the Corporation pursuant to a resolution adopted by a majority of directors then in office.

Section 2.3 **Place of Meeting.** The Board of Directors or the Chairman of the Board, as the case may be, may designate the place of meeting for any annual meeting or for any special meeting of the stockholders called by the Board of Directors or the Chairman of the Board. If no designation is so made, the place of meeting shall be the principal executive office of the Corporation. Notwithstanding the foregoing, the Board of Directors, in its sole discretion, may determine that any such meeting shall not be held at any place, but may instead be held solely by means of remote communication.

Section 2.4 Notice of Meeting. Written or printed notice, stating the place, if any, date and time of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be delivered by the Corporation not less than 10 days nor more than 60 days before the date of the meeting, either personally, by mail or by other lawful means, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his or her address as it appears on the stock transfer books of the Corporation. Such further notice shall be given as may be required by law. Except as otherwise permitted by Section 2.8, business may not be conducted at a special meeting of stockholders unless it has been brought before the meeting pursuant to the Corporation's notice of meeting. Meetings may be held without notice if all stockholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 6.6 of these Bylaws. Any previously scheduled meeting of the stockholders may be postponed, and, unless the Certificate of Incorporation otherwise provides, any special meeting of the stockholders may be cancelled, by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such meeting of stockholders.

Section 2.5 Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of shares of then-outstanding capital stock of the Corporation representing a majority of the then-outstanding shares entitled to vote generally at a meeting of stockholders, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a separate class or series, the holders of a majority of the then-outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. Attendance of a person at a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened shall not constitute the presence of such person for the purposes of determining whether a quorum exists. The chairman of the meeting or the holders of shares representing a majority of the votes entitled to be cast by stockholders so present may adjourn the meeting from time to time, whether or not there is such a quorum. No notice of the time and place, if any, of the adjourned meeting or the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting need be given except as required by law; *provided, however*, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given in conformity herewith. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.6 Conduct of Business. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time for the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

Section 2.7 Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing (or in such manner prescribed by the General Corporation Law of the State of Delaware (the “DGCL”)) by the stockholder, or by his or her duly authorized attorney-in-fact. Such proxy must be filed with the Secretary or his or her representative at or before the time of the meeting at which such proxy will be voted. No proxy shall be valid after three years from the date of its execution, unless the proxy provides for a longer period. Each proxy shall be revocable unless expressly provided therein to be irrevocable or unless otherwise made irrevocable by law.

Section 2.8 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders at an annual meeting of stockholders may be made only (a) pursuant to the Corporation’s notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation (i) who was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed or such nomination or nominations are made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in Paragraphs (A)(2) and (A)(3) of this Section 2.8 is delivered to, or mailed to and received by, the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the meeting, (ii) who is entitled to vote at the meeting upon such election of directors or upon such business, as the case may be, and (iii) who complies with the notice procedures set forth in Paragraphs (A)(2) and (A)(3) of this Section 2.8 or (d) as provided in the Stockholder Agreement, dated as of November 1, 2021 between the Corporation and the stockholders party thereto (as the same may be amended, supplemented, restated or otherwise modified from time to time). Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “**Exchange Act**”), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (c) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of stockholders. In addition, for business (other than the nomination of persons for election to the Board of Directors) to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to the Certificate of Incorporation, these Bylaws, and applicable law.

(2) For nominations of persons for election to the Board of Directors or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of Paragraph (A)(1) of this Section 2.8, the stockholder (a) must have given timely notice thereof in writing to the Secretary and (b) must provide any updates or supplements to such notice at such times and in the forms required by this Section 2.8. To be timely, a stockholder’s notice shall be delivered to, or mailed to and received by, the Secretary at the principal executive office of the Corporation not earlier than the close of business on the 120th day, nor later than the close of business on the 90th day, prior to the first anniversary of the preceding year’s annual meeting; *provided, however*, that in the event that the date of any annual meeting is more than 30 days before or more than 30 days after such anniversary date, notice by the stockholder, to be timely, must be so delivered, or mailed and received, not earlier than the close of business on the

120th day prior to such annual meeting and not later than the close of business on the later of (a) the 90th day prior to such annual meeting and (b) the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. Except as provided in Section 2.5 of these Bylaws, the public announcement of an adjournment of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) To be in proper form for purposes of this Section 2.8, a stockholder's notice to the Secretary (whether pursuant to this Paragraph (A) or Paragraph (B) of this Section 2.8) must set forth:

(a) as to each Proposing Person (as defined below) (i) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (ii) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person (provided that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series and number of shares of capital stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future);

(b) as to each Proposing Person, (i) any derivative, swap, or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of capital stock of the Corporation, including due to the fact that the value of such derivative, swap, or other transactions are determined by reference to the price, value, or volatility of any shares of any class or series of capital stock of the Corporation, or which derivative, swap, or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of capital stock of the Corporation ("**Synthetic Equity Interests**"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap, or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap, or other transactions are required to be, or are capable of being, settled through delivery of such shares, or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap, or other transactions; (ii) any proxy (other than a revocable proxy given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding, or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of capital stock of the Corporation (including the number of shares and class or series of capital stock of the Corporation that are subject to such proxy, agreement, arrangement, understanding, or relationship); (iii) any agreement, arrangement, understanding, or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of capital stock of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of capital stock of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("**Short Interests**"); (iv) any rights to dividends on the shares of any class or series

of capital stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation; (v) any performance related fees (other than an asset based fee) to which such Proposing Person is entitled based on any increase or decrease in the price or value of shares of any class or series of the capital stock of the Corporation, or any Synthetic Equity Interests or Short Interests, if any; and (vi) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies by such Proposing Person in support of the nominations or business proposed to be brought before the meeting pursuant to Regulation 14A under the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (i) through (vi) are referred to as “**Disclosable Interests**”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company, or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(c) if such notice pertains to the nomination by the stockholder of a person or persons for election to the Board of Directors (each, a “**nominee**”), as to each nominee, (i) the name, age, business and residence address, and principal occupation or employment of the nominee; (ii) all other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director in an election contest (whether or not such proxies are or will be solicited), or that is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; (iii) such nominee’s written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected; and (iv) all information with respect to such nominee that would be required to be set forth in a stockholder’s notice pursuant to this Section 2.8 if such nominee were a Proposing Person;

(d) if the notice relates to any business (other than the nomination of persons for election to the Board of Directors) that the stockholder proposes to bring before the meeting, (i) a reasonably brief description of the business desired to be brought before the meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend these Bylaws, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting, and (iv) any material interest in such business of each Proposing Person;

(e) a representation that the stockholder giving the notice is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination; and

(f) a representation whether any Proposing Person intends or is part of a group that intends (a) to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or elect the nominee or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination.

(4) The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine (i) the eligibility of such proposed nominee to serve as a director of the Corporation, and (ii) whether such nominee qualifies as an “independent director” or “audit committee financial expert” under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the Corporation.

(5) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 2.8 to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting of stockholders is increased and there is no public announcement by the Corporation naming all of the Corporation’s nominees for director or specifying the size of the increased Board of Directors at least 120 days prior to the first anniversary of the preceding year’s annual meeting, a stockholder’s notice pursuant to this Section 2.8 shall also be considered timely, but only with respect to nominees for any new seats on the Board of Directors created by such increase, if it is delivered to, or mailed to and received by, the Secretary at the principal executive office of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders.

(1) No business other than that stated in the Corporation’s notice of a special meeting of stockholders shall be transacted at such special meeting. If the business stated in the Corporation’s notice of a special meeting of stockholders includes electing one or more directors to the Board of Directors, nominations of persons for election to the Board of Directors at such special meeting may be made (1) by or at the direction of the Board of Directors or (2) by any stockholder of the Corporation (i) who was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination or nominations are made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in Paragraph (B)(2) of this Section 2.8 is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the special meeting, (ii) who is entitled to vote at the meeting and upon such election, and (iii) who complies with the notice procedures set forth in Paragraph (B)(2) of this Section 2.8; provided, however, that a stockholder may nominate persons for election at a special meeting only to such position(s) as specified in the Corporation’s notice of the meeting.

(2) If a special meeting has been called in accordance with Section 2.2 for the purpose of electing one or more directors to the Board of Directors, then for nominations of persons for election to the Board of Directors to be properly brought before such special meeting by a stockholder pursuant to clause (b) of Paragraph (B)(1) of this Section 2.8, the stockholder (a) must have given timely notice thereof in writing and in the proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (b) must provide any updates or supplements to such notice at such times and in the forms required by this Section 2.8. To be timely, a stockholder’s notice relating to a special meeting shall be delivered to, or mailed to and received by, the Secretary at the principal executive office of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of (a) the 90th day prior to such special meeting and (b) the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above. To be in proper form for purposes of this Paragraph (B) of this Section 2.8, such notice shall set forth the information required by clauses (a), (b), (c), (e), and (f) of Paragraph (A)(3) of this Section 2.8.

(C) *General.*

(1) Only such persons as are nominated in accordance with the procedures set forth in this Section 2.8 shall be eligible to be elected at an annual or special meeting of directors to serve as directors, and no business may be conducted at a meeting of stockholders unless it has been brought before the meeting in accordance with the procedures set forth in this Section 2.8. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.8 and, if any proposed nomination or business was not made or proposed in compliance with this Section 2.8, to declare that such non-compliant proposal or nomination be disregarded.

(2) Notwithstanding the foregoing provisions of this Section 2.8, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.8, to be considered a qualified representative of the stockholder, a person must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(3) For purposes of this Section 2.8, (a) “**public announcement**” means disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and (b) “**Proposing Person**” means (i) the stockholder giving the notice required by Paragraph (A) or Paragraph (B) of this Section 2.8, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such notice is given, and (iii) any affiliates or associates (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner.

(4) Notwithstanding the foregoing provisions of this Section 2.8, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the nomination of persons for election to the Board of Directors or the proposal of business to be considered by the stockholders at a meeting of stockholders. Paragraph (A) of this Section 2.8 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. Nothing in this Section 2.8 shall be deemed to (a) affect any rights of stockholders to request inclusion of proposals in the Corporation’s

proxy statement pursuant to Rule 14a-8 (or any successor thereto) promulgated under the Exchange Act, (b) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation's proxy statement, except to the extent provided in Rule 14a-11 promulgated under the Exchange Act, or (c) affect any rights of the holders of any class or series of Preferred Stock to nominate and elect directors pursuant to and to the extent provided in any applicable provisions of the Certificate of Incorporation.

Section 2.9 Required Vote. Except as otherwise provided by law, the Certificate of Incorporation, any Certificate of Designations or these Bylaws, when a quorum is present, the affirmative vote of the holders of shares representing at least a majority of votes actually present in person or represented by proxy at the meeting and entitled to vote on a matter constitutes the act of the stockholders. No stockholder shall be entitled to exercise any right of cumulative voting. Every reference in these Bylaws to a majority or other proportion of shares, or a majority or other proportion of the votes of shares, of then-outstanding capital stock of the Corporation (or any one or more classes or series of such stock) shall refer to such majority or other proportion of the votes to which such shares of capital stock entitle their holders to cast as provided in the Certificate of Incorporation or any Certificate of Designations.

Section 2.10 Inspectors of Elections; Opening and Closing the Polls. The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law.

The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.11 Stockholder Action by Written Consent. Any action required or permitted to be taken by stockholders may be effected only at a duly called annual or special meeting of stockholders and may not be effected by a written consent or consents by stockholders in lieu of such a meeting.

Section 2.12 Stock List. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder for a period of at least 10 days prior to the meeting in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. If the meeting is to be held solely by means of remote communication, then, in addition to the foregoing requirements, the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.13 **Specification of Treatment of Abstentions and Broker Non-Votes.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the votes cast on a matter affirmatively or negatively shall be valid and binding upon the Corporation. For purposes of these Bylaws, a share present at a meeting, but for which there is an abstention or as to which a stockholder gives no authority or direction as to a particular proposal or director nominee, shall be counted as present for the purpose of establishing a quorum but shall not be counted as a vote cast.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 **General Powers.** The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. In addition to the powers and authorities expressly conferred upon the Board of Directors by these Bylaws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 **Number, Tenure, Qualifications and Election of Directors.**

(A) The Board of Directors shall consist of not less than six nor more than twelve members. Subject to the limitations of the foregoing sentence and the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed, and may be increased or decreased from time to time, exclusively by a resolution adopted by an affirmative vote of a majority of the entire Board of Directors which the Corporation would have if there were no vacancies at the time such resolution is adopted (the “**Entire Board of Directors**”).

(B) Each director shall be elected at the annual meeting of stockholders in the manner set forth in the Certificate of Incorporation. A nominee for director shall be elected to the Board if the votes cast for such nominee’s election exceed the votes cast against such nominee’s election; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which (i) the Secretary of the Corporation receives a notice that a stockholder intends to nominate a person for election to the Board in compliance with either (x) the advance notice requirements for stockholder nominees for director set forth in Section 2.8 of these Bylaws, or (y) Rule 14a-11 under the Exchange Act; and (ii) such nomination has not been withdrawn by such stockholder on or prior to the day next preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

(C) Each director shall be elected by the vote of the majority of the votes cast with respect to such director at any meeting for the election of such director at which a quorum is present, provided that, except as otherwise provided by the Certificate of Incorporation, if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at

any such meeting and entitled to vote on the election of directors. For purposes of this Section 3.2, a majority of the votes cast means that the number of shares voted “for” a director must exceed the number of votes cast “against” that director. If a nominee for director is not elected, the director shall offer to tender his or her resignation to the Board of Directors. The Corporate Governance Committee will make a recommendation to the Board of Directors to accept or reject the resignation or whether other action should be taken. The Board of Directors will act on the Committee’s recommendation and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results. The director who has so tendered his or her resignation will not participate in the Board of Directors’ decision.

(D) The directors, other than those who may be elected by holders of any series of Preferred Stock, shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the Entire Board of Directors. The class designation and term of office of each director in office at the time of adoption of these Amended and Restated Bylaws on November 1, 2021 (the “**Effective Time**”) shall remain unchanged following the Effective Time. At each annual meeting of stockholders following the Effective Time, successors to the members of the class of directors having a term expiring at such annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class to be as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. If an additional director could be added to more than one class, such director shall be added to the class with the shortest remaining term.

Section 3.3 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, if any, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.4 Special Meetings. Special meetings of the Board of Directors shall be called by the Chairman of the Board, the Chief Executive Officer or a majority of directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, if any, and time of the meetings.

Section 3.5 Notice. Notice of any special meeting of directors shall be given to each director at his or her business or residence (as he or she may specify) in writing by hand delivery, first-class mail, overnight mail or courier service, confirmed facsimile transmission or electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mail so addressed, with postage thereon prepaid, at least five days before such meeting. If given by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If given by telephone, hand delivery or confirmed facsimile transmission or electronic transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 24 hours before such meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws, as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 6.6 of these Bylaws.

Section 3.6 **Action by Consent of Board of Directors.** Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.7 **Conference Telephone Meetings.** Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors, or such committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and communicate with each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 3.8 **Quorum; Voting.** Subject to Section 3.9, at all meetings of the Board of Directors, the presence of a majority of the directors then in office shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, the directors present thereat may adjourn the meeting without further notice. Attendance of a director at a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened shall not constitute the presence of such director for the purposes of determining whether a quorum exists. Except as otherwise provided by the Certificate of Incorporation, the act of a majority of directors present at a meeting at which there is a quorum constitutes the act of the Board of Directors.

Section 3.9 **Vacancies.** Except as otherwise provided by the Certificate of Incorporation or a Certificate of Designations, any vacancy on the Board of Directors that results from an increase in the number of directors may be filled by the affirmative vote of a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors may be filled by the affirmative vote of a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director. Any director of any class elected to fill a vacancy resulting from an increase in the number of directors of such class shall hold office for a term that shall coincide with the remaining term of that class. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. No decrease in the number of directors shall shorten the term of any incumbent director.

Section 3.10 **Committees of the Board of Directors.** The Board of Directors may from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; one-third of the members shall constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present.

No committee shall have the power or authority in reference to any of the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) altering, amending or repealing any Bylaw, or adopting any new Bylaw.

Section 3.11 **Removal.** Any director may be removed from office at any time, only for cause, by the affirmative vote of holders of at least a majority of the votes entitled to be cast to elect any such director.

Section 3.12 **Records.** The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors, and of any committee thereof, and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

Section 3.13 **Compensation.** The Board of Directors shall have authority to determine from time to time the amount of compensation, if any, that shall be paid to its members for their services as directors and as members of standing or special committees of the Board of Directors. The Board of Directors shall also have power, in its discretion, to provide for and to pay to directors rendering services to the Corporation not ordinarily rendered by directors as such, special compensation appropriate to the value of such services as determined by the Board of Directors from time to time. Nothing herein contained shall be construed to preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.14 **Chairman of the Board.** The Chairman of the Board, who shall not be deemed an officer of the Corporation, shall be chosen from among the directors. The Chairman of the Board shall, if present and except as set forth in Section 4.3, preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall have such other powers and duties as may from time to time be prescribed by the Board of Directors or these Bylaws. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and of the Board of Directors. He or she may also preside at any such meeting attended by the Chairman of the Board if he or she is so designated by the Chairman.

ARTICLE IV

OFFICERS

Section 4.1 **Officers Designated.** The elected officers of the Corporation (the “**Elected Officers**”) shall be a Chief Executive Officer, a President, a Secretary, a Chief Financial Officer and such other officers as the Board of Directors from time to time may deem proper. Elected Officers shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such Elected Officers shall also have such powers and duties as from time to time may be conferred by the Board of Directors. Subject to the requirements of the Certificate of Incorporation, the Chairman of the Board or Chief Executive Officer may appoint, such other officers (including one or more Treasurers, Controllers, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and Assistant Controllers) (each, an “**Appointed Officer**”) and such agents, as may be necessary or desirable for the conduct of the business of the Corporation. Such Appointed Officers and agents shall have such powers and duties as generally pertain to their respective offices and shall have such duties and shall hold their offices for such terms as shall be provided in these Bylaws or as may be prescribed by Chairman of the Board or Chief Executive Officer, as the case may be.

Section 4.2 **Term of Office.** Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign, but, subject to the requirements of the Certificate of Incorporation, any officer may be removed pursuant to the provisions set forth in Section 4.8.

Section 4.3 **Chief Executive Officer.** The Chief Executive Officer, subject to the control of the Board of Directors, shall act in a general executive capacity and shall control the business and affairs of the Corporation. Subject to the requirements of the Certificate of Incorporation, the Chief Executive Officer shall have the power to appoint and remove subordinate officers, agents and employees, except those elected by the Board of Directors. The Chief Executive Officer shall keep the Board of Directors informed of material developments regarding the business of the Corporation and shall consult with them concerning the business of the Corporation.

Section 4.4 **President.** The President shall have such duties as may be determined from time to time by resolution of the Board of Directors not inconsistent with these Bylaws and, in the absence or incapacity of the Chief Executive Officer, shall also perform the duties of that office. In general, the President shall perform all other duties normally incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 4.5 **Vice-Presidents.** Each Vice President shall have such powers and shall perform such duties as shall be assigned to him or her by the Chairman of the Board, Chief Executive Officer, such other officer who the Vice President reports into or by the Board of Directors.

Section 4.6 **Chief Financial Officer.** The Chief Financial Officer shall act in an executive financial capacity. He or she shall assist the Chairman of the Board and the Chief Executive Officer in the general supervision of the Corporation’s financial policies and affairs. The Chief Financial Officer shall exercise general supervision over the receipt, custody and disbursement of corporate funds. The Chief Financial Officer shall cause the funds of the

Corporation to be deposited in such banks as may be authorized by the Board of Directors, or in such banks as may be designated as depositaries in the manner provided by resolution of the Board of Directors. He or she shall have such further powers and duties and shall be subject to such directions as may be granted or imposed upon him or her from time to time by the Board of Directors, the Chairman of the Board or the Chief Executive Officer.

Section 4.7 **Secretary.** The Secretary shall keep, or cause to be kept, in one or more books provided for that purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders; he or she shall see that all notices are duly given in accordance with the provisions of the Certificate of Incorporation, these Bylaws and as required by law; he or she shall be custodian of the records and the seal of the Corporation; and he or she shall see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and in general, he or she shall perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors, the Chairman of the Board or the Chief Executive Officer.

Section 4.8 **Removal.** Except as otherwise provided by the Certificate of Incorporation, any Elected Officer may be removed by the affirmative vote of a majority of directors then in office whenever, in their judgment, the best interests of the Corporation would be served thereby. Any Appointed Officer may be removed by the Board of Directors, the Chairman of the Board or the Chief Executive Officer whenever, in their, his or her judgment, the best interests of the Corporation would be served thereby. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the Corporation.

Section 4.9 **Vacancies.** Except as otherwise provided by the Certificate of Incorporation, any newly created elected office and any vacancy in any elected office because of death, resignation or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors. Any vacancy in an office appointed by the Chairman of the Board or the Chief Executive Officer because of death, resignation or removal may be filled by the Chairman of the Board or the Chief Executive Officer.

ARTICLE V

STOCK

Section 5.1 **Stock Certificates and Transfers; Direct Registration.**

(A) The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe. Subject to the satisfaction of any additional requirements specified in the Certificate of Incorporation, the shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his or her attorney, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

(B) Notwithstanding any other provision in these Bylaws, the Board of Directors may resolve to adopt a system of issuance, recordation and transfer of its shares by electronic or other means not involving any issuance of certificates (a “**Direct Registration System**”), including provisions for notice to purchasers in substitution for any required statements on certificates, and as may be required by applicable corporate securities laws or stock exchange listing rules. Any Direct Registration System so adopted shall not become effective as to issued and outstanding certificated securities until the certificates therefor have been surrendered to the Corporation.

Section 5.2 **Record Date.**

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than 60 days nor less than 10 days before the date of such meeting of stockholders, nor more than 60 days prior to the time for such other action as described above. If the Board of Directors so fixes a date for notice of any meeting of stockholders or any adjournment thereof, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 5.2 at the adjourned meeting.

Section 5.3 **Lost, Mutilated, Stolen or Destroyed Certificates.** No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, mutilated, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors, or any financial officer of the Corporation, may in its, or his or her, discretion require.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.1 **Fiscal Year.** The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 6.2 **Dividends.** The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and the Certificate of Incorporation.

Section 6.3 **Seal.** The corporate seal shall have inscribed thereon the words “Corporate Seal,” the year of incorporation and around the margin thereof the words “VMware, Inc.”

Section 6.4 **Facsimile Signatures.** In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or any committee thereof.

Section 6.5 **Reliance upon Books, Reports and Records.** The Board of Directors, each committee thereof, each member of the Board of Directors and such committees and each officer of the Corporation shall, in the performance of its, his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or documents presented to it or them by any of the Corporation’s officers or employees, by any committee of the Board of Directors or by any other person as to matters that the Board, such committee, such member or such officer reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 6.6 **Waiver of Notice.** Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board of Directors or committee thereof need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 6.7 **Audits.** The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, or a committee thereof, and it shall be the duty of the Board of Directors, or such committee, to cause such audit to be done annually.

Section 6.8 **Resignations.** Any director or any officer, whether elected or appointed, may resign at any time by giving written notice of such resignation to the Chairman of the Board, the Chief Executive Officer or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer or the Secretary, or at such later time as is specified therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective, other than as required by Section 3.2.

Section 6.9 **Indemnification and Insurance.**

(A) As and to the extent provided in the Certificate of Incorporation, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists at the Effective Time or may hereafter be amended. Any repeal or modification of this paragraph (A) shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

(B) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a “**Covered Person**”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**proceeding**”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation, or has or had agreed to become a director of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a limited liability company, partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including attorneys’ fees and expenses, judgments, fines, amounts to be paid in settlement and excise payments or penalties arising under the Employee Retirement Income Security Act of 1974 (“**ERISA**”)) reasonably incurred by such Covered Person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the preceding sentence, except as otherwise provided in this Section 6.9, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors. The Corporation may, by the action of the Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(C) The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees and expenses) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Section 6.9 or otherwise. The rights contained in this paragraph (C) shall inure to the benefit of a Covered Person's heirs, executors and administrators.

(D) If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Section 6.9 is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expenses of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

(E) The rights conferred on any Covered Person by this Section 6.9 shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of these Bylaws or the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise.

(F) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such individual or entity against such expense, liability or loss under the DGCL.

(G) The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person is entitled to collect and is collectible as indemnification or advancement of expenses from such other corporation, limited liability company, partnership, joint venture, trust, enterprise or non-profit enterprise.

(H) Any repeal or modification of the foregoing provisions of this Section 6.9 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

(I) This Section 6.9 shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons, to a greater extent or in a manner otherwise different than provided for in this Section 6.9 when and as authorized by appropriate corporate action.

(J) If this Section 6.9 or any portion hereof will be invalidated on any ground by any court of competent jurisdiction, then the Corporation will nevertheless indemnify each Covered Person entitled to indemnification under paragraph (B) of this Section 6.9 as to all expense, liability and loss (including attorneys' fees and related disbursements, judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such Covered Person and for which indemnification is available to such Covered Person pursuant to this Section 6.9 to the fullest extent permitted by any applicable portion of this Section 6.9 that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 6.10 **Establishing Forum for Certain Actions.** Unless the Corporation consents in writing to the selection of any alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (d) any action asserting a claim governed by the internal affairs doctrine.

Section 6.11 **Remote Communication.** For the purposes of these Bylaws, if authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, so long as (i) the Corporation implements reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation implements reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholder, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

ARTICLE VII

CONTRACTS, PROXIES, ETC.

Section 7.1 **Contracts.** Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time specify. Such authority may be general or confined to specific instances as the Board of Directors may determine. The Chairman of the Board, the Chief Executive Officer or such other persons as the Board of Directors may authorize may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the Chief Executive Officer or such other persons as the Board of Directors may authorize may delegate contractual powers to others under his or her jurisdiction, it being understood, however, that any such delegation of power shall not relieve such person of responsibility with respect to the exercise of such delegated power.

Section 7.2 **Proxies.** Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes that the Corporation may be entitled to cast as the holder of stock or other securities in any other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

ARTICLE VIII

AMENDMENTS

Amendments. These Bylaws may be altered, amended or repealed at any meeting of the Board of Directors or of the stockholders, provided that notice of the proposed change was given in the notice of the meeting; *provided, however*, that, in the case of amendments by the Board of Directors, notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote or no vote, the affirmative vote of a majority of the Entire Board of Directors shall be required to alter, amend or repeal any provision of these Bylaws, or to adopt any new Bylaw. Notwithstanding any other provision of these Bylaws or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any series of Preferred Stock required by law, by the Certificate of Incorporation or by a Certificate of Designations, the affirmative vote of the holders of shares representing a majority of the votes entitled to be cast by the holders of Common Stock shall be required for the stockholders of the Corporation to alter, amend or repeal any provision of these Bylaws, or to adopt any new Bylaw; provided, however, that, the affirmative vote of the holders of shares representing at least 67% of votes entitled to be cast thereon shall be required for the stockholders of the Corporation to alter, amend, repeal or adopt any Bylaw inconsistent with the following provisions of these Bylaws: Sections 2.1, 2.2, 2.4, 2.5, 2.6, 2.8, 2.9 and 2.11 of Article II, Sections 3.1, 3.2, 3.9 and 3.11 of Article III, Section 6.9 of Article VI and this Section 8.1 of Article VIII or in each case, any successor provision (including, without limitation, any such article or section as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other Bylaw).

Effective: November 1, 2021

COMMERCIAL FRAMEWORK AGREEMENT

between

DELL TECHNOLOGIES INC.

and

VMWARE, INC.

Dated as of November 1, 2021

TABLE OF CONTENTS

	Page
1. Definitions; Construction	1
1.1. Definitions	1
1.2. Construction	4
2. Purpose and Effect of the Agreement	6
2.1. Purpose	6
2.2. Conflicts; Order of Precedence	6
3. Product, Service, and Strategic Collaborations	6
3.1. Covered Solutions	6
3.2. Covered Solutions SOWs	6
3.3. Strategic Solutions	6
3.4. Existing Strategic Collaborations	6
3.5. Team Members	7
3.6. Other Collaborations	7
4. Sales	7
4.1. Annual Operating Plan	7
4.2. Dell Sales	7
4.3. Sales Incentives	7
4.4. Dell Incentives	7
4.5. VMware Investments	7
4.6. Customer Support	7
5. Pricing	8
5.1. Pricing	8
5.2. Fiscal Year	8
6. Governance and Unforeseen Circumstances	8
6.1. Governance Procedures	8
6.2. Unforeseen Circumstances	8
7. Confidentiality	8
7.1. Mutual Non-Disclosure Agreement	8
8. Term and Termination	8
8.1. Term	8
8.2. Termination for Cause	9

8.3.	Termination of Covered Solutions SOWs	9
8.4.	Other Termination Rights	9
8.5.	Effect of Termination or Expiration	9
8.6.	Survival	10
9.	Representations and Warranties	10
9.1.	Mutual Representations and Warranties	10
9.2.	Disclaimer	10
10.	Limitations of Liability	11
10.1.	Exclusion of Damages	11
10.2.	Applicability	11
11.	Intellectual Property and Data Privacy	11
11.1.	Ownership	11
11.2.	Data Protection	11
12.	Dispute Resolution	11
13.	Assignment	12
14.	General Terms	12
14.1.	Notices	12
14.2.	Compliance with Laws	12
14.3.	Counterparts	13
14.4.	Costs and Expenses	13
14.5.	Third-Party Beneficiaries	13
14.6.	Governing Law; Jurisdiction	13
14.7.	Waiver of Jury Trial	13
14.8.	Specific Performance	14
14.9.	Severability	14
14.10.	Amendment; Waiver	14
14.11.	Entire Agreement	15

SCHEDULES:

Schedule A	Existing Covered Solutions and In-Flight Covered Solutions
Schedule B	Strategic Solutions
Schedule C	Minimum Required Elements for a Covered Solutions SOW
Schedule D	Team Members
Schedule E	Notice Addresses

EXHIBITS:

Exhibit 1	Covered Solutions
Exhibit 2-A	DFS Amendment
Exhibit 2-B	DTS Agreement
Exhibit 3	Team Member Bonus Metrics
Exhibit 4	Annual Operating Plan
Exhibit 5	VMware Investments and Sales Incentives
Exhibit 6	Pricing
Exhibit 7	Governance
Exhibit 8	Mutual Non-Disclosure Agreement
Exhibit 9	Data Protection Agreement

SCHEDULES TO EXHIBITS:

Schedule 4.1	AOP Model
Schedule 4.2	Industry Growth Rate
Schedule 4.3	Field Bookings Report
Schedule 4.4	Field Bookings Reconciliation

COMMERCIAL FRAMEWORK AGREEMENT

THIS COMMERCIAL FRAMEWORK AGREEMENT (together with all schedules and exhibits hereto, and as may be amended or modified from time to time, this “**Agreement**”), dated as of November 1, 2021 (the “**Effective Date**”) is by and between Dell Technologies Inc., a Delaware corporation (“**Dell**”) and VMware, Inc., a Delaware corporation (“**VMware**”). Dell and VMware are hereinafter referred to together as the “**Parties**” and individually as a “**Party**.”

WHEREAS, pursuant to that certain Separation and Distribution Agreement, dated as of April 14, 2021 (the “**SDA**”), Dell and VMware will consummate the Transactions (as defined in the SDA) in order to effect the separation of Dell and VMware;

WHEREAS, the Parties wish to formalize the commercial relationship between the Parties in order to maintain the mutual strategic advantage between Dell and VMware following the Transactions, and to affirm the Parties’ interest in continuing to collaborate on solutions and a go-to-market strategy (“**GTM**”);

WHEREAS, the Parties recognize that, with respect to certain technologies and GTM activities, the Parties’ respective products and services work better together to create advantages and value for customers; and

WHEREAS, the Parties recognize that it may be in the Parties’ continued mutual interests to pursue joint opportunities with respect to certain products and services subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINITIONS; CONSTRUCTION

1.1. Definitions. Capitalized terms used and not otherwise defined in this Agreement have the meanings given below.

“**AOP**” has the meaning set forth in Section 4.1.

“**Business Day**” means any day on which commercial banks are generally open for business in New York, New York, other than a Saturday, a Sunday or a day observed as a holiday under the Laws of the State of New York or under the federal Laws of the United States of America.

“**CEO**” means chief executive officer.

“**Change in Control**” means, with respect to a Party, (a) the consummation by such Party of a consolidation, merger, amalgamation, share exchange, equity contribution, reorganization or other business combination or transaction (in one or a series of related transactions) involving such Party in which, immediately following such transaction, either (i) less than 50 percent of the directors of such Party were directors of such Party immediately prior to the consummation of such transaction or (ii) the holders (excluding the acquiror and persons acting with the acquiror) in such transaction) of the voting securities of such Party outstanding immediately prior to such transaction cease to hold at least 50% of the combined voting power of the securities of such Party or the surviving Person or any parent thereof outstanding immediately after such merger of consolidation); (b) the acquisition by a Person, or group of Persons acting in concert, of Control of such Party (including by means of merger, consolidation, business combination, share exchange or other reorganization in one or a series of related transactions) (provided, that the entry into, or consummation of, a bona fide internal restructuring or reorganization of any kind by such Party shall not be deemed to be the acquisition of Control of such Party for purposes of this clause (b)); or (c) the direct or indirect sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of such Party and its subsidiaries’ assets (determined on a consolidated basis) (including by means of merger, consolidation, other business combination, exclusive license of all rights, share exchange or other reorganization); provided, that in each case, any transaction solely between and among such Party and one or more of its wholly-owned subsidiaries shall not be considered a Change in Control hereunder. For purposes of this definition, “Control” means, with respect to a Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of a majority of the voting securities of such Person or the right to nominate or appoint a majority of the directors of such Person; provided, however, that the existence of any approval or consent rights shall not be taken into account for purposes of determining the existence of Control.

“**Chosen Courts**” has the meaning set forth in Section 14.6.

“**Covered Solution**” means a project designed to accelerate the growth of an industry, product, service or platform or that may provide one or both Parties a strategic market opportunity benefiting mutual customers of the Parties that are the subject of a Covered Solutions SOW.

“**Covered Solutions Executive**” means the CEO or, if designated by the CEO, the COO of each Party, as applicable.

“**Covered Solutions Review Activities**” means the Parties’ respective obligations related to the review of Covered Solutions under this Agreement, including the Parties’ obligations (a) to review and update strategic plans and signed Covered Solutions SOWs, (b) to identify areas of potential collaboration and (c) to determine future collaboration projects, in each case in accordance with the terms and conditions in Exhibit 7.

“**Covered Solutions SOW**” means (a) any In-Flight Covered Solutions SOW that has been executed by the Parties, (b) any Future Covered Solutions SOW that has been executed by the Parties and (c) any Existing Covered Solutions SOW.

“**Customer Support Agreement**” has the meaning set forth in Section 4.6.

“**DFS Agreement**” means that certain Global Operating and Purchase Agreement by and between VMware, Inc. and Dell Financial Services, L.L.C. effective as of July 18, 2016, as amended by that certain Amendment No. 1 dated as of May 30, 2018.

“**DPA**” means that certain Data Protection Agreement between the Parties dated on or about November 1, 2021 and attached hereto as Exhibit 9, as may be amended from time to time.

“**DTS Agreement**” has the meaning set forth in Section 3.4(b).

“**Existing Covered Solution**” means each project listed in Schedule A designated as an “Existing Covered Solution.”

“Existing Covered Solutions SOW” means (a) an executed statement of work under the TCA that relates to an Existing Covered Solution or (b) any other written agreement executed by the Parties prior to the Effective Date that relates to an Existing Covered Solution.

“Fiscal Quarter” means a fiscal quarter of VMware or Dell as of the Effective Date, unless otherwise agreed by the Parties in writing and subject to Section 5.2.

“Fiscal Year” means a fiscal year of VMware or Dell as of the Effective Date, unless otherwise agreed by the Parties in writing and subject to Section 5.2.

“Future Covered Solutions SOW” means a written agreement of the Parties that relates to a Potential Covered Solution and includes the minimum elements identified in Section 3.2.

“Governmental Authority” means any government, court of competent jurisdiction, regulatory or administrative agency, commission or other governmental authority or instrumentality, whether Federal, state, local, domestic, foreign or multinational.

“GTM” has the meaning set forth in the Recitals.

“In-Flight Covered Solution” means each project designated as an “In-Flight Covered Solution” in Schedule A.

“In-Flight Covered Solutions SOW” means a written agreement of the Parties that relates to an In-Flight Covered Solution and includes the minimum elements identified in Section 3.2.

“Initial Term” has the meaning set forth in Section 8.1.

“Law” means all U.S. and non-U.S. laws (including common law), statutes, ordinances, rules, regulations, declarations, decrees, directives, codes, treaties, legislative enactments, executive orders, circulars and court (or other governmental, administrative or regulatory) orders issued, promulgated or entered into by or with any Governmental Authority.

“NDA” has the meaning set forth in Section 7.

“Obligations” means (a) all of the obligations of the Parties set forth in Section 3 and all of the obligations of the Parties to participate in Covered Solutions Review Activities (collectively, the **“Product Obligations”**), (b) all of the obligations of the Parties set forth in Section 4 (collectively, the **“Sales Obligations”**), and (c) all of the obligations of the Parties set forth in Section 5 (collectively, the **“Pricing Obligations”**), in each case, including any rights associated with the foregoing clauses (a), (b) and (c).

“Person” means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, or any other legal entity, including any Governmental Authority.

“Potential Covered Solution” means a Covered Solution identified by the Parties during the Term of the Agreement that is not an In-Flight Covered Solution or an Existing Covered Solution.

“Principles” means the Parties’ core goals in connection with this Agreement, namely: (a) continuing the Parties’ mutually beneficial preferred sales engagement with respect to the Parties’ respective GTM activities, (b) pursuing mutually beneficial Covered Solutions, and (c) continuing the Parties’ “Better Together” messaging, in each case subject to the terms and conditions of this Agreement.

“Renewal Term” has the meaning set forth in Section 8.1.

“Strategic Solutions” means the products and services listed on Schedule B, as such schedule may be updated from time to time during the Term in accordance with this Agreement.

“TCA” means the Technology Collaboration Agreement by and between VMware and EMC Corporation dated as of February 2, 2009, and to which Dell is bound as an affiliate of EMC Corporation (as amended and as may be amended from time to time, and together with all statements of work thereunder).

“Team Member” has the meaning set forth in Section 3.5.

“Team Member Bonus Metrics” has the meaning set forth in Section 3.5.

“Term” has the meaning set forth in Section 8.1.

“Unforeseen Circumstances” means a hurricane, earthquake, global pandemic (except for existing governmental regulations and restrictions relating to the Covid-19 pandemic), act of God, act of war, terrorism, riot, rebellion, revolution or civil disorders.

“VMware Board of Directors” means the board of directors of VMware.

“VMware Related Persons Transactions Committee” has the meaning set forth in the SDA.

1.2. Construction. In this Agreement, unless a clear contrary intention appears:

- (a) references to this Agreement include the Schedules and Exhibits hereto, and references to the Covered Solutions SOWs include the attachments, exhibits and schedules thereto;
- (b) except where otherwise indicated, references in this Agreement (exclusive of the Schedules and Exhibits) to Sections, Schedules or Exhibits are to Sections of, Schedules to or Exhibits to, this Agreement (exclusive of the Schedules and Exhibits);
- (c) the singular number includes the plural number and vice versa;
- (d) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

-
- (e) references to any gender includes any other gender;
 - (f) reference to any agreement, document or instrument means such agreement, document or instrument as amended, modified, supplemented or restated, and in effect from time to time in accordance with the terms thereof subject to compliance with the requirements set forth herein;
 - (g) reference to any applicable Law means such applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any applicable Law means that provision of such applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
 - (h) “herein,” “hereby,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement, as applicable, and not to any particular article, section or other provision hereof or thereof;
 - (i) the word “or” is not exclusive;
 - (j) references to and mentions of the word “including” (and with correlative meaning “include”) or the phrases “e.g.” or “such as” means including, without limiting the generality of, any description preceding such term;
 - (k) the headings are for convenience of reference only and shall not affect the construction or interpretation hereof or thereof;
 - (l) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to and including;”
 - (m) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto;
 - (n) any consent required herein from a Party may be given or withheld in such Party’s sole discretion, unless otherwise indicated; and
 - (o) this Agreement shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

2. PURPOSE AND EFFECT OF THE AGREEMENT

- 2.1. Purpose. This Agreement establishes the terms and conditions applicable to the Parties’ strategic commercial relationship and advancement of the Principles.

2.2. Conflicts; Order of Precedence. In the event of a conflict between the terms and conditions of any Schedule or Exhibit to this Agreement and the terms and conditions of this Agreement, the terms and conditions of the Schedule or Exhibit will govern. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any Covered Solutions SOW, the terms and conditions of the Covered Solutions SOW will govern; provided that, in the event of a conflict between the terms and conditions of any of Section 8.2, Section 8.4(c), Section 9.2, Section 10 or Section 13 on the one hand, and terms and conditions of any Covered Solutions SOW on the other hand, the terms and conditions of Section 8.2, Section 8.4(c), Section 9.2, Section 10 and Section 13 will govern; provided, further, that in the event any wind-down provision exists in a Covered Solutions SOW, such provision will remain in effect notwithstanding anything herein to the contrary. For the avoidance of doubt, Section 9.2 shall not limit any express representations or warranties set forth in a Covered Solutions SOW.

3. PRODUCT, SERVICE, AND STRATEGIC COLLABORATIONS

- 3.1. Covered Solutions. The Parties shall cooperate (a) to identify in good faith Potential Covered Solutions and (b) to negotiate diligently in good faith In-Flight Covered Solutions SOWs and Future Covered Solutions SOWs, in each case in accordance with the terms and conditions set forth in Exhibit 1.
- 3.2. Covered Solutions SOWs. Each In-Flight Covered Solutions SOW and Future Covered Solutions SOW will address the elements set forth in Schedule C. Each In-Flight Covered Solutions SOW and Future Covered Solutions SOW will be effective when executed by an authorized representative of VMware and an authorized representative of Dell.
- 3.3. Strategic Solutions. The Covered Solutions Executives shall review and agree on any applicable changes to the Strategic Solutions at least annually in accordance with the terms and conditions set forth in Exhibit 7, and the Parties shall update Schedule B accordingly, as applicable.
- 3.4. Existing Strategic Collaborations.
- (a) The Parties shall enter into an amendment to the DFS Agreement in the form attached hereto as Exhibit 2-A.
- (b) The Parties shall enter into a contract formalizing the Parties' relationship with respect to Dell Technologies Select, in the form attached hereto as Exhibit 2-B (the "**DTS Agreement**").

- 3.5. Team Members. Each Party's executives responsible for implementing the Principles on behalf of such Party are set forth on Schedule D (each such executive, a "**Team Member**"). Each Party may update the list of Team Members in Schedule D from time to time upon notice to the other Party, and the Parties shall review and update Schedule D in accordance with their terms and conditions set forth in Exhibit 3. Subject to applicable Law, a portion of each Team Member's executive bonus shall be calculated in accordance with the terms and conditions set forth in Exhibit 3 (the "**Team Member Bonus Metrics**"), unless otherwise agreed by the Parties. The Parties shall amend and maintain each Team Member's executive bonus structure in accordance with the terms and conditions set forth in Exhibit 3, as applicable.
- 3.6. Other Collaborations. Except as expressly set forth in this Agreement, nothing in this Agreement limits the ability of either Party to collaborate or enter into any agreements with any third Person.

4. SALES

- 4.1. Annual Operating Plan. The Parties shall develop and update, no less frequently than annually, an annual operating plan in accordance with the terms and conditions set forth in Exhibit 4 (such annual operating plan, the "**AOP**").
- 4.2. Dell Sales. Dell shall use commercially reasonable efforts to meet the Overall Annual Bookings Target and the Strategic Solutions Annual Bookings Target, in each case as defined and determined in accordance with the terms and conditions set forth in Exhibit 4 and subject to the terms and conditions of Exhibit 5 (including Section 5 of Exhibit 5).
- 4.3. Sales Incentives. The Parties shall implement sales incentives to support the AOP in accordance with the terms and conditions set forth in Exhibit 4.
- 4.4. Dell Incentives. Dell shall design and implement incentive plans for Dell sales personnel in connection with achievement of the targets detailed in the applicable AOP, in accordance with the terms and conditions set forth in Exhibit 4.
- 4.5. VMware Investments. VMware shall maintain investment levels in connection with achievement of the targets detailed in the applicable AOP, in accordance with the terms and conditions set forth in Exhibit 5.
- 4.6. Customer Support. Regarding instances in which a customer is jointly using a VMware and a Dell product and each Party may have support services obligations to such customer, the Parties shall work in good faith to complete a Customer Support Agreement ("**Customer Support Agreement**") by the Effective Date based upon each Party's generally-available service offerings as well as any mutually agreed-upon new service offerings. By way of description and not limitation, such a Customer Support Agreement may include topics such as respective rights and obligations regarding support services delivery SLAs, appropriate access to knowledge base and service request-related systems and tools, and other topics the Parties deem appropriate. In consideration of the Principles, the Parties will discuss and evaluate creating new service offerings. Any cost of additional mutually agreed-upon service offerings is expected to be borne by the Party requesting the implementation of such offering.

5. PRICING

- 5.1. Pricing. With respect to pricing, the Parties shall comply with the terms and conditions set forth in Exhibit 6.
- 5.2. Fiscal Year. After the Effective Date, neither Party will change its respective fiscal year without the prior written consent of the other Party.

6. GOVERNANCE AND UNFORESEEN CIRCUMSTANCES

- 6.1. Governance Procedures. The Parties shall comply with the governance procedures set forth in Exhibit 7.
- 6.2. Unforeseen Circumstances. To the extent performance by a Party of its obligations under this Agreement is prevented, hindered or delayed by Unforeseen Circumstances, such Party shall be excused for such non-performance, hindrance or delay solely as expressly set forth in this Agreement and solely for so long as such Unforeseen Circumstances continue; provided that: (a) such Unforeseen Circumstances are beyond the reasonable control of the applicable Party and could not be prevented by appropriate precautions; (b) such Party is diligently attempting to work around or mitigate the Unforeseen Circumstances; and (c) the Party claiming Unforeseen Circumstances shall promptly notify the other Party of the occurrence of Unforeseen Circumstances and describe the Unforeseen Circumstances in reasonable detail.

7. CONFIDENTIALITY

- 7.1. Mutual Non-Disclosure Agreement. The Parties shall comply with the terms and conditions of the Non-Disclosure Agreement set forth in Exhibit 8 (the “**NDA**”).

8. TERM AND TERMINATION

- 8.1. Term. This Agreement commences on the Effective Date and continue for five years (the “**Initial Term**”), and thereafter will automatically renew for additional one-year terms (each, a “**Renewal Term**,” and together with the Initial Term, the “**Term**”), unless earlier terminated in accordance with this Agreement. Either Party may terminate this Agreement by providing at least 180 days’ written notice to the other Party prior to the end of the Initial Term or the then-current Renewal Term. Subject to the termination rights set forth in Section 8.2 and Section 8.4(c), the term of any Covered Solutions SOW shall be expressly set forth in such Covered Solutions SOW, as applicable.

- 8.2. Termination for Cause. Either Party may terminate this Agreement or any category of Obligations (e.g., the Product Obligations), in each case, upon written notice to the other Party (including such Party's Covered Solutions Executive) if such other Party (a) materially breaches an Obligation under this Agreement and fails to cure such breach within 30 days after receipt of notice of such breach by the non-breaching Party or (b) commits a series of non-material breaches under this Agreement that collectively constitute a material breach; provided that a Party's right to terminate this Agreement for any breach of Section 7 or Section 13 is governed by Section 8.4(a). The cure period set forth in this Section 8.2 does not apply to, and will not prejudice, a specific right in another Section of this Agreement to terminate this Agreement or any Obligations. If either Party has the right to terminate this Agreement (or any portion thereof), such Party may also elect to terminate one or more Covered Solutions SOWs (or any portion thereof).
- 8.3. Termination of Covered Solutions SOWs. Notwithstanding anything to the contrary in Section 8.2, a Covered Solutions SOW may be terminated in accordance with the terms of any such Covered Solutions SOW.
- 8.4. Other Termination Rights.
- (a) Termination for Breaches of Confidentiality and Assignment Obligations. Either Party may terminate this Agreement immediately upon notice to the other Party in the event of (i) a material breach of such other Party's obligations under Section 7 hereof or (ii) an attempted assignment, transfer or other action by such other Party in contravention of Section 13 hereof.
- (b) Termination for Deterioration of Financial Condition. Either Party may immediately terminate this Agreement upon written notice to the other Party: (i) upon the filing by or with respect to the other Party of a petition in bankruptcy or insolvency under the Laws of any jurisdiction; (ii) a final adjudication that the other Party is bankrupt or insolvent; (iii) the filing or making of any statement or admission that the other Party is unable to pay its debts as they become due or that it is insolvent; or (iv) the making of any assignment for the benefit of creditors or similar process.
- (c) Other VMware Termination Rights. VMware may terminate Covered Solutions SOWs and Obligations as expressly set forth in Section 4(c) and Section 4(d) of Exhibit 5.
- (d) Termination for Change in Control. Either Party may terminate this Agreement upon 60 days' written notice in the event of a Change in Control of the other Party.
- 8.5. Effect of Termination or Expiration.
- (a) Effect on Covered Solutions SOWs. Upon the termination or expiration of this Agreement, all Covered Solutions SOWs then in effect will continue in accordance with their terms, except where such Covered Solutions SOW (or portion thereof) has been earlier or simultaneously terminated in accordance with Section 8.2 or Section 4(c) of Exhibit 5 of this Agreement or in accordance with the terms and conditions of such Covered Solutions SOW.

- (b) Upon the termination or expiration of this Agreement, except as set forth in Section 8.6, all rights and obligations of the Parties under this Agreement will immediately cease and terminate, and neither Party shall have any further obligation to the other Party with respect to this Agreement, except that VMware shall pay the VMware Investments (as defined in Exhibit 5) to Dell in accordance with the terms and conditions of Exhibit 5.
- (c) Expiration or termination of this Agreement or any Covered Solutions SOW will not act as a waiver of any breach of this Agreement and will not act as a release of either Party from any liability or obligation incurred under this Agreement through the effective date of such expiration or termination, including with respect to any fees or expenses that accrued on or before the effective date of such expiration or termination.
- 8.6. Survival. The following provisions shall survive any termination or expiration of this Agreement: Section 1 (*Definitions and Construction*), Section 7 (*Confidentiality*), Section 8.5 (*Effect of Termination*), Section 8.6 (*Survival*), Section 9.2 (*Representations and Warranties Disclaimer*), Section 10 (*Limitations of Liability*), Section 11.1 (*IP Ownership*), Section 12 (*Dispute Resolution*) and Section 14 (*General Terms*), and any term in an Exhibit to this Agreement that expressly states it will survive the expiration or termination of the Agreement.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party that, as of the Effective Date: (i) it is duly incorporated and validly existing or registered as applicable under applicable Laws of the relevant jurisdiction; (ii) it has the full power and authority to execute, deliver, and perform under this Agreement; (iii) it has taken all requisite actions and obtained all consents, approvals, authorizations, and permits necessary for the execution, delivery and performance of its obligations under this Agreement; (iv) this Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms; and (v) the execution, delivery, and performance of this Agreement will not violate such Party's articles of incorporation, any other agreements or obligations of such Party or, to the best of such Party's knowledge, Laws applicable to such Party.
- 9.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES OR GIVES ANY EXPRESS REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY REPRESENTATIONS AND WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY REPRESENTATION, WARRANTY, OR COVENANT BASED ON COURSE OF DEALING OR USAGE IN TRADE.

10. LIMITATIONS OF LIABILITY

- 10.1. Exclusion of Damages. EXCEPT FOR A BREACH OF A PARTY'S OBLIGATIONS UNDER SECTION 7 (CONFIDENTIALITY) AND NOTWITHSTANDING ANY TERMS IN A COVERED SOLUTIONS SOW TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE UNDER THIS AGREEMENT OR ANY COVERED SOLUTIONS SOW FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES BASED ON LOST REVENUE, LOST PROFITS, LOSS OF INCOME, OR LOSS OF BUSINESS ADVANTAGE DAMAGES, IN ALL CASES WHETHER OR NOT FORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.2. Applicability. THE LIMITATIONS OF LIABILITY STATED IN THIS SECTION 10 WILL APPLY REGARDLESS OF WHETHER A PARTY'S REMEDIES IN THIS AGREEMENT ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THIS SECTION 10 DOES NOT LIMIT EITHER PARTY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

11. INTELLECTUAL PROPERTY AND DATA PRIVACY

- 11.1. Ownership. Neither Party shall acquire any rights, title, or interest in or to any of the intellectual property of the other Party as a result of this Agreement. No rights or licenses to intellectual property are granted by either Party under this Agreement, whether by implication, estoppel or otherwise.
- 11.2. Data Protection. Where any activities of the Parties under this Agreement involve the processing of Personal Data (as defined in the DPA), the DPA will govern the Parties' obligations in processing such Personal Data, and the Parties shall comply with the terms and conditions of same. The Parties shall complete the Annexes and any other required information to be included in the DPA to accurately reflect the processing activities of the Parties under this Agreement and shall update the DPA as required from time to time to comply with applicable Law or to reflect any new or modified processing activities contemplated under this Agreement.

12. DISPUTE RESOLUTION

- 12.1. A dispute arising under this Agreement that is not resolved in the ordinary course of business shall be considered in person or by telephone by the Covered Solutions Executives within five Business Days after receipt of a notice from either Party specifying the details of the dispute to be escalated to the Covered Solutions Executives.
- 12.2. If the Covered Solutions Executives are unable to resolve the dispute within 15 Business Days after escalation (or are unable to meet within such period), then either Party may pursue its rights and remedies under this Agreement, including by initiating judicial proceedings.

-
- 12.3. The foregoing shall not prevent or delay either Party from seeking equitable remedies available under Law.
- 12.4. All negotiations, conferences, and discussions pursuant to this Section 12 shall be confidential and shall be treated as compromise and settlement negotiations and shall be governed by Rule 408 of the Federal Rules of Evidence and any applicable similar state rule. Nothing said or disclosed, nor any document produced, in the course of such negotiations, conferences, and discussions that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future litigation.

13. ASSIGNMENT

Neither Party shall assign (including by operation of law) any of its rights or obligations under this Agreement or any Covered Solutions SOW without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, a Party may freely assign this Agreement to a successor entity resulting from an internal corporate reorganization to a wholly owned affiliate of such Party. Any permitted assignee of this Agreement must assume the assigning Party's obligations under this Agreement in writing. In the event of a permitted assignment, this Agreement shall be binding upon and inure to the benefit of the Party's permitted successors and assigns. Any attempted assignment or transfer in violation of this Section 13 will be null and void *ab initio*.

14. GENERAL TERMS

- 14.1. Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by e-mail (with written confirmation of receipt, by other than automatic means, whether electronic or otherwise) or (c) one Business Day following the day sent by an internationally recognized overnight courier (with written confirmation of receipt), to the addresses of the Parties as set forth in Schedule E or to such other address(es) as shall be furnished in writing by any such party to the other parties hereto in accordance with the provisions of this Section 14.1.
- 14.2. Compliance with Laws. Each Party shall comply with the Laws applicable to it in connection with this Agreement.
- 14.3. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties thereto and delivered to the other Party. Copies of executed counterparts transmitted by electronic signature (including by means of e-mail in .pdf format) shall be considered original executed counterparts for purposes of this Section 14.3.
- 14.4. Costs and Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses of the Parties in connection with the Agreement shall be paid by the Party incurring such costs or expenses.

-
- 14.5. Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties and their respective successors and permitted assigns and are not intended to confer upon any Person, except the Parties and their respective successors and permitted assigns, any rights or remedies hereunder; and there are no third-party beneficiaries of this Agreement; and this Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.
- 14.6. Governing Law; Jurisdiction. This Agreement will be governed by and construed and interpreted in accordance with the internal Laws of the State of Delaware, irrespective of the choice of Laws principles of the State of Delaware, as to all matters, including matters of validity, construction, effect, enforceability, performance, and remedies. Except as set forth in Section 12, each Party agrees that it shall bring any action, claim, or proceeding between the Parties arising out of or related to this Agreement (exclusively in the Delaware Court of Chancery or, only if the Delaware Court of Chancery lacks or declines to accept jurisdiction over a particular matter, any appropriate state or federal court within the State of Delaware (the “**Chosen Courts**”)), and with respect to any such action, claim, or proceeding (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such claim in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party and (iv) agrees that service of process or summons upon such Party in any such action, claim, or proceeding will be effective if notice is given in accordance with Section 14.1.
- 14.7. Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, EXECUTION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.
- 14.8. Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, subject to the provisions of Section 12, the Parties shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement

without proof of actual damages or otherwise (and each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy) in the Chosen Courts and agrees not to assert and hereby waives any defense to the effect that a remedy of injunctive relief or specific performance is unenforceable, invalid or contrary to Law or that a remedy of monetary damages would provide an adequate remedy, this being in addition to any other remedy to which they are entitled at law or in equity.

- 14.9. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.
- 14.10. Amendment; Waiver.
- (a) This Agreement may be amended, supplemented, or otherwise modified only by a written instrument executed by both Parties. No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and executed by the Party so waiving. Notwithstanding the foregoing, to the extent any such amendment, supplement, modification or waiver by VMware or the VMware Board of Directors materially and adversely affects VMware, such amendment, supplement, modification or waiver by VMware or the VMware Board of Directors shall require the prior written consent of the VMware Related Persons Transactions Committee.
- (b) Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of any Party. Except as provided in Section 14.10(a), no action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, or a failure or delay by any Party in exercising any right, power or privilege hereunder, will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 14.11. Entire Agreement. This Agreement and the Schedules, Exhibits and Annexes hereto and the specific agreements contemplated hereby contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements, oral or written, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

DELL TECHNOLOGIES INC

/s/ Robert Potts

Name: Robert Potts

Title: Senior Vice President and Assistant Secretary

VMWARE, INC.

/s/ Zane Rowe

Name: Zane Rowe

Title: Executive Vice President and
Chief Financial Officer

[Signature Page to Commercial Framework Agreement]

VMWARE INC.

STOCKHOLDERS AGREEMENT

Dated as of November 1, 2021

TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS	
SECTION 1.1. Definitions	1
SECTION 1.2. General Interpretive Principles	7
ARTICLE II	
REPRESENTATIONS AND WARRANTIES	
SECTION 2.1. Representations and Warranties of the Parties	7
ARTICLE III	
GOVERNANCE	
SECTION 3.1. Board of Directors of the Company	8
SECTION 3.2. Standstill; Voting	13
SECTION 3.3. Affiliate Transactions	16
SECTION 3.4. VCOC Investors	16
ARTICLE IV	
ADDITIONAL AGREEMENTS	
SECTION 4.1. Further Assurances	17
SECTION 4.2. Other Businesses; Waiver of Certain Duties	18
SECTION 4.3. Confidentiality	19
SECTION 4.4. Expense Reimbursement	20
SECTION 4.5. Information Rights; Visitation Rights	20
ARTICLE V	
INDEMNIFICATION; INSURANCE	
SECTION 5.1. Indemnification of Directors	22
SECTION 5.2. Insurance	22
ARTICLE VI	
MISCELLANEOUS	
SECTION 6.1. Entire Agreement	22

SECTION 6.2.	Specific Performance	22
SECTION 6.3.	Governing Law	22
SECTION 6.4.	Submissions to Jurisdictions; Waiver of Jury Trial	23
SECTION 6.5.	Obligations	24
SECTION 6.6.	Consents, Approvals and Actions	24
SECTION 6.7.	Amendment; Waiver	24
SECTION 6.8.	Assignment of Rights By Stockholders	24
SECTION 6.9.	Binding Effect	24
SECTION 6.10.	Third Party Beneficiaries	25
SECTION 6.11.	Termination of this Agreement	25
SECTION 6.12.	Notices	25
SECTION 6.13.	No Third Party Liability	27
SECTION 6.14.	No Partnership	27
SECTION 6.15.	Aggregation; Beneficial Ownership	27
SECTION 6.16.	Severability	28
SECTION 6.17.	Counterparts	28

ANNEXES AND EXHIBITS

ANNEX A - FORM OF SPOUSAL CONSENT

VMWARE, INC.
STOCKHOLDERS AGREEMENT

This STOCKHOLDERS AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, this “Agreement”) is made as of November 1, 2021, by and among:

- (a) VMware, Inc. a Delaware corporation (together with its successors and assigns, the “Company”);
- (b) Michael S. Dell (“MSD”), Susan Lieberman Dell Separate Property Trust (the “SLD Trust” and, together with MSD and their respective Permitted Assignees (as defined herein) that hold Securities (as defined herein), the “MSD Stockholders”); and
- (c) SL SPV-2, L.P., a Delaware limited partnership (“SL SPV-2”), Silver Lake Partners IV, L.P., a Delaware limited partnership (“SLP IV”), Silver Lake Technology Investors IV, L.P., a Delaware limited partnership (“SLTI IV”) Silver Lake Partners V DE (AIV), L.P., a Delaware limited partnership (“SLP V”), Silver Lake Technology Investors V, L.P., a Delaware limited partnership (“SLTI V”), Silver Lake Group, L.L.C., a Delaware limited liability company (“SLG”) (and together with SL SPV-2, SLP IV, SLTI IV, SLP V, SLTI V and their respective Permitted Assignees that hold Securities, the “SLP Stockholders” and together with the MSD Stockholders, the “Stockholders”).

WHEREAS, pursuant to that certain Separation and Distribution Agreement, dated as of April 14, 2021 (as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the “Separation and Distribution Agreement”), by and between the Company and Dell Technologies Inc., a Delaware corporation (“Dell”), at the Distribution Effective Time (as defined therein), upon the terms and subject to the conditions set forth therein, the Company and Dell consummated the Distribution (as defined below);

WHEREAS, as a result of the Distribution, the Stockholders became holders of record of Common Stock; and

WHEREAS, pursuant to this Agreement, the parties hereto desire to set forth the respective rights and obligations of the Stockholders generally.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Additional MSD Director” has the meaning ascribed to such term in Section 3.1(a)(i)(A).

“Affiliate” means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person. The term “control” means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether

through the ownership of voting securities, by contract or otherwise. The terms “controlled” and “controlling” have meanings correlative to the foregoing. Notwithstanding the foregoing, for purposes of this Agreement, (i) the Company, its Subsidiaries and its other controlled Affiliates shall not be considered Affiliates of any of the Stockholders or of any Affiliates of any of the Stockholders (except that the Company, its Subsidiaries and its other controlled Affiliates may be considered Affiliates of each other), (ii) none of the MSD Stockholders, on the one hand, and the SLP Stockholders, on the other hand, shall be considered Affiliates of each other, and (iii) except with respect to Section 4.2 and Section 6.13, none of the Stockholders shall be considered Affiliates of (x) any portfolio company in which any of the Stockholders or any of their investment fund Affiliates have made a debt or equity investment (and vice versa) or (y) any limited partners, non-managing members or other similar direct or indirect investors in any of the Stockholders or their affiliated investment funds.

“Agreement” has the meaning ascribed to such term in the Preamble.

“Approved Exchange” means the New York Stock Exchange and the Nasdaq Stock Market.

“beneficial ownership” and “beneficially own” and similar terms have the meaning set forth in Rule 13d-3 under the Exchange Act; provided, however, that (i) subject to Section 6.15, no party hereto shall be deemed to beneficially own any Securities held by any other party hereto solely by virtue of the provisions of this Agreement (other than this definition) and (ii) with respect to any Securities held by a party hereto that are exercisable for, convertible into or exchangeable for shares of Common Stock upon delivery of consideration to the Company or any of its Subsidiaries, such shares of Common Stock shall not be deemed to be beneficially owned by such party unless, until and to the extent such Securities have been exercised, converted or exchanged and such consideration has been delivered by such party to the Company or such Subsidiary.

“Board” means the Board of Directors of the Company.

“Business Day” means a day, other than a Saturday, Sunday or other day on which banks located in New York, New York or San Francisco, California are authorized or required by law to close.

“CCGC” means the Compensation and Corporate Governance Committee of the Board or any successor committee responsible for the nomination of directors for election to the Board.

“Class I MSD Director” has the meaning ascribed to such term in Section 3.1(a)(i)(A).

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“Commercial Framework Agreement” means that certain Commercial Framework Agreement, dated as of the date hereof, by and between the Company and Dell, as the same may be amended, restated, supplemented or modified from time to time.

“Common Stock” means the Class A common stock and any other class or series of common stock of the Company.

“Company” has the meaning ascribed to such term in the Preamble.

“Confidential Information” has the meaning ascribed to such term in Section 4.3(a).

“Covered Person” means (i) any director or officer of the Company or any of its Subsidiaries who is also a director, officer, employee, managing director or other Affiliate of any Stockholder, (ii) MSD and the MSD Stockholders, and (iii) SLP and the SLP Stockholders.

“DGCL” means the General Corporation Law of the State of Delaware.

“Distribution” has the meaning ascribed to such term in the Separation and Distribution Agreement.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated pursuant thereto.

“Immediate Family Member” means, with respect to any natural person (including MSD), such natural person’s parent, spouse, children (whether natural or adopted), grandchildren or more remote descendants, siblings and spouse’s parents and siblings.

“MSD” has the meaning ascribed to such term in the Preamble.

“MSD Charitable Entity” means the Michael & Susan Dell Foundation and any other private foundation or supporting organization (as defined in Section 509(a) of the Code) established and principally funded directly or indirectly by MSD or his spouse or by MSD and his spouse together.

“MSD Director Nominee” has the meaning ascribed to such term in Section 3.1(a)(i).

“MSD Fiduciary” means any trustee of an inter vivos or testamentary trust appointed by MSD.

“MSD Stockholders” has the meaning ascribed to such term in the Preamble.

“MSD Stockholders’ Initial Stake” means the 169,278,015 shares of Common Stock beneficially owned by the MSD Stockholders in the aggregate immediately following the Distribution (equitably adjusted for any stock splits, reverse stock splits, recapitalizations or similar transactions that may occur following the Distribution).

“Organizational Documents” means, with respect to any Person, the articles or memorandum of association, certificate of incorporation, certificate of organization, bylaws, partnership agreement, limited liability company agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of such Person.

“Permitted Assignee”:

(i) in the case of the MSD Stockholders, means:

(A) MSD, the SLD Trust or any Immediate Family Member of MSD;

(B) any MSD Charitable Entity;

(C) one or more trusts whose current beneficiaries are and will remain for so long as such trust holds Securities, any of (or any combination of) MSD, one or more Immediate Family Members of MSD or MSD Charitable Entities;

(D) any corporation, limited liability company, partnership or other entity wholly-owned by any one or more persons or entities described in clause (i)(A), (i)(B) or (i)(C) of this definition of “Permitted Assignee”; or

(E) from and after MSD’s death, any recipient of Securities under MSD’s will, any revocable trust established by MSD that becomes irrevocable upon MSD’s death, or by the laws of descent and distribution;

provided, that in each of clauses (A) through (E) above, such person or entity executes and delivers to the Company a joinder or counterpart to this Agreement in form and substance reasonably acceptable to the Company pursuant to which such Permitted Assignee shall agree to be bound by the provisions of this Agreement applicable to MSD Stockholders.

(ii) in the case of the SLP Stockholders, (A) any other SLP Stockholder or (B) any Affiliate of the SLP Stockholders (including, for the avoidance of doubt, (x) an affiliated private equity fund of such Stockholder and (y) any special purpose entity formed as part of a “fund-to-fund” transfer or “back-leverage” of all or a portion of such Stockholder’s investment in the Company); *provided*, that in each of clauses (A) and (B), such person or entity executes and delivers to the Company a joinder or counterpart to this Agreement in form and substance reasonably acceptable to the Company pursuant to which such Permitted Assignee shall agree to be bound by the provisions of this Agreement applicable to SLP Stockholders.

“Person” means an individual, any general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity, or a government or any agency or political subdivision thereof.

“Plan Assets Regulations” means the regulations issued by the U.S. Department of Labor at Section 2510.3-101 of Part 2510 of Chapter XXV, Title 29 of the Code of Federal Regulations, or any successor regulations as the same may be amended from time to time.

“Reasonable Approval of the CCGC” means the approval (not to be unreasonably withheld, conditioned or delayed, but subject to the CCGC’s fiduciary duties in all respects) of a director nominee in the reasonable good faith judgment of the CCGC based on criteria that is no more burdensome to such designee than criteria to serve as a director set forth in the Company’s Corporate Governance Guidelines and the Charter of the CCGC, in each case, as in effect at the time of the determination; *provided*, that in the case of an SLP Director Nominee, any investment professional of SLP with the title of Managing Director or above shall be deemed to have the “Reasonable Approval of the CCGC.”

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date hereof, by and among the Company, the Stockholders and the other signatories party thereto, as the same may be amended, restated, supplemented or modified from time to time.

“Related Persons Transactions Committee” means the Related Persons Transactions Committee of the Board.

“Representatives” means, with respect to any Person, such Person’s and its Affiliates’ respective directors, officers, employees, trustees, partners, members, stockholders, controlling persons, investment committee, financial advisors, attorneys, consultants, valuers, accountants, agents and other representatives.

“Rule 144” means Rule 144 (or any successor provision) under the Securities Act, as such provision is amended from time to time.

“Sale Transaction” means (i) any merger, consolidation, business combination or amalgamation of the Company with or into any Person in one or a series of related transactions (other than a merger, consolidation, business combination or amalgamation in which the holders (excluding the acquiror and persons acting with the acquiror in such transaction) of the voting securities of the Company outstanding immediately prior to such transaction continue to hold at least 50% of the combined voting power of the securities of the Company or the surviving entity or any parent thereof outstanding immediately after such merger or consolidation), (ii) the sale of voting equity securities of the Company that represents a majority of the aggregate voting power of such voting equity securities (including by means of merger, consolidation, business combination, share exchange or other reorganization in one or a series of related transactions and taking into account the voting securities held by the acquiror prior to such transaction) or (iii) the direct or indirect sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company and its Subsidiaries’ assets (determined on a consolidated basis) (including by means of merger, consolidation, other business combination, exclusive license, share exchange or other reorganization); provided, that in each case, any transaction solely between and among the Company and one or more of its wholly-owned Subsidiaries shall not be considered a Sale Transaction hereunder.

“SEC” means the U.S. Securities and Exchange Commission or any successor agency.

“Securities” means any equity securities of the Company, including any Common Stock, any debt securities of the Company exercisable or exchangeable for, or convertible into, equity securities of the Company, or any option, warrant or other right to acquire any such equity securities or debt securities of the Company.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated pursuant thereto.

“Separation and Distribution Agreement” has the meaning ascribed to such term in the Recitals.

“Short Interests” means any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Company’s equity securities by, manage the risk of share price changes for, or increase or decrease the voting power of, such person with respect to the shares of any class or series of the Company’s equity securities, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Company’s equity securities.

“Significant Subsidiary” has the meaning ascribed to such term in Section 210.1-02 of Regulation S-X promulgated by the SEC.

“SL SPV-2” has the meaning ascribed to such term in the Preamble.

“SLD Trust” has the meaning ascribed to such term in the Preamble.

“SLG” has the meaning ascribed to such term in the Preamble.

“SLP” means Silver Lake Management Company III, L.L.C., Silver Lake Management Company IV, L.L.C., Silver Lake Management Company V, L.L.C. and their respective affiliated management companies and investment vehicles.

“SLP IV” has the meaning ascribed to such term in the Preamble.

“SLP V” has the meaning ascribed to such term in the Preamble.

“SLP Director Nominee” has the meaning ascribed to such term in Section 3.1(a)(i).

“SLP Stockholders” has the meaning ascribed to such term in the Preamble.

“SLP Stockholders’ Initial Stake” means the 42,050,818 shares of Common Stock beneficially owned by the SLP Stockholders in the aggregate immediately following the Distribution (equitably adjusted for any stock splits, reverse stock splits, recapitalizations or similar transactions that may occur following the Distribution).

“SLTI IV” has the meaning ascribed to such term in the Preamble.

“SLTI V” has the meaning ascribed to such term in the Preamble.

“Spousal Consent” has the meaning ascribed to such term in Section 2.1(f).

“Stockholders” has the meaning ascribed to such term in the Preamble.

“Subsidiary” means, with respect to any Person, any entity of which (i) a majority of the total voting power of shares of stock or equivalent ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees or other members of the applicable governing body thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if no such governing body exists at such entity, a majority of the total voting power of shares of stock or equivalent ownership interests of the entity is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing member or general partner of such limited liability company, partnership, association or other business entity.

“Synthetic Equity Interests” means any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such person, the purpose or effect of which is to give such person economic risk similar to ownership of equity securities of any class or series of the Company, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Company’s equity securities, or which derivative, swap or other transactions provide the opportunity to profit from any increase in the price or value of shares of any class or series of the Company’s equity securities, without regard to

whether (A) the derivative, swap or other transactions convey any voting rights in such equity securities to such person; (B) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such equity securities; or (C) such person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions.

“VCOC Investor” has the meaning ascribed to such term in Section 3.4(a).

SECTION 1.2. General Interpretive Principles. The name assigned to this Agreement and the section captions used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms “hereof,” “herein” and similar terms refer to this Agreement as a whole, and references herein to Articles or Sections refer to Articles or Sections of this Agreement. For purposes of this Agreement, the words, “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation.” The terms “dollars” and “\$” shall mean United States dollars. The use of “Affiliates” and “Subsidiaries” shall be deemed to be followed by the words “as such entities exist as of the relevant date of determination.” The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Furthermore, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application to the parties hereto and is expressly waived.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Representations and Warranties of the Parties. Each of the MSD Stockholders and the SLP Stockholders hereby represents and warrants, severally and not jointly, to the Company, and the Company hereby represents and warrants to the MSD Stockholders and the SLP Stockholders, in each case, as of the date hereof (and in respect of any Stockholder who becomes a party to this Agreement after the date hereof, such Stockholder hereby represents and warrants to the Company on the date of its, his or her execution of this Agreement) as follows:

(a) Such party, to the extent applicable, is duly organized or incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation and has all requisite power and authority to conduct its business as it is now being conducted and is proposed to be conducted.

(b) Such party has the full power, authority and legal right to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action, corporate or otherwise, of such party. This Agreement has been duly executed and delivered by such party and constitutes its, his or her legal, valid and binding obligation, enforceable against it, him or her in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally.

(c) The execution and delivery by such party of this Agreement, the performance by such party of its, his or her obligations hereunder by such party does not and will not violate (i) in the case of parties who are not individuals, any provision of its Organizational Documents, (ii) any provision of any material agreement to which it, he or she is a party or by which it, he or she is bound or (iii) any law, rule, regulation, judgment, order or decree to which it, he or she is subject.

(d) Such party is not as of such date in violation of any law, rule, regulation, judgment, order or decree, which violation could reasonably be expected at any time to have a material adverse effect upon such party's ability to enter into this Agreement or to perform its, his or her obligations hereunder.

(e) There is no pending legal action, suit or proceeding that would materially and adversely affect the ability of such party to enter into this Agreement or to perform its, his or her obligations hereunder.

(f) If such Stockholder is an individual and married, he or she has delivered to the Company a duly executed copy of a Spousal Consent in the form attached hereto as Annex A (a "Spousal Consent").

(g) Such Stockholder has not granted and is not a party to any proxy, voting trust or other similar agreement in effect as of the date hereof that violates the provisions of this Agreement.

ARTICLE III

GOVERNANCE

SECTION 3.1. Board of Directors of the Company.

(a) Board Representation.

(i) Director Nominees.

(A) MSD Nomination Rights. To the extent permitted by applicable law and the rules of the Approved Exchange on which the Company's equity securities are traded or listed, the Company agrees that unless otherwise agreed to by the MSD Stockholders, (x) for so long as the MSD Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 47% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 20% of all outstanding Common Stock), the CCGC (or the Board) shall nominate (i) one individual (the "Class I MSD Director") designated by the MSD Stockholders for election to the Board as a Class I director (as referenced in the Company's certificate of incorporation) at each annual meeting or action by written consent at which Class I directors will be elected and (ii) following a timely written request from the MSD Stockholders, shall promptly appoint to the Board and thereafter nominate a second individual (the "Additional MSD Director") designated by the MSD Stockholders for election to the Board at each annual meeting or action by written consent at which the class of directors that the Additional MSD Director becomes a member of, will be elected, in each case for so long as the Board remains classified and (y) for so long as the MSD Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 18% but less than 47% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 7.5% but less than 20% of all outstanding Common Stock), the CCGC (or the Board) shall nominate the Class I MSD Director for election to the Board at each annual meeting or action by written consent at which Class I directors will be elected. If the MSD Stockholders cease to collectively beneficially own a number of shares of Common Stock equal to at least 47% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 20% of all outstanding Common Stock), the MSD Stockholders shall cause any Additional MSD Director to offer to promptly resign from the Board (which resignation may or may not be accepted by the Board in its

sole discretion). If the MSD Stockholders cease to collectively beneficially own a number of shares of Common Stock equal to at least 18% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 7.5% of all outstanding Common Stock), the MSD Stockholders shall cause the Class I MSD Director to offer to promptly resign from the Board (which resignation may or may not be accepted by the Board in its sole discretion). The Class I MSD Director and the Additional MSD Director are each referred to as an "MSD Director Nominee"; provided, that in the case of any MSD Director Nominee other than MSD, such individual will be subject to the Reasonable Approval of the CCGC; provided, further, that in no event shall any MSD Director Nominee, other than MSD, be an officer or employee of Dell. The initial Class I MSD Director shall be MSD and as of the date hereof, MSD is the sole "MSD Director Nominee". In the event the MSD Stockholders exercise their right to designate the Additional MSD Director following the date hereof, at the Board's election, either the size of the Board will be expanded to include such MSD Director Nominee or such MSD Director Nominee will replace an existing Board member, and the Additional MSD Director will be added to the class of directors standing for election at the Company's next annual meeting, unless otherwise required by the Company's certificate of incorporation. If the MSD Stockholders wish to designate the Additional MSD Director, the MSD Stockholders shall deliver written notice to the Company; provided, that such notice shall not be delivered between the date that is 30 days after the end of any fiscal year and the filing by the Company of a proxy statement relating to the Company's next annual meeting. If at any time following the date hereof, the Board of Directors is no longer classified and all directors stand for annual election, then the CCGC (or the Board) shall nominate at each meeting or action by written consent at which directors are elected (I) two MSD Director Nominees (or such lesser number as may be requested by MSD) for so long as the MSD Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 47% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 20% of all outstanding Common Stock) and (II) one MSD Director Nominee for so long as the MSD Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 18% but less than 47% of the MSD Stockholders' Initial Stake (or, if less, equal to at least 7.5% but less than 20% of all outstanding Common Stock). The MSD Stockholders shall cause each MSD Director Nominee, and any replacement, to complete the Company's standard director and officer questionnaire and other governance and nomination documents provided in the ordinary course to all other director nominees.

(B) SLP Nomination Rights. To the extent permitted by applicable law and the rules of the Approved Exchange on which the Company's equity securities are traded or listed, the Company agrees that unless otherwise agreed to by the SLP Stockholders, for so long as the SLP Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 67% of the SLP Stockholders' Initial Stake (or, if less, equal to at least 7.5% of all outstanding Common Stock), the CCGC (or the Board) shall nominate one individual designated by the SLP Stockholders for election to the Board as a Class I director (as referenced in the Company's certificate of incorporation) at each annual meeting or action by written consent at which Class I directors will be elected (such individual, the "SLP Director Nominee"; provided, that in the event the SLP Director Nominee is other than Egon Durban, such individual will be subject to the Reasonable Approval of the CCGC; provided, further, that in no event shall the SLP Director Nominee be an officer or employee of Dell. If the SLP Stockholders cease to collectively beneficially own a number of shares of Common Stock equal to at least 67% of the SLP Stockholders' Initial Stake (or, if less, equal to at least 7.5% of all outstanding Common Stock), the SLP Stockholders shall cause the SLP Director Nominee to offer to promptly resign from the Board (which resignation may or may not be accepted by the

Board in its sole discretion). As of the date hereof, Egon Durban is the “SLP Director Nominee”. If at any time following the date hereof, the Board of Directors is no longer classified and all directors stand for annual election, then the CCGC (or the Board) shall nominate the SLP Director Nominee at each meeting or action by written consent at which directors are elected for so long as the SLP Stockholders collectively beneficially own a number of shares of Common Stock equal to at least 67% of the SLP Stockholders’ Initial Stake (or, if less, equal to at least 7.5% of all outstanding Common Stock). The SLP Stockholders shall cause each SLP Director Nominee, and any replacement, to complete the Company’s standard director and officer questionnaire and other nomination and governance documents provided in the ordinary course to all other director nominees.

(ii) Support.

(A) For so long as the MSD Stockholders have the right to designate at least one MSD Director Nominee or the SLP Stockholders have the right to designate an SLP Director Nominee, in each case, for election pursuant to Section 3.1(a)(i), each of the CCGC (or the Board) and the Company shall nominate each such MSD Director Nominee and SLP Director Nominee when applicable as part of the slate of directors that is included in the proxy statement (or consent solicitation or similar document) of the Company relating to such election of directors, and shall provide the same support for the election of each such SLP Director Nominee and MSD Director Nominee as it provides for all other individuals standing for election.

(B) During such period as the CCGC (or the Board) or the Company continues to nominate the MSD Director Nominee(s) and unless the MSD Stockholders notify the Company or the Board in writing of their desire to irrevocably renounce their rights to designate all MSD Director Nominees and all MSD Director Nominees have resigned from the Board in accordance with Section 3.1(c), the MSD Stockholders agree with the Company (and not any other party hereto) that (A) no MSD Stockholder shall otherwise act, alone or in concert with others, to seek to propose to the Company or any of its stockholders to nominate or support any Person as a director who is not an MSD Director Nominee or otherwise nominated by the CCGC (or the Board) and (B) at the Company’s annual meeting of stockholders and at any other meeting of the stockholders of the Company, however called, including any adjournment, recess or postponement thereof, the MSD Stockholders shall, to the extent that their shares of Common Stock are entitled to vote thereon, or in any other circumstance in which the vote, consent or other approval of the stockholders of the Company is sought, (1) appear at each such meeting or otherwise cause all of the Common Stock beneficially owned by the MSD Stockholders (and for which the MSD Stockholders have the right to vote) as of the applicable record date to be counted as present thereat for purposes of calculating a quorum and (2) vote (or cause to be voted), in person or by proxy, all of the MSD Stockholders’ Common Stock as of the applicable record date for each MSD Director Nominee and each other individual nominated by the CCGC (or the Board) for election to the Board.

(C) During such period as the CCGC (or the Board) continues to nominate the SLP Director Nominee and unless the SLP Stockholders notify the Company or the Board in writing of their desire to irrevocably renounce their rights to designate an SLP Director Nominee and such SLP Director Nominee has resigned from the Board in accordance with Section 3.1(c), the SLP Stockholders agree with the Company (and not any other party hereto) that (A) no SLP Stockholder shall otherwise act, alone or in concert with others, to seek to propose to the Company or any of its stockholders to nominate or support any Person as a director who is not an SLP Director

Nominee or otherwise nominated by the CCGC (or the Board) and (B) at the Company's annual meeting of stockholders and at any other meeting of the stockholders of the Company, however called, including any adjournment, recess or postponement thereof, the SLP Stockholders shall, to the extent that their shares of Common Stock are entitled to vote thereon, or in any other circumstance in which the vote, consent or other approval of the stockholders of the Company is sought, (1) appear at each such meeting or otherwise cause all of the Common Stock beneficially owned by the SLP Stockholders (and for which the SLP Stockholders have the right to vote) as of the applicable record date to be counted as present thereat for purposes of calculating a quorum and (2) vote (or cause to be voted), in person or by proxy, all of the SLP Stockholders' Common Stock as of the applicable record date for each SLP Director Nominee and each other individual nominated by the CCGC (or the Board) for election to the Board.

(iii) Director Replacements. In the event that any MSD Director Nominee or SLP Director Nominee resigns as a director or is unable to serve as a director due to death, disability or other incapacity, subject to the reduction and elimination provisions contained in Section 3.1(a)(i), the MSD Stockholders or the SLP Stockholders, as applicable, shall have the right to immediately nominate another MSD Director Nominee or SLP Director Nominee, as applicable, who shall promptly be appointed by the CCGC (or the Board) to fill the vacancy resulting therefrom, subject to the requirements set forth in Section 3.1(a)(i)(A) or Section 3.1(a)(i)(B), as applicable. The Company shall take all actions consistent with actions taken by the Company in connection with the election of other members of the Board, including soliciting the vote of the stockholders of the Company, in order to elect or appoint any such SLP Director Nominee or any MSD Director Nominee nominated pursuant to this Section 3.1(a)(iii), and, in the event that the Company solicits the vote of the stockholders of the Company with respect to any such MSD Director Nominee or SLP Director Nominee, (A) the MSD Stockholders agree with the Company (and not any other party hereto) to vote their Common Stock for the election of such nominee and (B) the SLP Stockholders agree with the Company (and not any other party hereto) to vote their Common Stock for the election of such nominee. For the avoidance of doubt, it is understood that the failure of the stockholders of the Company to elect or appoint any MSD Director Nominee or SLP Director Nominee shall not be a breach of this Agreement by the Company (*provided* that such failure has not resulted from a breach of this Agreement by the Company) or affect the right of the MSD Stockholders or the SLP Stockholders to nominate any MSD Director Nominee or SLP Director Nominee, as applicable, for election pursuant to Section 3.1(a)(i) in connection with any future election of directors of the Company.

(iv) Board Committees. For so long as the MSD Stockholders have the right to designate any MSD Director Nominee for election pursuant to Section 3.1(a)(i) and to the extent permitted by applicable law and the rules of the Approved Exchange on which the Company's equity securities are traded or listed, the MSD Stockholders shall be entitled to have an MSD Director Nominee, to the extent then serving on the Board, serve as a member of each committee of the Board (other than the audit committee); provided, that, no MSD Director Nominee shall be entitled to serve as a member of a committee of the Board if, at the time such MSD Director Nominee is to be appointed to such committee, there exists, solely as a result of such MSD Director Nominee serving on such committee, an actual conflict of interest between the Company, on the one hand, and such MSD Director Nominee, on the other hand. For so long as the SLP Stockholders have the right to designate an SLP Director Nominee for election pursuant to Section 3.1(a)(i) and to the extent permitted by applicable law and the rules of the Approved Exchange on which the Company's equity securities are traded or listed, the SLP Stockholders shall be entitled to have an SLP Director Nominee, to the extent then

serving on the Board, serve as a member of each committee of the Board (other than the audit committee); provided, that, no SLP Director Nominee shall be entitled to serve as a member of a committee of the Board if, at the time such SLP Director Nominee is to be appointed to such committee, there exists, solely as a result of such SLP Director Nominee serving on such committee, an actual conflict of interest between the Company, on the one hand, and such SLP Director Nominee, on the other hand. In addition, no MSD Director Nominee or SLP Director Nominee shall serve on the audit or related persons transactions committees of the Board. The MSD Stockholders and the SLP Stockholders acknowledge that any appointment to a currently existing committee will occur, following a request by a MSD Director Nominee or SLP Director Nominee, in accordance with the Board's customary committee assignment timeline. In the event the Board forms a new committee or materially changes the delegation of authority to an existing committee and an MSD Director Nominee or SLP Director Nominee (or both) elect to serve on such committee, the Board shall appoint such individual(s) to such committee at the time of formation of, or change in authority of, the committee.

(b) Board Chairman. As of the date hereof, the Chairman of the Board shall be MSD. For so long as the MSD Stockholders have the right to nominate a director pursuant to Section 3.1(a)(i)(A), the Chairman of the Board shall remain MSD for so long as he remains a member of the Board.

(c) Renunciation of Director Designation Right. In the event that the MSD Stockholders notify the Company or the Board in writing of their decision to irrevocably renounce their rights to designate an MSD Director Nominee, the MSD Stockholders shall cause each MSD Director Nominee then serving on the Board to resign promptly, but in any event within one Business Day of such notice. In the event that the SLP Stockholders notify the Company or the Board in writing of their decision to irrevocably renounce their rights to designate an SLP Director Nominee, the SLP Stockholders shall cause such SLP Director Nominee then serving on the Board to resign promptly, but in any event within one Business Day of such notice.

(d) Compliance with Policies. At all times while serving as a member of the Board, the MSD Director Nominees and SLP Director Nominee shall comply with all duly adopted policies, procedures, processes, codes, rules, standards and guidelines applicable to all non-executive Board members, including the Company's Business Conduct Guidelines, director policies and corporate governance guidelines, and preserve the confidentiality of Company business and information, including discussions or matters considered in meetings of the Board or Board committees (subject to Section 4.2 and Section 4.3 below). For so long as there is any MSD Director Nominee or SLP Director Nominee serving or participating on the Board, (i) any share ownership requirement for each such nominee serving on the Board will be deemed satisfied by the Securities owned by MSD Stockholders (in the case of any MSD Director Nominee) and the SLP Stockholders (in the case of the SLP Director Nominee), (ii) no policy, procedure, code, rule, standard or guideline applicable to the Board adopted after the date hereof shall be deemed violated by the MSD Director Nominees or the SLP Director Nominee (x) accepting an invitation to serve on another board of directors of a company whose principal lines(s) of business do not compete with the principal line(s) of business of the Company (*provided* that clause (ii) shall not exempt compliance with any policy, procedure, process, code, rule, standard or guideline adopted by the Board to reflect guidelines or recommendations published by Institutional Shareholder Services or other leading proxy advisory services) or (y) receiving compensation (1), in the case of MSD, from Dell or its Affiliates or (2) in the case of the SLP Director Nominee, from any SLP Stockholder or its Affiliates and (iii) under no circumstances shall any policy, procedure, code, rule, standard or guideline applicable to the Board (other than with respect to insider trading, hedging (as governed by the Company's insider trading policy in effect as of the date of this Agreement) and other applicable law) be deemed to impose any restrictions on sales of Securities by the MSD Stockholders or the SLP Stockholders.

SECTION 3.2. Standstill; Voting.

(a) Acquisition of Common Stock.

(i) The MSD Stockholders, severally and not jointly, agree with the Company (and not any other party hereto) not to acquire, whether by purchase, tender or exchange offer, by joining a partnership, limited partnership, syndicate or other group, through swap or hedging transactions or otherwise, beneficial ownership of any Securities, Synthetic Equity Interests or Short Interests other than: (A) the Common Stock received by the MSD Stockholders in the Distribution; (B) acquisitions of up to 2% in the aggregate of the Common Stock outstanding as of the date of any such acquisition (measured immediately prior to such acquisition) that do not result in the MSD Stockholders beneficially owning in the aggregate a percentage of the outstanding Common Stock that is greater than the percentage of the outstanding Common Stock represented by the MSD Stockholders' Initial Stake; (C) acquisitions of up to 1% in the aggregate of the Common Stock outstanding as of the date of any such acquisition (measured immediately prior to such acquisition) that would not be permitted under the preceding clause (B) (whether because such acquisitions would result in the MSD Stockholders beneficially owning in the aggregate a percentage of the outstanding Common Stock that is greater than that permitted thereby or because the MSD Stockholders have already acquired the maximum aggregate amount permitted thereby); or (D) acquisitions that are otherwise approved by the Board. For the avoidance of doubt, but subject to compliance with duly adopted policies, procedures, processes, codes, rules, standards and guidelines adopted by the Company with respect to insider trading and other applicable law, this Section 3.2(a)(i) shall not in any way limit, restrict or prevent a disposition of Securities, Synthetic Equity Interests or Short Interests by the MSD Stockholders regardless of the manner of such disposition (including any deferred disposition, forward contract, installment sale, collateralized convertible security or similar instrument). For the avoidance of doubt, the MSD Stockholders may not acquire Securities that would result in the MSD Stockholders holding, in the aggregate, a percentage of the then outstanding Common Stock that is greater than one percentage point more than the percentage of the outstanding Common Stock represented by the MSD Stockholders' Initial Stake on the date hereof.

(ii) The SLP Stockholders, severally and not jointly, agree with the Company (and not any other party hereto) not to acquire, whether by purchase, tender or exchange offer, by joining a partnership, limited partnership, syndicate or other group, through swap or hedging transactions or otherwise, beneficial ownership of any Securities, Synthetic Equity Interests or Short Interests other than: (A) the Common Stock received by the SLP Stockholders in the Distribution; (B) acquisitions of up to 2% in the aggregate of the Common Stock outstanding as of the date of any such acquisition (measured immediately prior to such acquisition) that do not result in the SLP Stockholders beneficially owning in the aggregate a percentage of the outstanding Common Stock that is greater than the percentage of the outstanding Common Stock represented by the SLP Stockholders' Initial Stake; (C) acquisitions of up to 1% in the aggregate of the Common Stock outstanding as of the date of any such acquisition (measured immediately prior to such acquisition) that would not be permitted under the preceding clause (B) (whether because such acquisitions would result in the SLP Stockholders beneficially owning in the aggregate a percentage of the outstanding Common Stock that is greater than that permitted thereby or because the SLP Stockholders have already acquired the maximum aggregate amount permitted thereby); or (D) acquisitions that are otherwise approved by the Board. For the avoidance of doubt, but subject to compliance with duly adopted policies, procedures, processes, codes, rules, standards and guidelines adopted by the Company with respect to insider trading and other applicable law, this Section 3.2(a)(ii) shall not in any way limit, restrict or prevent a disposition of Securities, Synthetic Equity Interests or Short Interests by the SLP Stockholders regardless of the manner of such disposition (including any deferred disposition, forward contract, installment sale, collateralized convertible security or similar instrument). For the avoidance of doubt, the SLP Stockholders may not acquire Securities that would result in the SLP Stockholders holding, in the aggregate, a percentage of the then outstanding Common Stock that is greater than one percentage point more than the percentage of the outstanding Common Stock represented by the SLP Stockholders' Initial Stake on the date hereof.

(iii) For so long as the MSD Stockholders (with respect to the MSD Stockholders) have the right to nominate a director to the Board pursuant to Section 3.1 and the SLP Stockholders (with respect to the SLP Stockholders) have the right to nominate a director to the Board pursuant to Section 3.1, the MSD Stockholders and the SLP Stockholders, as applicable, shall, upon reasonable written request of the Company, inform the Company of their respective beneficial ownership to the extent that such Stockholders are no longer subject to Section 16 of the Exchange Act and such position differs from the ownership positions publicly reported on their respective Schedule 13D and amendments thereto.

(b) Other Stockholder Action.

(i) The MSD Stockholders, severally and jointly, agree with the Company (and not any other party hereto) not to (A) make any public proposal or announcement (individually, together or with a third party) or (B) take any public or private action with any third party, in the case of each of the foregoing clauses (A) and (B), other than in any MSD Director Nominee's capacity as a member of the Board (and subject in all respects to such MSD Director Nominee's fiduciary duties under applicable law), that constitutes: (w) controlling, changing or influencing the Board or management of the Company, including any plans or proposals to change the number of directors or to fill any vacancies on the Board; (x) any material change in the capitalization, share repurchase programs and practices, capital allocation programs and practices or dividend practice of the Company; (y) any other material change in the Company's management, business or corporate structure; or (z) seeking to have the Company waive or make amendments or modifications to the Company's certificate of incorporation or bylaws.

(ii) The SLP Stockholders, severally and jointly, agree with the Company (and not any other party hereto) not to (A) make any public proposal or announcement (individually, together or with a third party) or (B) take any public or private action with any third party, in the case of each of the foregoing clauses (A) and (B), other than in the SLP Director Nominee's capacity as a member of the Board (and subject in all respects to such SLP Director Nominee's fiduciary duties under applicable law), that constitutes: (w) controlling, changing or influencing the Board or management of the Company, including any plans or proposals to change the number of directors or to fill any vacancies on the Board; (x) any material change in the capitalization, share repurchase programs and practices, capital allocation programs and practices or dividend practice of the Company; (y) any other material change in the Company's management, business or corporate structure; or (z) seeking to have the Company waive or make amendments or modifications to the Company's certificate of incorporation or bylaws.

(c) Stockholder Voting.

(i) Except as otherwise set forth below, in the event the Board approves and recommends that the Company's stockholders vote in favor of a transaction that requires approval of the Company's stockholders relating to mergers, acquisitions or other business combinations or extraordinary transactions involving the Company, or the issuance of Securities in connection with any such transaction (in each such case, other than a Sale Transaction), the MSD Stockholders, severally and not jointly, agree with the Company (and not any other party hereto) to, at any applicable meeting of stockholders of the Company, however called, including any adjournment, recess or postponement thereof, to the extent that their

shares of Common Stock are entitled to vote thereon, (A) appear at each such meeting or otherwise cause all of the Common Stock beneficially owned by such MSD Stockholder (and for which the MSD Stockholders have the right to vote) as of the applicable record date to be counted as present thereat for purposes of calculating a quorum and (B) vote (or cause to be voted), in person or by proxy, all of such MSD Stockholder's Common Stock as of the applicable record date in favor of such transaction. Notwithstanding the foregoing, no MSD Stockholder shall have any obligations with respect to any transaction pursuant to this Section 3.2(c)(i) unless (x) MSD (or any MSD Director Nominee who is an Immediate Family Member of MSD) has voted in favor of the applicable transaction in his or her capacity as a director, (y) the Board has not "changed" or "withdrawn" its recommendation that the Company's stockholders vote in favor of such applicable transaction and (z) such applicable transaction does not require any MSD Stockholder to forfeit, terminate or relinquish any or all of its rights under this Agreement (for the avoidance of doubt, any increase to the size of the Board or grant of director nomination rights to any Person in connection with any such transaction shall not be deemed to be a forfeiture, termination or relinquishment of the MSD Stockholders' rights so long as such transaction does not otherwise limit the MSD Stockholders' ability to nominate directors pursuant to Section 3.1(a)(i)(A)).

(ii) Except as otherwise set forth below, in the event the Board approves and recommends that the Company's stockholders vote in favor of a transaction that requires approval of the Company's stockholders relating to mergers, acquisitions or other business combinations or extraordinary transactions involving the Company, or the issuance of Securities in connection with any such transaction (in each such case, other than a Sale Transaction), the SLP Stockholders, severally and not jointly, agree with the Company (and not any other party hereto) to, at any applicable meeting of stockholders of the Company, however called, including any adjournment, recess or postponement thereof, to the extent that their shares of Common Stock are entitled to vote thereon, (A) appear at each such meeting or otherwise cause all of the Common Stock beneficially owned by such SLP Stockholder (and for which the SLP Stockholders have the right to vote) as of the applicable record date to be counted as present thereat for purposes of calculating a quorum and (B) vote (or cause to be voted), in person or by proxy, all of such SLP Stockholder's Common Stock as of the applicable record date in favor of such transaction. Notwithstanding the foregoing, no SLP Stockholder shall have any obligations with respect to any transaction pursuant to this Section 3.2(c)(ii) unless (x) Egon Durban (or any SLP Director Nominee who is a Managing Director of SLP) has voted in favor of the applicable transaction in his or her capacity as a director, (y) the Board has not "changed" or "withdrawn" its recommendation that the Company's stockholders vote in favor of such applicable transaction and (z) such applicable transaction does not require any SLP Stockholder to forfeit, terminate or relinquish any or all of its rights under this Agreement (for the avoidance of doubt, any increase to the size of the Board or grant of director nomination rights to any Person in connection with any such transaction shall not be deemed to be a forfeiture, termination or relinquishment of the SLP Stockholders' rights so long as such transaction does not otherwise limit the SLP Stockholders' ability to nominate directors pursuant to Section 3.1(a)(i)(A)).

(d) The MSD Stockholders, on the one hand, and the SLP Stockholders, on the other hand, agree not to have voting or investment power (as such terms are used in Rule 13d-3 under the Exchange Act) over the Common Stock beneficially owned by the other.

(e) This Section 3.2 shall terminate and cease to have any force or effect (i) with respect to the MSD Stockholders, upon the earliest of (A) the date on which the MSD Stockholders beneficially own less than 7.5% of the outstanding Common Stock, (B) the later of (x) the three year anniversary after the date of the Distribution and (y) the one year anniversary of the date on which the MSD Stockholders cease to have (or irrevocably renounce in a writing delivered to the Company or the Board) the right to designate an MSD Director Nominee pursuant to Section 3.1(a)(i), or (C) the expiration of

the initial term (or earlier termination) of the Commercial Framework Agreement and (ii) (i) with respect to the SLP Stockholders, upon the earliest of (A) the date on which the SLP Stockholders beneficially own less than 7.5% of the outstanding Common Stock, (B) the later of (x) the three year anniversary after the date of the Distribution and (y) the one year anniversary of the date on which the SLP Stockholders cease to have (or irrevocably renounce in a writing delivered to the Company or the Board) the right to designate an SLP Director Nominee pursuant to Section 3.1(a)(i), or (C) the expiration of the initial term (or earlier termination) of the Commercial Framework Agreement.

SECTION 3.3. Affiliate Transactions. All transactions that occur following the Distribution between the Company, on the one hand, and (a) MSD or his Affiliates, on the other hand, shall remain subject to review and approval by the Related Persons Transactions Committee of the Board until such time that the MSD Stockholders cease to have (or irrevocably renounce in a writing delivered to the Board) the right to designate an MSD Director Nominee pursuant to Section 3.1(a)(i) (and all such MSD Director Nominees have resigned pursuant to Section 3.1(c)) and cease to collectively beneficially own 10% or more of the outstanding Common Stock (and after such time, such transactions shall not be subject to review or approval by the Related Persons Transactions Committee) and (b) SLP or its Affiliates, on the other hand, shall remain subject to review and approval by the Related Persons Transactions Committee of the Board until such time that the SLP Stockholders cease to have (or irrevocably renounce in a writing delivered to the Board) the right to designate an SLP Director Nominee pursuant to Section 3.1(a)(i) (and such SLP Director Nominee has resigned pursuant to Section 3.1(c)) and cease to collectively beneficially own 10% or more of the outstanding Common Stock (and after such time, such transactions shall not be subject to review or approval by the Related Persons Transactions Committee).

SECTION 3.4. VCOC Investors.

(a) With respect to (X) each SLP Stockholder and (Y) each Affiliate thereof that directly or indirectly has an interest in the Company, in each such case of (X) and (Y) that is intended to qualify as a “venture capital operating company” as defined in the Plan Assets Regulations (each, a “VCOC Investor”), for so long as the VCOC Investor, directly or through one or more Subsidiaries, continues to beneficially own at least 5% of the outstanding Securities (or other securities of the Company into which such Securities may be converted or for which such Securities may be exchanged), in each case, without limitation or prejudice of any the rights provided to the SLP Stockholders hereunder, the Company shall, with respect to each such VCOC Investor:

(i) provide such VCOC Investor or its designated representative with the following:

(A) the information rights and the visitation rights set forth in Section 4.5(a)(i)(A), Section 4.5(a)(i)(B), Section 4.5(a)(i)(C), Section 4.5(a)(iii) and Section 4.5(b)(i)(B);

(B) to the extent the Company or any of its Subsidiaries is required by law or pursuant to the terms of any outstanding indebtedness of the Company or such Subsidiary to prepare such reports, any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act, actually prepared by the Company or such Subsidiary as soon as available; and

(C) copies of all materials provided to the Board at substantially the same time as provided to the members of the Board and, if requested, copies of the materials provided to the board of directors (or equivalent governing body) of any Significant Subsidiary of the Company; provided, that no materials provided to committees of the Board but not to the full Board shall be required to be delivered pursuant to this Section 3.4(a)(i)(C); provided, further, that the Company or such Significant Subsidiary shall be entitled to exclude

portions of such materials to the extent providing such portions would be reasonably likely to result in the waiver of attorney-client privilege or for which the Company reasonably expects there to be a conflict of interest between the Company or such Significant Subsidiary, on the one hand, and the VCOC Investor, on the other hand; provided that

(ii) solely for purposes of Section 3.4(a)(i)(A), Section 3.4(a)(i)(B) and Section 3.4(a)(i)(C), the obligation of the Company to deliver the materials described therein shall be deemed satisfied if delivered by the Company to a designated representative of the VCOC Investor, including, with respect to the SLP Stockholders, the SLP Director Nominee (it being understood that the designated representative shall be entitled to distribute copies of such materials to each VCOC Investor) and (ii) solely for purposes of Section 3.4(a)(i)(A) and Section 3.4(a)(i)(B), the obligation of the Company to deliver the materials described therein shall be deemed satisfied if the Company makes such information available through public filings on the EDGAR system or any successor or replacement system of the SEC or provides such materials on the Company's website; and

(iii) make appropriate officers of the Company and its Subsidiaries and members of the Board available periodically and at such times as reasonably requested by such VCOC Investor for consultation with such VCOC Investor or its designated representative with respect to matters relating to the business and affairs of the Company and its Subsidiaries.

(b) The Company agrees to consider, in good faith, the recommendations of each VCOC Investor or its designated representative in connection with the matters on which it is consulted as described above, recognizing that the ultimate discretion with respect to all such matters shall be retained by the Company.

(c) Any VCOC Investor, for so long as such VCOC Investor directly or indirectly, or through one or more Subsidiaries, continues to beneficially own at least 5% of the outstanding Securities (or other securities of the Company into which such Securities may be converted or for which such Securities may be exchanged) shall be an express third party beneficiary of this Section 3.4.

ARTICLE IV

ADDITIONAL AGREEMENTS

SECTION 4.1. Further Assurances. From time to time, at the reasonable request of a party hereto and without further consideration, each party hereto shall execute and deliver such additional documents and take all such further action as may be necessary or appropriate to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement; including, with respect to the Stockholders, the delivery to the Company of director questionnaires and such other information that is requested of each other director of the Board as is reasonably requested by the CCGC in connection with the nomination or continued director service of an MSD Director Nominee or the SLP Director Nominee, as applicable.

SECTION 4.2. Other Businesses; Waiver of Certain Duties.

(a) The Company (for itself and on behalf of each of its Subsidiaries and controlled Affiliates), hereby expressly acknowledges and agrees, subject to any express agreement that may from time to time be in effect, that, subject to Section 4.2(b), any Covered Person may, and shall have no duty not to:

(i) invest in, carry on and conduct, whether directly, or as a partner in any partnership, or as a joint venturer in any joint venture, or as an officer, director, stockholder, equityholder or investor in any Person, or as a participant in any syndicate, pool, trust or association, any business of any kind, nature or description, whether or not such business is competitive with or in the same or similar lines of business as the Company or any of its Subsidiaries or controlled Affiliates;

(ii) do business with any client, customer, vendor or lessor of any of the Company or any of its Subsidiaries or controlled Affiliates; or

(iii) make investments in any kind of property in which the Company or its Subsidiaries or controlled Affiliates may make investments.

(b) To the fullest extent permitted by Section 122(17) of the DGCL or any other applicable law in the event that the applicable entity is not incorporated, formed or organized as a corporation in the State of Delaware, the Company (for itself and on behalf of each of its Subsidiaries and controlled Affiliates) hereby renounces any interest or expectancy to participate in any business or investments of any Covered Person as currently conducted or as may be conducted in the future, and waives any claim against a Covered Person and shall indemnify a Covered Person against any claim that such Covered Person is liable to the Company or its stockholders for breach of any fiduciary duty solely by reason of such Person's participation in any such business or investment. The Company shall pay in advance any expenses incurred in defense of such claim as provided in this provision. In the event that a Covered Person acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Covered Person and (y) the Company or any of its Subsidiaries or controlled Affiliates, the Covered Person shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company or any of its Subsidiaries or controlled Affiliates. To the fullest extent permitted by Section 122(17) of the DGCL or any other applicable law in the event that the applicable entity is not incorporated, formed or organized as a corporation in the State of Delaware, the Company (for itself and on behalf of each of its Subsidiaries and controlled Affiliates) hereby renounces any interest or expectancy in any potential transaction or matter of which the Covered Person acquires knowledge, except for any corporate opportunity which is expressly offered to a Covered Person in writing stating that such offer is being provided to such Covered Person solely in his or her capacity as a director of the Company and such corporate opportunity is intended solely for the benefit of the Company, and waives any claim against each Covered Person and shall indemnify a Covered Person against any claim, that such Covered Person is liable to the Company or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Covered Person (A) pursues or acquires any corporate opportunity for its own account or the account of any Affiliate or other Person, (B) directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to another Person or (C) does not communicate information regarding such corporate opportunity to the Company; provided, however, in each such case, that any corporate opportunity which is expressly offered to a Covered Person in writing stating that such offer is being provided to such Covered Person solely in his or her capacity as an officer or director of the Company shall belong to the Company. The Company shall pay in advance any expenses incurred in defense of such claim as provided in this provision, except to the extent that a Covered Person is determined by a final, non-appealable order of a Delaware court having competent jurisdiction (or any other judgment which is not appealed in the applicable time) to have breached this Section 4.2(b), in which case any such advanced expenses shall be promptly reimbursed to the Company.

(c) The provisions of this Section 4.2, to the extent that they restrict the duties and liabilities of the Stockholders or any MSD Director Nominee or SLP Director Nominee otherwise existing at law or in equity, are agreed by the Company and each of the Stockholders to replace such other duties and liabilities of the Stockholders or any MSD Director Nominee or SLP Director Nominee to the fullest extent permitted by applicable law.

SECTION 4.3. Confidentiality.

(a) Each Stockholder agrees to keep confidential and not disclose to any third party any materials and information provided to it by or on behalf of the Company or any of its Subsidiaries, and, subject to Section 4.3(b), not to use any such information other than in connection with its investment in the Company (“Confidential Information”); provided, however, that the term “Confidential Information” does not include information that:

(i) is already in such recipient’s possession (provided, that such information is not subject to another confidentiality agreement with or other obligation of secrecy to any Person);

(ii) is or becomes generally available to the public other than as a result of a disclosure, directly or indirectly, by such recipient or its Representatives;

(iii) is or becomes available to such recipient on a non-confidential basis from a source other than any of the Stockholders or any of their respective Representatives (provided, that such source is not known by such recipient to be bound by a confidentiality agreement with or other obligation of secrecy to any Person); or

(iv) is or was independently developed by such recipient or its Representatives without the use of any Confidential Information.

(b) The Company acknowledges that the Stockholders’ (including their affiliated private equity funds’) review of the Confidential Information will inevitably enhance their knowledge and understanding of the Company’s and its Subsidiaries’ industries in a way that cannot be separated from such Stockholder’s or its affiliated private equity funds’ other knowledge and the Company agrees that Section 4.3(a) shall not restrict such Stockholder’s (including its affiliated private equity funds’) use of such overall knowledge and understanding of such industries, including in connection with the purchase, sale, consideration of and decisions related to other investments and serving on the boards of such investments.

(c) Notwithstanding anything in this Section 4.3 to the contrary, any such Stockholder may disclose Confidential Information to:

(i) such Stockholder’s and its Affiliates’ Representatives who are subject to a customary confidentiality obligation to such Stockholder or its Affiliates;

(ii) any Person to which such Stockholder offers or may propose to offer to transfer any Securities (provided, that (x) such transfer would be permitted by the terms of this Agreement (assuming the receipt of all consents required hereunder) and (y) the prospective transferee agrees to be subject to a customary confidentiality agreement with the Company);

(iii) any other Stockholder or its Affiliates, or their respective Representatives, or any member of the Board or any board of directors of any Subsidiary of the Company;

(iv) the extent required to be disclosed by such Stockholder or its Affiliates, or their respective Representatives, by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process, law, regulation, legal or judicial process or audit or inquiries by a regulator, bank examiner or self-regulatory organization or pursuant to mandatory professional ethics rules (but only to the extent so required and after notifying the Company to the extent reasonably practicable and requesting confidential treatment of the Confidential Information required to be disclosed);

(v) current or prospective limited partners of a Stockholder or its affiliated private equity funds who are subject to confidentiality obligations to such Stockholder or its affiliated private equity funds; and

(vi) other Person(s) with the Company's prior written consent; provided, that each Stockholder shall be liable for any breaches of the confidentiality obligations under this Section 4.3 by any Person (including its Representatives) to which it discloses Confidential Information.

(d) Notwithstanding anything herein to the contrary, the Company and each Stockholder acknowledges and agrees (i) that the MSD Director Nominees may share confidential, non-public information about the Company and its Subsidiaries (including any materials received in their capacities as members of a Board or committee of the Company) with the MSD Stockholders and their respective Affiliates and (ii) that the SLP Director Nominee may share confidential, non-public information about the Company and its Subsidiaries (including any materials received in their capacities as members of a Board or committee of the Company) with the SLP Stockholders and their respective Affiliates, limited partners, members and direct and indirect investors, in each case, on a confidential basis (provided, that with respect to limited partners, members and direct and indirect investors, the SLP Director Nominee may only share such information solely to the extent necessary in connection with such Stockholder's fundraising activities).

SECTION 4.4. Expense Reimbursement. The Company shall, promptly and upon request, reimburse the Stockholders for all reasonable and documented out-of-pocket costs and expenses of their respective director nominees of the Board, if any, incurred in connection with Board service, including travel, lodging and meal expenses in connection with Board or committee meetings, in accordance with the Company's duly adopted policies with respect to director expense reimbursement as in effect from time to time. In the event the Company, in its sole discretion, requests the services of "value creation" personnel or employees of SLP or its Affiliates, SLP shall only be required to provide such services pursuant to a customary engagement letter on mutually agreeable terms and conditions (or such other services agreement which is mutually acceptable).

SECTION 4.5. Information Rights; Visitation Rights.

(a) Information Rights.

(i) Information Generally. The Company shall deliver, or cause to be delivered, to each of the Stockholders (for so long as they are entitled to nominate a MSD Director Nominee or SLP Director Nominee, as applicable):

(A) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, consolidated balance sheets of the Company and its consolidated Subsidiaries as of the end of such period, and the related consolidated statements of income, cash flows and changes in stockholders' equity of the Company and its consolidated Subsidiaries for the period then ended and the portion of the fiscal year then ended, in each case (x) prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein, and subject to the absence of footnotes and to year-end adjustments and (y) setting forth the figures for the corresponding periods of the previous fiscal year, or, in the case of such balance sheet, for the last day of such fiscal quarter, in comparative form, all in reasonable detail;

(B) as soon as available and in any event within 90 days after the end of each fiscal year of the Company, (1) a copy of the audited consolidated balance sheet of the Company and its consolidated Subsidiaries as of the end of such fiscal year, and the audited consolidated statements of income, cash flows and changes in stockholders' equity of the Company and its consolidated Subsidiaries for the fiscal year then ended, in each case, (x) prepared in conformity with generally accepted accounting principles in the United States applied on a consistent basis, except as otherwise noted therein and (y) setting forth in comparative form the figures for the immediately preceding fiscal year, all in reasonable detail and (2) a copy of the report, opinion or certification of the Company's independent accountant with respect to the Company's financial statements for such fiscal year; and

(C) with reasonable promptness after the transmission or occurrence (but in any event, within three Business Days), other reports, including communications directed at stockholders of the Company generally or the financial community, and any reports filed by the Company with the SEC or any stock exchange (if and when applicable).

(ii) Other Information. The Company shall deliver, or cause to be delivered, with reasonable promptness to the Stockholders such other information and data with respect to the Company or any of its consolidated Subsidiaries as from time to time may be reasonably requested by such Stockholder.

(iii) SEC Filings. At any time during which the Company is subject to the periodic reporting requirements of the Exchange Act or voluntarily reports thereunder, the Company may satisfy its obligations pursuant to Section 4.5(a)(i)(A), Section 4.5(a)(i)(B) and Section 4.5(a)(i)(C) by filing with the SEC (via the EDGAR system) on a timely basis annual and quarterly reports satisfying the requirements of the Exchange Act or otherwise filing with the SEC such other reports and materials or providing such reports on the Company's website.

(b) Visitation Rights.

(i) The Company shall, and shall cause its Subsidiaries to, permit each of the Stockholders (for so long as they are entitled to nominate a MSD Director Nominee or SLP Director Nominee, as applicable), at such Stockholder's own expense and at any time and from time to time during normal business hours and with reasonable prior notice, reasonable access (in a manner that does not unreasonably interfere with the normal business operations of the Company and its Subsidiaries) to:

(A) examine and make copies of and abstracts from the books, records, material contracts, properties, employees and management of the Company and its Subsidiaries;

(B) visit the properties of the Company and its Subsidiaries; and

(C) discuss the affairs, finances and accounts of the Company and its Subsidiaries with any of the directors, officers or employees of the Company and the independent accountants of the Company.

ARTICLE V

INDEMNIFICATION; INSURANCE

SECTION 5.1. Indemnification of Directors. In addition to any other indemnification rights that the directors have pursuant to the Organizational Documents of the Company, each of the directors of the Company shall have the right to enter into, and the Company agrees to enter into, an indemnification agreement that (a) is no less favorable to such director than any indemnification agreement such director may have with the Company as of the date hereof, and in any event no less favorable to such director than any indemnification agreement the Company may enter into with any other director of the Company from time to time, and (b) provides that the Company shall be the indemnitor of first resort.

SECTION 5.2. Insurance. The Company shall at all times maintain a policy or policies of insurance providing directors' and officers' liability insurance to the extent reasonably satisfactory to the MSD Stockholder and the SLP Stockholders.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. Entire Agreement. This Agreement (together with the Registration Rights Agreement) constitutes the entire understanding and agreement between the parties and supersedes and replaces any prior understanding, agreement or statement of intent, in each case, written or oral, of any and every nature with respect thereto. In the event of any inconsistency between this Agreement and any document executed or delivered to effect the purposes of this Agreement, including the Organizational Documents of any Person, this Agreement shall govern as among the parties hereto. Each of the parties hereto shall exercise all voting and other rights and powers available to it so as to give effect to the provisions of this Agreement and, if necessary, to procure (so far as it is able to do so) any required amendment to the Company's or its Subsidiaries' Organizational Documents, in order to cure any such inconsistency.

SECTION 6.2. Specific Performance. The parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that, in the event of breach by any party, damages would not be an adequate remedy and each of the other parties shall be entitled to specific performance and injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity. The parties hereto further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief.

SECTION 6.3. Governing Law. This Agreement and all claims or causes of action (whether in tort, contract or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement) shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

SECTION 6.4. Submissions to Jurisdictions; Waiver of Jury Trial.

(a) Each of the parties hereto hereby irrevocably acknowledges and consents that any legal action or proceeding brought with respect to this Agreement or any of the obligations arising under or relating to this Agreement shall be brought and determined exclusively in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal

court of the United States of America sitting in the State of Delaware), and each of the parties hereto hereby irrevocably submits to and accepts with regard to any such action or proceeding, for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware). Each party hereby further irrevocably waives any claim that the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware) lacks jurisdiction over such party, and agrees not to plead or claim, in any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby brought in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), that any such court lacks jurisdiction over such party.

(b) Each party irrevocably consents to the service of process in any legal action or proceeding brought with respect to this Agreement or any of the obligations arising under or relating to this Agreement by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party, at its address for notices as provided in Section 6.12, such service to become effective ten days after such mailing. Each party hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder or under any other documents contemplated hereby that service of process was in any way invalid or ineffective. Subject to Section 6.4(c), the foregoing shall not limit the rights of any party to serve process in any other manner permitted by applicable law. The foregoing consents to jurisdiction shall not constitute general consents to service of process in the State of Delaware for any purpose except as provided above and shall not be deemed to confer rights on any Person other than the respective parties to this Agreement.

(c) Each of the parties hereto hereby waives any right it may have under the laws of any jurisdiction to commence by publication any legal action or proceeding with respect to this Agreement or any of the obligations under or relating to this Agreement. To the fullest extent permitted by applicable law, each of the parties hereto hereby irrevocably waives the objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding with respect to this Agreement or any of the obligations arising under or relating to this Agreement in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), and hereby further irrevocably waives and agrees not to plead or claim that the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware) is not a convenient forum for any such suit, action or proceeding.

(d) The parties hereto agree that any judgment obtained by any party hereto or its successors or assigns in any action, suit or proceeding referred to above may, in the discretion of such party (or its successors or assigns), be enforced in any jurisdiction, to the extent permitted by applicable law.

(e) EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE PARTIES (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY SUIT, ACTION OR PROCEEDING,

SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.4(E).

SECTION 6.5. Obligations. All obligations hereunder shall be satisfied in full without set-off, defense or counterclaim.

SECTION 6.6. Consents, Approvals and Actions. All actions required to be taken by, or approvals or consents of, the MSD Stockholders or the SLP Stockholders under this Agreement or the Registration Rights Agreement shall be taken by consent or approval by, or agreement of, the holders of a majority of the Securities held by the MSD Stockholders or the SLP Stockholders, as applicable, and in each case such consent, approval or agreement shall constitute the necessary action, approval or consent by the MSD Stockholders or the SLP Stockholders, as applicable.

SECTION 6.7. Amendment; Waiver.

(a) Any amendment, modification, supplement or waiver to or of any provision of this Agreement shall require the prior written approval of (i) the Stockholder(s) to which the rights or obligations to be amended, modified, supplemental or waived apply and (ii) the Company. For the avoidance of doubt, any assignment pursuant to Section 6.8(b) shall not constitute an amendment hereto and the applicable assignment agreement need be signed only by the applicable transferor and transferee.

(b) Any failure by any party at any time to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provision or any other provisions hereof. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 6.8. Assignment of Rights By Stockholders.

(a) Subject to Section 6.8(b), no Stockholder may assign or transfer its rights or obligations under this Agreement except with the prior consent of the Company. Any purported assignment of rights or obligations under this Agreement in derogation of this Section 6.8 shall be null and void and shall not bind or be recognized by the Company or any other Person.

(b) Notwithstanding anything in this Agreement to the contrary, the Stockholders may assign or transfer any or all of their rights or obligations under this Agreement to their respective Permitted Assignees who hold Securities and have the voting power to comply with the contractual obligations of Section 3.2(c) (and, for the avoidance of doubt, any such assignees who are transferred such rights or obligations shall be deemed to be MSD Stockholders or SLP Stockholders, as applicable, for all purposes hereunder).

SECTION 6.9. Binding Effect. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the parties' successors and permitted assigns. Except upon the consummation of a Sale Transaction in which the consideration paid to the SLP Stockholders and the MSD Stockholders consists solely of cash, if the Company (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger; or (ii), shall transfer all or substantially all of its properties and assets to any Person, then, in each case of clauses (i) and (ii), the Company shall cause such Person that is the surviving entity or acquirer of the assets

of the Company (and any Person that is the parent company of such surviving entity or acquirer in which a Stockholder receives securities in connection with such transaction) to execute a stockholders agreement with terms with respect to the right of the MSD Stockholders and the SLP Stockholders to designate Board nominees that are substantially equivalent to the rights set forth in Sections 3.1(a)(i), (ii) and (iii) of this Agreement (assuming any applicable ownership thresholds of the MSD Stockholders and the SLP Stockholders with respect to such rights (applied *mutatis mutandis* to such Person and its securities) are satisfied in any such Person), such that such Person shall assume all of the obligations of the Company set forth in Sections 3.1(a)(i), (ii) and (iii) of this Agreement.

SECTION 6.10. Third Party Beneficiaries. Except for Section 3.4, Section 4.2, Article V and Section 6.13 (which will be for the benefit of the Persons set forth therein, and any such Person will have the rights provided for therein), this Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto, and it does not create or establish any third party beneficiary hereto.

SECTION 6.11. Termination of this Agreement. This Agreement shall terminate only (i) (x) (A) with respect to the MSD Stockholders, by written consent of the MSD Stockholders (for so long as such Stockholders own Securities) and (B) with respect to the SLP Stockholders, by written consent of the SLP Stockholders (for so long as such Stockholders own Securities) and (y) the written consent of the Company; provided, that the MSD Stockholders and the SLP Stockholders may, in their sole discretion, terminate their respective rights and obligations under Section 3.1(a) at any time, (ii) subject to Section 6.9, upon the dissolution or liquidation of the Company, or (iii) upon the consummation of a Sale Transaction in which (1) the consideration paid to the SLP Stockholders and the MSD Stockholders consists solely of cash or (2) the MSD Stockholders and the SLP Stockholders receive the same rights to designate board nominees with respect to any surviving or acquiring parent company in such Sale Transaction (in each case, in which such Stockholders receive securities in connection with such Sale Transaction) as the MSD Stockholders and the SLP Stockholders are entitled to pursuant to Sections 3.1(a)(i), (ii) and (iii) (assuming any applicable ownership thresholds of the MSD Stockholders and the SLP Stockholders with respect to such rights (applied *mutatis mutandis* to any such surviving or acquiring parent company and its securities) are satisfied in any such surviving or acquiring parent company); provided, that in the case of a termination pursuant to clause (i), Section 3.4, Section 4.2, Section 4.4, Article V and Article VI shall survive any such termination and remain in full force and effect unless and solely to the extent expressly waived in writing, with reference to such provisions, by the applicable Stockholder.

SECTION 6.12. Notices. Any and all notices, designations, offers, acceptances or other communications provided for herein shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by e-mail (with written confirmation of receipt) or nationally recognized overnight courier, which shall be addressed:

(a) in the case of the Company, to its principal office to the attention of its General Counsel (email [REDACTED]), with a copy (which shall not constitute actual or constructive notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Barbara L. Becker
Saeed M. Muzumdar
Andrew Kaplan
Email: bbecker@gibsondunn.com
Email: smuzumdar@gibsondunn.com
Email: akaplan@gibsondunn.com

(b) in the case of the Stockholders identified below, to the following respective addresses or e-mail addresses:

If to any of the MSD Stockholders, to:

Michael S. Dell
c/o Dell Inc.
One Dell Way
Round Rock, TX 76882

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Attention: Steven A. Rosenblum
Gordon S. Moodie
Email: sarosenblum@wlrk.com
Email: gsmoodie@wlrk.com

If to any of the SLP Stockholders, to:

c/o Silver Lake Partners
2775 Sand Hill Road
Suite 100
Menlo Park, CA 94025
Attention: Karen King
E-mail: [REDACTED]

and

c/o Silver Lake Partners
9 West 57th Street
32nd Floor
New York, NY 10019
Attention: Andrew J. Schader
E-mail: [REDACTED]

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

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: William R. Dougherty
Email: wdougherty@stblaw.com

and

Simpson Thacher & Bartlett LLP
2475 Hanover Street
Palo Alto, CA 94304
Attention: Atif I. Azher
Naveed Anwar
Email: aazher@stblaw.com
Email: naveed.anwar@stblaw.com

(c) in the case of any other Stockholder, to the address or e-mail address appearing in the books and records of the Company.

Any and all notices, designations, offers, acceptances or other communications shall be conclusively deemed to have been given, delivered or received (i) in the case of personal delivery, on the day of actual delivery thereof, (ii) in the case of e-mail, on the day of transmittal thereof if given during the normal business hours of the recipient, and on the Business Day during which such normal business hours next occur if not given during such hours on any day and (iii) in the case of dispatch by nationally recognized overnight courier, on the next Business Day following the disposition with such nationally recognized overnight courier. By notice complying with the foregoing provisions of this Section 6.12, each party shall have the right to change its mailing address or e-mail address for the notices and communications to such party. The Stockholders hereby consent to the delivery of any and all notices, designations, offers, acceptances or other communications provided for herein by email to the email address of such Stockholders as provided herein.

SECTION 6.13. No Third Party Liability. This Agreement may only be enforced against the named parties hereto. All claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto; and no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, portfolio company in which any such party or any of its investment fund Affiliates have made a debt or equity investment (and vice versa), agent, attorney or representative of any party hereto (including any Person negotiating or executing this Agreement on behalf of a party hereto), unless party to this Agreement, shall have any liability or obligation with respect to this Agreement or with respect to any claim or cause of action (whether in contract or tort) that may arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including a representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

SECTION 6.14. No Partnership. Nothing in this Agreement and no actions taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the parties or constitute any party the agent of any other party for any purpose.

SECTION 6.15. Aggregation; Beneficial Ownership.

(a) Subject to Section 6.15(d), all Securities held or acquired by the MSD Stockholders and their Affiliates and Permitted Assignees shall be aggregated for the purpose of determining the availability of any rights under and application of any limitations under this Agreement, and each such MSD Stockholder and its Affiliates may apportion such rights as among themselves in any manner they deem appropriate.

(b) All Securities held or acquired by the SLP Stockholders and their Affiliates and Permitted Assignees shall be aggregated for the purpose of determining the availability of any rights under and application of any limitations under this Agreement, and each such SLP Stockholder and its Affiliates may apportion such rights as among themselves in any manner they deem appropriate.

(c) Subject to Section 6.15(d), without limiting the generality of the foregoing, for the purposes of calculating the beneficial ownership of any Stockholder, all of such Stockholder's Common Stock, all of its Affiliates' Common Stock and all of its Permitted Assignees' Common Stock shall be included as being owned by such Stockholder and as being outstanding; and

(d) Notwithstanding anything herein to the contrary, in the case of any transfer of Securities by the MSD Stockholders, their Affiliates or their Permitted Assignees after MSD's death to an individual or Person other than an (i) individual or entity described in clause (i)(A), (i)(B), (i)(C) or (i)(D) of the definition of "Permitted Assignee" or (ii) MSD Fiduciary, such Securities shall not be deemed to be owned by the MSD Stockholders for purposes of Section 3.1.

SECTION 6.16. Severability. If any portion of this Agreement shall be declared void or unenforceable by any court or administrative body of competent jurisdiction, such portion shall be deemed severable from the remainder of this Agreement, which shall continue in all respects to be valid and enforceable.

SECTION 6.17. Counterparts. This Agreement may be executed in any number of counterparts (which delivery may be via facsimile transmission or e-mail if in .pdf format or otherwise by way of electronic signature), each of which shall be deemed an original, but all of which together shall constitute a single instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement or caused this Agreement to be signed by its officer thereunto duly authorized as of the date first written above.

COMPANY:

VMWARE, INC.

By: /s/ Craig Norris

Name: Craig Norris

Title: Vice President and Assistant Secretary

[Signature Page to Stockholders Agreement]

SLP STOCKHOLDERS:

SL SPV-2, L.P.

By: SLTA SPV-2, L.P., its general partner

By: SLTA SPV-2 (GP), L.L.C., its general partner

By: Silver Lake Group, L.L.C., its managing member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SILVER LAKE PARTNERS IV, L.P.

By: Silver Lake Technology Associates IV, L.P., its general partner

By: SLTA IV (GP), L.L.C., its general partner

By: Silver Lake Group, L.L.C., its managing member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SILVER LAKE TECHNOLOGY INVESTORS IV, L.P.

By: Silver Lake Technology Associates IV, L.P., its general partner

By: SLTA IV (GP), L.L.C., its general partner

By: Silver Lake Group, L.L.C., its managing member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

[Signature Page to Stockholders Agreement]

SILVER LAKE PARTNERS V DE (AIV), L.P.

By: Silver Lake Technology Associates V, L.P., its general partner

By: SLTA V (GP), L.L.C., its general partner

By: Silver Lake Group, L.L.C., its managing member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SILVER LAKE TECHNOLOGY INVESTORS V, L.P.

By: Silver Lake Technology Associates V, L.P., its general partner

By: SLTA V (GP), L.L.C., its general partner

By: Silver Lake Group, L.L.C., its managing member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SILVER LAKE GROUP, L.L.C.

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

[Signature Page to Stockholders Agreement]

MSD STOCKHOLDERS:

/s/ Michael S. Dell

MICHAEL S. DELL

SUSAN LIEBERMAN DELL SEPARATE
PROPERTY TRUST

By: Hexagon Trust Company, as Trustee

By: /s/ Marc R. Lisker

Name: Marc R. Lisker

Title: President

[Signature Page to Stockholders Agreement]

VMWARE, INC.
REGISTRATION RIGHTS AGREEMENT

Dated as of November 1, 2021

TABLE OF CONTENTS

		<u>Page</u>
	ARTICLE I	
	DEFINITIONS	
Section 1.1	Definitions	1
Section 1.2	General Interpretive Principles	9
	ARTICLE II	
	REGISTRATION RIGHTS	
Section 2.1	Holder Initiated Shelf Registration	9
Section 2.2	Shelf Take-Downs	11
Section 2.3	Demand Registration	15
Section 2.4	Piggyback Registration	19
Section 2.5	Expenses of Registration	21
Section 2.6	Obligations of the Company	21
Section 2.7	Indemnification	25
Section 2.8	Information by Holder	29
Section 2.9	Transfer of Registration Rights; Additional Holders; General Transfer Restrictions on Exercise of Rights	29
Section 2.10	Delay of Registration	29
Section 2.11	Limitations on Subsequent Registration Rights	29
Section 2.12	Reporting	30
Section 2.13	Blackout Periods	30
Section 2.14	Discontinuance of Distributions and Use of Prospectus and Free Writing Prospectus	31
	ARTICLE III	
	MISCELLANEOUS	
Section 3.1	Term	31
Section 3.2	Further Assurances	32
Section 3.3	Entire Agreement	32
Section 3.4	Specific Performance	32
Section 3.5	Governing Law	32
Section 3.6	Submissions to Jurisdictions; Waiver of Jury Trials	32
Section 3.7	Obligations	34
Section 3.8	Consents, Approvals and Actions	34
Section 3.9	Amendment and Waiver	34

Section 3.10	Binding Effect	35
Section 3.11	Third Party Beneficiaries	35
Section 3.12	Notices	35
Section 3.13	No Third Party Liability	38
Section 3.14	No Partnership	38
Section 3.15	Severability	38
Section 3.16	Counterparts	38

EXHIBITS

Exhibit A	Form of Joinder Agreement
-----------	---------------------------

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT is made as of November 1, 2021, by and among VMware, Inc., a Delaware corporation, and each of the following (hereinafter severally referred to as a “Stockholder” and collectively referred to as the “Stockholders”):

- (a) Michael S. Dell (“MD”) and Susan Lieberman Dell Separate Property Trust (the “SLD Trust” and together with MD, the “MD Stockholders”);
- (b) Silver Lake Partners V DE (AIV), L.P., a Delaware limited partnership, Silver Lake Partners IV, L.P., a Delaware limited partnership, Silver Lake Technology Investors IV, L.P., a Delaware limited partnership, Silver Lake Technology Investors V, L.P., a Delaware limited partnership, SL SPV-2, L.P., a Delaware limited partnership, and Silver Lake Group L.L.C., a Delaware limited liability company (collectively, the “SLP Stockholders”, and together with the MD Stockholders, the “Existing Stockholders”); and
- (c) any other Person who becomes a party hereto pursuant to, and in accordance with, Section 2.9.

WHEREAS, in connection with the distribution of Common Stock held by Dell Technologies Inc. and its subsidiaries (collectively, “Dell”) to Dell’s stockholders, the Company desires to grant registration rights to the Existing Stockholders on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Adverse Disclosure” means public disclosure of material non-public information that, in the Board’s good faith judgment, after consultation with outside counsel to the Company, (i) would be required to be made in any report or Registration Statement filed with the SEC by the Company so that such report or Registration Statement would not contain any untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such report or Registration Statement and (iii) would be expected to materially and adversely interfere with a *bona fide* financing transaction, disposition or acquisition by the Company or its Subsidiaries that is material to the Company and its Subsidiaries (on a consolidated basis).

“Affiliate” means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person. The term “control” means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms “controlled” and “controlling” have meanings correlative to the foregoing. Notwithstanding the foregoing, for purposes of this Agreement, (i) the Company, its Subsidiaries and its other controlled Affiliates shall not be considered Affiliates of any of the Existing Stockholders or any of such party’s Affiliates (except that the Company, its Subsidiaries and its other controlled Affiliates may be considered Affiliates of each other), (ii) none of the MD Stockholders, on the one hand, or the SLP Stockholders, on the other hand, shall be considered Affiliates of each other and (iii) none of the Existing Stockholders shall be considered Affiliates of (x) any portfolio company in which any of the Existing Stockholders or any of their investment fund Affiliates have made a debt or equity investment (and vice versa) or (y) any limited partners, non-managing members or other similar direct or indirect investors in any of the Existing Stockholders or their affiliated investment funds.

“Agreement” means this Registration Rights Agreement (including the schedules, annexes and exhibits attached hereto) as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Automatic Shelf Registration Statement” shall have the meaning set forth in Rule 405 (or any successor provision) of the Securities Act.

“beneficial ownership” and “beneficially own” and similar terms have the meaning set forth in Rule 13d-3 under the Exchange Act; provided, however, that (i) no party hereto shall be deemed to beneficially own any Securities held by any other party hereto solely by virtue of the provisions of this Agreement (other than this definition) and (ii) with respect to any Securities held by a party hereto that are exercisable for, convertible into or exchangeable for Shares upon delivery of consideration to the Company or any of its Subsidiaries, such Shares shall not be deemed to be beneficially owned by such party unless, until and to the extent such Securities have been exercised, converted or exchanged and such consideration has been delivered by such party to the Company or such Subsidiary.

“Blackout Period Restrictions” means (i) offering for sale, selling, hypothecating, transferring, making any short sale of, loaning, granting any option or right to purchase of or otherwise disposing of any Securities (including Securities that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the SEC and Securities that may be issued upon exercise of any Company Stock Options or warrants) or securities convertible into or exercisable or exchangeable for Securities, (ii) entering into any swap, hedging arrangement or other derivatives transaction with respect to any Securities (including Securities that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the SEC and Securities that may be issued upon exercise of any Company Stock Options or warrants) or securities convertible into or exercisable or exchangeable for Securities, whether any such transaction described in clause (i) above or this clause (ii) is

to be settled by delivery of Securities, in cash or otherwise, (iii) making any demand for or exercising any right or causing to be filed a Registration Statement, including any amendments thereto, with respect to the registration of any Securities or securities convertible into or exercisable or exchangeable for Securities and (iv) publicly disclosing the intention to do any of the foregoing; provided, that the foregoing shall not prohibit a Holder that has a contractual right to transfer Registrable Securities in a registered sale pursuant to this Agreement from transferring its Registrable Securities in an applicable Underwritten Shelf Take-Down or an underwritten offering of Shares pursuant to Section 2.3 or Section 2.4.

“Board” means the Board of Directors of the Company.

“Business Day” means a day, other than a Saturday, Sunday or other day on which banks located in New York, New York are authorized or required by law to close.

“Common Stock” means the Class A common stock, par value \$0.01 per share, of the Company.

“Company” means VMware, Inc. (including any of its successors by merger, acquisition, reorganization, conversion or otherwise).

“Company Indemnifiable Persons” has the meaning ascribed to such term in Section 2.7(a).

“Company Stock Option” means an option to subscribe for, purchase or otherwise acquire shares of Common Stock.

“Control Holder” has the meaning ascribed to such term in Section 2.6(d).

“Dell” has the meaning ascribed thereto in the Preamble.

“Demand Delay” has the meaning ascribed to such term in Section 2.3(a)(ii).

“Demand Initiating Existing Holders” has the meaning ascribed to such term in Section 2.3(a).

“Demand Participating Existing Holders” has the meaning ascribed to such term in Section 2.3(a)(ii).

“Demand Period” has the meaning ascribed to such term in Section 2.3(b).

“Demand Registration” has the meaning ascribed to such term in Section 2.3(a).

“Disabling Event” means either the death of MD, or the continuation of any physical or mental disability or infirmity that prevents the performance of MD’s duties for a period of 180 consecutive days.

“Eligible Non-Marketed Underwritten Shelf Take-Down Holder” means, in the case of a Non-Marketed Underwritten Shelf Take-Down initiated by one or more Initiating Shelf Take-Down Holders, the Existing Holders.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated pursuant thereto.

“Existing Holders” means, collectively, the MD Holders and the SLP Holders.

“Existing Stockholders” has the meaning ascribed thereto in the Preamble.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Free Writing Prospectus” means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of Registrable Securities.

“Holder Indemnifiable Persons” has the meaning ascribed to such term in Section 2.7(b).

“Holders” means, collectively, the MD Holders, the SLP Holders and the Transferee Holders.

“Indemnified Party” has the meaning ascribed to such term in Section 2.7(c).

“Indemnifying Party” has the meaning ascribed to such term in Section 2.7(c).

“Initiating Shelf Take-Down Holder” has the meaning ascribed to such term in Section 2.2(a).

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit A attached hereto.

“Marketed Underwritten Shelf Take-Down” has the meaning ascribed to such term in Section 2.2(c)(i).

“Marketed Underwritten Shelf Take-Down Notice” has the meaning ascribed to such term in Section 2.2(c)(i).

“MD” has the meaning ascribed to such term in the Preamble.

“MD Charitable Entity” means the Michael & Susan Dell Foundation and any other private foundation or supporting organization (as defined in Section 509(a) of the Internal Revenue Code of 1986, as amended) established and principally funded directly or indirectly by MD or his spouse.

“MD Fiduciary” means any trustee of an inter vivos or testamentary trust appointed by MD.

“MD Holders” means, collectively, (i) the MD Stockholders and (ii) any designated transferees or successors of any MD Stockholder pursuant to Section 2.9 below that, in each such case, hold Registrable Securities or Securities exercisable or exchangeable for, or convertible into, Registrable Securities.

“MD Immediate Family Member” means, with respect to any MD Stockholder that is a natural person, such natural person’s parent, spouse, children (whether natural or adopted as minors), grandchildren or more remote descendants, siblings and spouse’s parents and siblings.

“MD Stockholders” has the meaning ascribed to such term in the Preamble.

“Non-Marketed Underwritten Shelf Take-Down” has the meaning ascribed to such term in Section 2.2(d)(i).

“Non-Marketed Underwritten Shelf Take-Down Election Period” has the meaning ascribed to such term in Section 2.2(d)(i).

“Non-Marketed Underwritten Shelf Take-Down Notice” has the meaning ascribed to such term in Section 2.2(d)(i).

“Permitted Transferees” means:

(i) In the case of the MD Stockholders:

(A) MD, SLD Trust or any MD Immediate Family Member;

(B) any MD Charitable Entity;

(C) one or more trusts whose current beneficiaries are and will remain for so long as such trust holds Securities, any of (or any combination of) MD, one or more MD Immediate Family Members or MD Charitable Entities;

(D) any corporation, limited liability company, partnership or other entity wholly-owned by any one or more persons or entities described in clauses (i)(A), (i)(B) or (i)(C) of this definition of “Permitted Transferee”; or

(E) from and after MD’s death, any recipient under MD’s will, any revocable trust established by MD that becomes irrevocable upon MD’s death, or by the laws of descent and distribution.

(ii) In the case of the SLP Stockholders, (A) any other SLP Stockholder or (B) any Affiliate of the SLP Stockholders (including, for the avoidance of doubt, (x) an affiliated private equity fund of such Stockholder and (y) any special purpose entity formed as part of a “fund to fund” transfer or “back-leverage” of all or a portion of such Stockholder’s investment in the Company).

For the avoidance of doubt, (x) each MD Stockholder will be a Permitted Transferee of each other MD Stockholder and (y) each SLP Stockholder will be a Permitted Transferee of each other SLP Stockholder.

“Person” means an individual, any general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity, or a government or any agency or political subdivision thereof.

“Prospectus” means the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments, and all other material incorporated by reference in such prospectus.

“register,” “registered” and “registration” means a registration effected pursuant to a Registration Statement in compliance with the Securities Act, and the declaration or ordering by the SEC of the effectiveness of such Registration Statement.

“Registrable Securities” means (i) Shares held (whether now held or hereafter acquired) by a party to this Agreement other than the Company or any designated transferee or successor to the extent permitted by Section 2.9 below or, without duplication, by any stockholder of the Company that holds registration or similar rights pursuant to an agreement between such stockholder and the Company and (ii) any Shares issued as (or as of any such date of determination then currently issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange or in replacement of, such Shares contemplated by the immediately foregoing clause (i); provided, however, that Shares shall cease to be Registrable Securities if (1) a Registration Statement covering such Shares has been declared effective by the SEC and such Shares have been disposed of pursuant to such effective Registration Statement, (2) such Shares are distributed pursuant to Rule 144 or 145 promulgated under the Securities Act (or any successor rule or other exemption from the registration requirements of the Securities Act), (3) such Shares cease to be outstanding, (4) the holder of such Shares together with its Affiliates owns less than 1% of the issued and outstanding shares of Common Stock and all Shares held by such holder and its Affiliates can be sold during any three month period without registration pursuant to Rule 144 in a single transaction without being restricted by the volume limitation thereunder or (5) such Shares shall have been otherwise transferred and such Shares may be publicly resold without registration under the Securities Act.

“Registration Expenses” means any and all expenses incident to the performance by the Company of its obligations under this Agreement, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC, FINRA and, if applicable, the fees and expenses of any “qualified independent underwriter,” as such term is defined in FINRA Rule 5121 (or any successor provision), and of its counsel, (ii) all fees and expenses of complying with any securities or blue sky laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing Prospectuses and Free Writing Prospectuses), (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (v) all applicable rating agency fees with respect to the Registrable Securities, (vi) the reasonable fees and disbursements of counsel for the Company and of its

independent public accountants, including the expenses of any special audits or comfort letters required by or incident to such performance and compliance, (vii) any fees and disbursements of underwriters customarily paid by the issuers or sellers of securities but excluding underwriting discounts and commissions and transfer taxes, if any, (viii) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice, (ix) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration, (x) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), (xi) the costs and expenses of the Company relating to analyst and investor presentations or any "road show" undertaken in connection with the registration or marketing of the Registrable Securities and (xii) any other fees and disbursements customarily paid by the issuers of securities.

"Registration Statement" means a registration statement filed with the SEC.

"Rule 144" means Rule 144 (or any successor provision) under the Securities Act, as such provision is amended from time to time.

"SEC" means the U.S. Securities and Exchange Commission or any successor agency.

"Securities" means any equity securities of the Company, including any Common Stock, any debt securities exercisable or exchangeable for, or convertible into equity securities of the Company, or any option, warrant or other right to acquire any such equity securities or debt securities of the Company.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated pursuant thereto.

"Share Equivalents" means (i) Shares and (ii) Shares issuable upon exercise, conversion or exchange of any security that is currently exercisable for, convertible into or exchangeable for, as of any such date of determination, Shares.

"Shares" means the shares of Common Stock of the Company and any securities into which such shares shall have been exchanged, or any securities resulting from any reclassification, recapitalization or similar transactions with respect to such shares.

"Shelf Holder" means, with respect to any Shelf Registration Statement, each Holder, including the Shelf Initiating Existing Holder, if any, that has its Registrable Securities registered on such Shelf Registration Statement.

"Shelf Initiating Existing Holders" has the meaning ascribed to such term in Section 2.1(a).

"Shelf Participating Existing Holders" means, collectively, all Shelf Holders that are Existing Holders.

“Shelf Percentage” means, with respect to any Shelf Request, the fraction, expressed as a percentage, determined by dividing (i) the Shelf Request by (ii) the total number of Registrable Securities held by the Shelf Initiating Existing Holders as of the date of such Shelf Request.

“Shelf Registration Notice” has the meaning ascribed to such term in Section 2.1(a).

“Shelf Registration Statement” means a Registration Statement of the Company filed with the SEC on Form S-3 or Form F-3, or on Form S-1 or Form F-1 (or any successor form) for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act (or any similar rule that may be adopted by the SEC) covering the Registrable Securities, as applicable.

“Shelf Request” has the meaning ascribed to such term in Section 2.1(a).

“Shelf Suspension” has the meaning ascribed to such term in Section 2.1(c).

“Shelf Take-Down” has the meaning ascribed to such term in Section 2.2(a).

“Shelf Take-Down Percentage” has the meaning ascribed to such term in Section 2.2(d)(i).

“SLD Trust” has the meaning ascribed to such term in the Preamble.

“SLP Holders” means, collectively, (i) the SLP Stockholders and (ii) any designated transferees or successors of any SLP Stockholder pursuant to Section 2.9 below that, in each such case, hold Registrable Securities or Securities exercisable or exchangeable for, or convertible into, Registrable Securities.

“SLP Stockholders” has the meaning ascribed to such term in the Preamble.

“Stockholders Agreement” means that certain Stockholders Agreement, dated as of the date hereof, by and among the Company, the Stockholders and the other signatories party thereto, as the same may be amended, restated, supplemented or modified from time to time

“Subsidiary” means, with respect to any Person, any entity of which (i) a majority of the total voting power of shares of stock or equivalent ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees or other members of the applicable governing body thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if no such governing body exists at such entity, a majority of the total voting power of shares of stock or equivalent ownership interests of the entity is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing member or general partner of such limited liability company, partnership, association or other business entity.

“Transferee Holders” means any Person (other than the Company or the Existing Holders) that becomes a party to this Agreement pursuant to Section 2.9 and that holds Registrable Securities or Securities exercisable or exchangeable for, or convertible into, Registrable Securities.

“Underwritten Shelf Take-Down” has the meaning ascribed to such term in Section 2.2(b).

“Underwritten Shelf Take-Down Notice” has the meaning ascribed to such term in Section 2.2(b).

“Well-Known Seasoned Issuer” shall have the meaning set forth in Rule 405 (or any successor provision) of the Securities Act.

Section 1.2 General Interpretive Principles. The name assigned to this Agreement and the section captions used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms “hereof,” “herein” and similar terms refer to this Agreement as a whole, and references herein to Articles or Sections refer to Articles or Sections of this Agreement. For purposes of this Agreement, the words, “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation.” The terms “dollars” and “\$” shall mean United States dollars. The use of “Affiliates” and “Subsidiaries” shall be deemed to be followed by the words “as such entities exist as of the relevant date of determination.” Except as otherwise set forth herein, Shares underlying unexercised Company Stock Options that have been issued by the Company shall not be deemed “outstanding” for any purposes in this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. Furthermore, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application to the parties hereto and is expressly waived.

ARTICLE II REGISTRATION RIGHTS

Section 2.1 Holder Initiated Shelf Registration

(a) Filing. One or more of the Existing Holders may deliver a written request to the Company (the Existing Holders delivering such a request, the “Shelf Initiating Existing Holders”) to file a Shelf Registration Statement (a “Shelf Registration Notice”), and subject to the Company’s rights under Section 2.1(c) and the limitations set forth in Section 2.2, the Company shall (i) promptly (but in any event no later than five days prior to the date such Shelf Registration Statement is declared effective) give written notice of the proposed registration to all other Holders (which such notice will include the applicable Shelf Percentage) and (ii) use its reasonable best efforts to file and have such Shelf Registration Statement (which shall be designated by the Company as an Automatic Shelf Registration Statement if the Company is a Well-Known Seasoned Issuer at the time of filing such Shelf

Registration Statement with the SEC) become effective with the SEC concurrently with filing or as soon as practicable thereafter, but in no event later than the 90th day after the receipt of such Shelf Registration Notice. Such Shelf Registration Statement will permit or facilitate the sale and distribution of all or such portion of such Shelf Initiating Existing Holders' Registrable Securities as are specified in such Shelf Registration Notice (such portion, the "Shelf Request"), together with all or such portion of the Registrable Securities of any other Holders joining in such demand as are specified in a written demand received by the Company within five days after such written notice is given (such amount not in any event to exceed the Shelf Percentage of the total Registrable Securities held by such Holder as of the date of such written notice); provided, however, that if the Company is permitted by applicable law, rule or regulation to add selling stockholders to a Shelf Registration Statement without filing a post-effective amendment, a Holder may request the inclusion of such Holder's Registrable Securities (such amount not in any event to exceed the Shelf Percentage of the total Registrable Securities held by such Holder) in such Shelf Registration Statement at any time or from time to time, and the Company shall add such Registrable Securities to the Shelf Registration Statement as promptly as reasonably practicable, and such Holder shall be deemed a Shelf Holder. If, on the date of any such demand, the Company does not qualify to file a Shelf Registration Statement, then the provisions of Section 2.3 hereof shall apply instead of this Section 2.1. In no event shall the Company be required to file, and maintain effectiveness pursuant to Section 2.1(b) of, more than one Shelf Registration Statement at any one time pursuant to this Section 2.1. To the extent the Company is eligible under the relevant provisions of Rule 430B under the Securities Act, the Company shall include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner by identifying the initial offering of the securities to the Holders) in order to ensure that the Holders may be added to such Shelf Registration Statement at a later time through the filing of a prospectus supplement rather than a post-effective amendment.

(b) Continued Effectiveness. The Company shall use its commercially reasonable efforts to keep such Shelf Registration Statement filed pursuant to Section 2.1(a) hereof continuously effective under the Securities Act in order to permit the Prospectus or any Free Writing Prospectus forming a part thereof to be usable by the Shelf Holders until the earlier of (i) the date as of which all Registrable Securities registered by such Shelf Registration Statement have been sold and (ii) such shorter period as the Shelf Initiating Existing Holders and any other Shelf Participating Existing Holders may mutually determine.

(c) Suspension of Filing or Registration. If the Company shall furnish to the Shelf Participating Existing Holders, a certificate signed by the Chief Executive Officer, Chief Financial Officer or equivalent senior executive of the Company, stating that the filing, effectiveness or continued use of the Shelf Registration Statement would require the Company to make an Adverse Disclosure, then the Company shall have a period of not more than 60 days or such longer period as the Shelf Participating Existing Holders shall mutually consent to in writing, within which to delay the filing or effectiveness (but not the preparation) of such Shelf Registration Statement or, in the case of a Shelf Registration Statement that has been declared effective, to suspend the use by Shelf Holders of such Shelf Registration Statement (in each case, a "Shelf Suspension"); provided, however, that, unless consented to in writing by the Shelf Participating Existing Holders, the Company shall not be permitted to exercise more than two Shelf Suspensions

pursuant to this Section 2.1(c) and Demand Delays pursuant to Section 2.3(a)(ii) in the aggregate, or aggregate Shelf Suspensions pursuant to this Section 2.1(c) or Demand Delays pursuant to Section 2.3(a)(ii) of more than 60 days, in each case, during any 12-month period (and the exercise of such Shelf Suspensions and Demand Delays shall not individually or together exceed 90 consecutive days). Each Shelf Holder shall keep confidential the fact that a Shelf Suspension is in effect, the certificate referred to above and its contents for the permitted duration of the Shelf Suspension or until otherwise notified by the Company, except (A) in the case of any Shelf Holder, for disclosure to any of such Shelf Holder's employees, agents and professional advisers who are obligated to keep it confidential, (B) in the case of any Shelf Participating Existing Holder, for disclosures to the extent required in order to comply with reporting obligations to its limited partners who have agreed to keep such information confidential and (C) as required by law, rule, regulation or legal process. In the case of a Shelf Suspension that occurs after the effectiveness of the Shelf Registration Statement, the Shelf Holders agree to suspend use of the applicable Prospectus and any Free Writing Prospectus for the permitted duration of such Shelf Suspension in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the certificate referred to above. The Company shall immediately notify the Shelf Holders upon the termination of any Shelf Suspension, and (i) in the case of a Shelf Registration Statement that has not been declared effective, shall promptly thereafter file the Shelf Registration Statement and use its reasonable best efforts to have such Shelf Registration Statement declared effective under the Securities Act and (ii) in the case of an effective Shelf Registration Statement, shall, prior to the expiration of the Shelf Suspension, (x) amend or supplement the Prospectus and any Free Writing Prospectus, if necessary, so it does not contain any untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading and furnish to the Shelf Holders such numbers of copies of the Prospectus and any Free Writing Prospectus as so amended or supplemented as the Shelf Holders may reasonably request and (y) if applicable, cause any post-effective amendment to the Registration Statement to become effective. The Company agrees, if necessary, to supplement or make amendments to the Shelf Registration Statement if required by the registration form used by the Company for such offering or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by any Shelf Participating Existing Holder.

Section 2.2 Shelf Take-Downs.

(a) Initiating Holder(s). Subject to Section 2.3(e), an unlimited number of offerings or sales of Registrable Securities pursuant to a Shelf Registration Statement (each, a "Shelf Take-Down") may be initiated by any of the Shelf Participating Existing Holders (each, an "Initiating Shelf Take-Down Holder").

(b) Underwritten Shelf Take-Downs. Subject to Section 2.3(e) and Section 2.9, if the Initiating Shelf Take-Down Holder so elects by written request to the Company (such request, an "Underwritten Shelf Take-Down Notice"), a Shelf Take-Down shall be in the form of an underwritten offering (an "Underwritten Shelf Take-Down") and if necessary or if requested by the Initiating Shelf Take-Down Holders that initiated the applicable Underwritten Shelf Take-Down, the Company shall amend or supplement the Shelf Registration Statement for such purpose as soon as possible. Such

Initiating Shelf Take-Down Holders that initiated the applicable Underwritten Shelf Take-Down shall have the right to select the managing underwriter or underwriters to administer such Underwritten Shelf Take-Down; provided, that such managing underwriter or underwriters shall be reasonably acceptable to the Company. Notwithstanding the delivery of any Underwritten Shelf Take-Down Notice, all determinations as to whether to complete any Underwritten Shelf Take-Down and as to the timing, manner, price and other terms and conditions of any Underwritten Shelf Take-Down shall be at the sole discretion of the Initiating Shelf Take-Down Holders that initiated the applicable Underwritten Shelf Take-Down. In connection with any Underwritten Shelf Take-Down, the Company shall, together with all participating Shelf Holders of Registrable Securities of the Company (if any) proposing (and permitted) to distribute their securities through such Underwritten Shelf Take-Down in accordance with this Section 2.2, enter into an underwriting agreement in customary form (containing such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type) with the managing underwriter or underwriters selected by the Initiating Shelf Take-Down Holders that initiated the applicable Underwritten Shelf Take-Down in accordance with this Section 2.2(b). Such underwriting agreement shall contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the Shelf Holders party thereto as are customarily made by issuers to selling stockholders in secondary underwritten public offerings. No Shelf Holder shall be entitled to participate in an Underwritten Shelf Take-Down in accordance with this Section 2.2 unless such Shelf Holder completes and executes all questionnaires, powers of attorney, indemnities and other documents required under the terms of such underwriting agreement.

(c) Marketed Underwritten Shelf Take-Downs.

(i) If the plan of distribution set forth in any Underwritten Shelf Take-Down Notice includes a customary “road show” (including an “electronic road show”) or other marketing efforts by the Company and one or more underwriters (a “Marketed Underwritten Shelf Take-Down”), promptly upon delivery of such Underwritten Shelf Take-Down Notice (but in no event more than one Business Day thereafter), the Company shall promptly deliver a written notice (a “Marketed Underwritten Shelf Take-Down Notice”) of such Marketed Underwritten Shelf Take-Down to all Shelf Holders of Registrable Securities under such Shelf Registration Statement (other than the Initiating Shelf Take-Down Holders that initiated the applicable Marketed Underwritten Shelf Take-Down), and, in each case subject to Section 2.2(c)(ii), the Company shall include in such Marketed Underwritten Shelf Take-Down all such Registrable Securities of such Shelf Holders that are registered on such Shelf Registration Statement for which the Company has received written requests, which requests must specify the aggregate amount of such Registrable Securities of such Holder to be offered and sold pursuant to such Marketed Underwritten Shelf Take-Down, for inclusion therein within three (3) Business Days after the date that such Marketed Underwritten Shelf Take-Down Notice has been delivered. Notwithstanding the delivery of any Marketed Underwritten Shelf Take-Down Notice, all determinations as to whether to complete any Marketed Underwritten Shelf Take-Down and as to the timing, manner, price and other terms and conditions of any Marketed Underwritten Shelf Take-Down shall be at the sole discretion of the Initiating Shelf Take-Down Holders that initiated the applicable Marketed Underwritten Shelf Take-Down.

(ii) The right of any Shelf Holders to participate in a Marketed Underwritten Shelf Take-Down shall be conditioned upon such Shelf Holder's compliance with the terms and conditions of Section 2.2(b) and this Section 2.2(c)(ii). Notwithstanding anything herein to the contrary, if the managing underwriter or underwriters of a proposed underwritten offering of the Registrable Securities included in a Marketed Underwritten Shelf Take-Down shall advise the Company and the Initiating Shelf Take-Down Holders that initiated the applicable Marketed Underwritten Shelf Take-Down that the number of securities requested to be included in such Marketed Underwritten Shelf Take-Down exceeds the number which can be sold in such offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the Company shall so advise all Shelf Holders of Registrable Securities that have requested to participate in such Marketed Underwritten Shelf Take-Down (other than the Initiating Shelf Take-Down Holders that initiated the applicable Marketed Underwritten Shelf Take-Down), and the number of shares of Registrable Securities that may be included in such Marketed Underwritten Shelf Take-Down (1) first, shall be allocated *pro rata* among the Shelf Holders that have requested to participate in such Marketed Underwritten Shelf Take-Down based on the relative number of Registrable Securities then held by each such Shelf Holder (provided, that any securities thereby allocated to such a Shelf Holder that exceed such Shelf Holder's request shall be reallocated among the remaining requesting Shelf Holders in like manner) and (2) second, and only if all the securities referred to in clause (1) have been included in such registration, the number of securities that the Company proposes to include in such registration that, in the opinion of the managing underwriter or underwriters, can be sold without having such adverse effect. No Registrable Securities excluded from a Marketed Underwritten Shelf Take-Down by reason of the managing underwriter's or underwriters' marketing limitation shall be included in such underwritten offering.

(iii) Notwithstanding anything herein to the contrary, a Marketed Underwritten Shelf Take-Down must reasonably be anticipated to result in an aggregate offering price (after deduction of underwriter commissions and offering expenses) of at least \$100,000,000 (or such lesser amount constituting all remaining Registrable Securities beneficially owned by the Initiating Shelf Take-Down Holder that initiated such Marketed Underwritten Shelf Take-Down).

(d) Non-Marketed Underwritten Shelf Take-Downs.

(i) If the Initiating Shelf Take-Down Holders that initiated the applicable Underwritten Shelf Take-Down intend to effect a plan of distribution pursuant to an Underwritten Shelf Take-Down that does not constitute a Marketed Underwritten Shelf Take-Down (a "Non-Marketed Underwritten Shelf Take-Down"), such Initiating Shelf Take-Down Holders shall provide an Underwritten Shelf Take-Down Notice (a "Non-Marketed Underwritten Shelf Take-Down Notice") of such Non-Marketed Underwritten Shelf Take-Down to the Company and, to the extent there are any Eligible Non-Marketed Underwritten Shelf Take-Down Holders that may be permitted to participate in such Non-Marketed Underwritten Shelf Take-Down, the Company shall immediately provide a copy of such notice to each Eligible Non-Marketed Underwritten Shelf

Take-Down Holder, in each case, at least one Business Day in advance of the pricing of such Non-Marketed Underwritten Shelf Take-Down. Each Non-Marketed Underwritten Shelf Take-Down Notice shall set forth (1) the total number of Registrable Securities expected to be offered and sold by the Initiating Shelf Take-Down Holders in such Non-Marketed Underwritten Shelf Take-Down, (2) the expected plan of distribution of such Non-Marketed Underwritten Shelf Take-Down, (3) the fraction, expressed as a percentage, determined by dividing the number of Registrable Securities anticipated to be sold by the Initiating Shelf Take-Down Holders that initiated the applicable Non-Marketed Underwritten Shelf Take-Down in such Non-Marketed Underwritten Shelf Take-Down by the total number of Registrable Securities held by such Initiating Shelf Take-Down Holders (the “Shelf Take-Down Percentage”), (4) to the extent there are any Eligible Non-Marketed Underwritten Shelf Take-Down Holders that may be permitted to participate in such Non-Marketed Underwritten Shelf Take-Down, an invitation to each Eligible Non-Marketed Underwritten Shelf Take-Down Holder who is a Shelf Holder of Registrable Securities under such Shelf Registration Statement to elect to include, on the same terms and conditions as the applicable Initiating Shelf Take-Down Holders in such Non-Marketed Underwritten Shelf Take-Down, Registrable Securities held by such Eligible Non-Marketed Underwritten Shelf Take-Down Holder (such amount not in any event to exceed the Shelf Take-Down Percentage of the total Registrable Securities held by such Eligible Non-Marketed Underwritten Shelf Take-Down Holder) and (5) to the extent there are any Eligible Non-Marketed Underwritten Shelf Take-Down Holders that may be permitted to participate in such Non-Marketed Underwritten Shelf Take-Down, the action or actions required to be taken by such Eligible Non-Marketed Underwritten Shelf Take-Down Holders in connection with such Non-Marketed Underwritten Shelf Take-Down should any such Eligible Non-Marketed Underwritten Shelf Take-Down Holder elect to participate in such Non-Marketed Underwritten Shelf Take-Down (including the timing thereof, which shall require written requests for inclusion therein by no later than 11:00 A.M., New York City time, on the Business Day after the date such notice was provided to such Eligible Non-Marketed Underwritten Shelf Take-Down Holders). Subject to Section 2.2(c)(ii), the Company shall include in such Non-Marketed Underwritten Shelf Take-Down all such Registrable Securities of such electing Eligible Non-Marketed Underwritten Shelf Take-Down Holders that are registered on such Shelf Registration Statement for which the Company has received written requests, which requests must specify the aggregate amount of such Registrable Securities of such Eligible Non-Marketed Underwritten Shelf Take-Down Holder to be offered and sold pursuant to such Non-Marketed Underwritten Shelf Take-Down, for inclusion therein within the time period specified in the applicable Non-Marketed Underwritten Shelf Take-Down Notice (the “Non-Marketed Underwritten Shelf Take-Down Election Period”). Notwithstanding the delivery of any Non-Marketed Underwritten Shelf Take-Down Notice, all determinations as to whether to complete any Non-Marketed Underwritten Shelf Take-Down and as to the timing, manner, price and other terms and conditions of any Non-Marketed Underwritten Shelf Take-Down shall be at the sole discretion of the applicable Initiating Shelf Take-Down Holders that initiated the applicable Non-Marketed Underwritten Shelf Take-Down.

(ii) In the case of a Non-Marketed Underwritten Shelf Take-Down initiated by an Initiating Shelf Take-Down Holder, in each such case, the right of any Eligible Non-Marketed Underwritten Shelf Take-Down Holder to participate in such Non-Marketed Underwritten Shelf Take-Down shall be conditioned upon such Eligible Non-Marketed Underwritten Shelf Take-Down Holder's compliance with the terms and conditions of Section 2.2(b) and this Section 2.2(d)(ii). Notwithstanding anything herein to the contrary, if the managing underwriter or underwriters of a proposed underwritten offering of the Registrable Securities included in a Non-Marketed Underwritten Shelf Take-Down shall advise the Company and the Initiating Shelf Take-Down Holders that initiated the applicable Non-Marketed Underwritten Shelf Take-Down that the number of securities requested to be included in such Non-Marketed Underwritten Shelf Take-Down exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the Company shall so advise the Initiating Shelf Take-Down Holders that have initiated such Non-Marketed Underwritten Shelf Take-Down and any other Existing Holders and the Eligible Non-Marketed Underwritten Shelf Take-Down Holders that have the right to, and have, requested to participate in such Non-Marketed Underwritten Shelf Take-Down, and the number of shares of Registrable Securities that may be included in such Non-Marketed Underwritten Shelf Take-Down shall be allocated *pro rata* among the Initiating Shelf Take-Down Holders that have initiated such Non-Marketed Underwritten Shelf Take-Down and the Eligible Non-Marketed Underwritten Shelf Take-Down Holders that have the right to, and have, provided the Company written requests to participate in such Non-Marketed Underwritten Shelf Take-Down within the Non-Marketed Underwritten Shelf Take-Down Election Period based on the relative number of Registrable Securities then held by each such Holder.

(iii) Notwithstanding anything herein to the contrary, in the event that an Initiating Shelf Take-Down Holder that initiated a Non-Marketed Underwritten Shelf Take-Down abandons or terminates such Non-Marketed Underwritten Shelf Take-Down, neither such Initiating Shelf Take-Down Holder nor any of its Affiliates shall be permitted to initiate a Non-Marketed Underwritten Shelf Take-Down for a period of 45 days following such abandonment or termination.

Section 2.3 Demand Registration.

(a) Demand for Registration. Subject to the limitations set forth in Section 2.1 and Section 2.2, if the Company shall receive from one or more of the Existing Holders (such Existing Holders, the "Demand Initiating Existing Holders") a written demand that the Company effect any registration (a "Demand Registration," which term, for the avoidance of doubt, shall also include a demand for a Marketed Underwritten Shelf Take-Down pursuant to Section 2.2(c) or a Non-Marketed Underwritten Shelf Take-Down pursuant to Section 2.2(d)), in each case, of Registrable Securities held by such Existing Holders having a reasonably anticipated aggregate offering price (after deduction of underwriter commissions and offering expenses) of at least \$100,000,000 (or such lesser amount constituting all remaining Registrable Securities beneficially owned by the Demand Initiating Existing Holders that initiated the applicable Demand Registration), the Company will:

(i) promptly (but in any event within two days after the date a Registration Statement for such Demand Registration is initially filed) give written notice of the proposed registration to all other Holders; and

(ii) use its reasonable best efforts to effect such registration as soon as practicable as will permit or facilitate the sale and distribution of all or such portion of such Demand Initiating Existing Holders' Registrable Securities as are specified in such demand, together with all or such portion of the Registrable Securities of any other Holders joining in such demand as are specified in a written demand received by the Company within five days after such written notice is given (subject to, for the avoidance of doubt, the limitations set forth in Section 2.1 and Section 2.2); provided, that the Company shall not be obligated to file any Registration Statement or other disclosure document pursuant to this Section 2.3 (but shall be obligated to continue to prepare such Registration Statement or other disclosure document) if the Company shall furnish to the Demand Initiating Existing Holders and any other Existing Holder participating in such Demand Registration (collectively, the "Demand Participating Existing Holders") a certificate signed by the Chief Executive Officer, Chief Financial Officer or equivalent senior executive of the Company, stating that the filing or effectiveness of such Registration Statement would require the Company to make an Adverse Disclosure, in which case the Company shall have an additional period (each, a "Demand Delay") of not more than 60 days (or such longer period as may be mutually agreed upon by the Demand Participating Existing Holders) within which to file such Registration Statement; provided, however, that the Company shall not exercise more than two Demand Delays pursuant to this Section 2.3(a)(ii) and Shelf Suspensions pursuant to Section 2.1(c) in the aggregate, or aggregate Demand Delays pursuant to this Section 2.3(a)(ii) or Shelf Suspensions pursuant to Section 2.1(c) of more than 60 days, in each case, during any 12-month period (and the exercise of such Shelf Suspensions and Demand Delays shall not individually or together exceed 90 consecutive days). Each Holder shall keep confidential the fact that a Demand Delay is in effect, the certificate referred to above and its contents for the permitted duration of the Demand Delay or until otherwise notified by the Company, except (A) in the case of any Holder, for disclosure to such Holder's employees, agents and professional advisers who need to know such information and are obligated to keep it confidential, (B) in the case of the Existing Holders, for disclosures to the extent required in order to comply with reporting obligations to its limited partners who have agreed to keep such information confidential and (C) as required by law, rule, regulation or legal process. In the case of a Demand Delay, the Holders agree to suspend use of the applicable Prospectus and any Free Writing Prospectus for the permitted duration of such Demand Delay in connection with any sale or purchase of, or offer to sell or purchase, Registrable Securities, upon receipt of the certificate referred to above. The Company shall immediately notify the Holders upon the termination of any Demand Delay, and (i) in the case of a Registration Statement that has not been declared effective, shall promptly thereafter file the Registration Statement and use its reasonable best efforts to have such Registration Statement declared effective under the Securities Act and (ii) in the case of an effective Registration Statement, shall amend or supplement the Prospectus and any Free Writing Prospectus, if necessary, so it does not contain any material misstatement or omission prior to the expiration of the Demand Delay and furnish to the Holders such numbers of copies of the Prospectus and any Free Writing

Prospectus as so amended or supplemented as the Holders may reasonably request. The Company agrees, if necessary, to supplement or make amendments to the Registration Statement if required by the registration form used by the Company for the Demand Registration or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by any Demand Participating Existing Holders.

(b) Effective Registration. The Company shall be deemed to have effected a Demand Registration if the Registration Statement pursuant to such Demand Registration is declared effective by the SEC and remains effective until (i) the date as of which all Registrable Securities registered by such Registration Statement pursuant to such Demand Registration have been sold and (ii) such shorter period, if such Registration Statement relates to an underwritten offering, as the Demand Initiating Existing Holders and the underwriter may mutually determine or until the Holder or Holders have completed the distribution relating thereto (the applicable period, the “Demand Period”); provided, that no Demand Registration shall be deemed to have been effected if (A) during the Demand Period such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court, (B) the conditions specified in the underwriting agreement, if any, entered into in connection with such registration are not satisfied other than by reason of a wrongful act, misrepresentation or breach of such applicable underwriting agreement by (a) a participating Holder or (b) the underwriters chosen by the Demand Initiating Existing Holders pursuant to Section 2.2(c) below and/or (C) the Demand Initiating Existing Holders that initiated the applicable Demand Registration have terminated, withdrawn or delayed any Demand Registration initiated by them pursuant to, and in accordance with Section 2.3(d) and such termination, withdrawal or delay is made (1) (x) following the occurrence of a material adverse change of the Company and its Subsidiaries taken as a whole, (y) if, as of the date of such termination withdrawal or delay, the per share stock price of Shares has declined by 10% or more as compared to the closing per share stock price of Shares on the date of the delivery of the written notice requesting such Demand Registration or (z) following the discovery by the Demand Initiating Existing Holders that initiated the applicable Demand Registration of material adverse or undisclosed information concerning the Company or its Subsidiaries of which such Person did not have prior actual knowledge or (2) because the registration would require the Company to make an Adverse Disclosure.

(c) Underwriting. If the Demand Initiating Existing Holders that initiated the applicable Demand Registration intend to distribute the Registrable Securities covered by their demand by means of an underwritten offering, they shall so advise the Company as part of their demand made pursuant to this Section 2.3, and the Company shall include such information in the written notice referred to in Section 2.3(a)(i). In such event, the right of any Holder to registration pursuant to this Section 2.3 shall be conditioned upon such Holder’s participation in such underwritten offering and the inclusion of such Holder’s Registrable Securities in the underwritten offering to the extent provided herein. The Company shall, together with all participating Holders of Registrable Securities of the Company (if any) proposing (and permitted) to distribute their securities through such underwritten offering, enter into an underwriting agreement in customary form (containing such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type) with the managing underwriter or underwriters selected by the Demand Initiating Existing Holders

that initiated the applicable Demand Registration. Such underwriting agreement shall contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the Holders party thereto as are customarily made by issuers to selling stockholders in secondary underwritten public offerings. No Holder shall be entitled to participate in such underwritten offering unless such Holder completes and executes all questionnaires, powers of attorney, indemnities and other documents required under the terms of such underwriting agreement. Notwithstanding any other provision of this Section 2.3, if the managing underwriter or underwriters of a proposed underwritten offering of the Registrable Securities included in a Demand Registration shall advise the Company and the Demand Initiating Existing Holders that initiated the applicable Demand Registration that the number of securities requested to be included in such Demand Registration exceeds the number which can be sold in such offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the Company shall so advise all Holders of Registrable Securities that have requested to participate in such Demand Registration (other than the Demand Initiating Existing Holders that initiated the applicable Demand Registration), and the number of shares of Registrable Securities that may be included in such Demand Registration (1) first, shall be allocated *pro rata* among the Demand Participating Existing Holders that have requested to participate in such Demand Registration based on the relative number of Registrable Securities then held by each such Demand Participating Existing Holder (provided, that any securities thereby allocated to such a Demand Participating Existing Holder that exceed such Holder's request shall be reallocated among the remaining requesting Demand Participating Existing Holders in like manner) and (2) second, and only if all of the securities referred to in clause (1) have been included in such Demand Registration, the number of securities that the Company proposes to include in such Demand Registration that, in the opinion of the managing underwriter or underwriters, can be sold without having such adverse effect. No Registrable Securities excluded from the underwritten offering by reason of the managing underwriter's or underwriters' marketing limitation shall be included in such Demand Registration. Notwithstanding the delivery of any notice of a Demand Registration, all determinations as to whether to complete any Demand Registration and as to the timing, manner, price and other terms and conditions of any Demand Registration shall be at the sole discretion of the Demand Initiating Existing Holders that initiated the applicable Demand Registration. Each of the Holders agrees to reasonably cooperate with each of the other Holders to establish notice, delivery and documentation procedures and measures to facilitate such other Holder's participation in future potential Demand Registrations pursuant this Section 2.3.

(d) Right to Terminate, Withdraw or Delay Registration. The Demand Initiating Existing Holders that initiated the applicable Demand Registration shall have the right to terminate, withdraw or delay any Demand Registration initiated by them under this Section 2.3 prior to the effectiveness of such Demand Registration whether or not any Holder has elected to include Registrable Securities in such Demand Registration and, thereupon, the Company shall be relieved of its obligation to register any Registrable Securities under this Section 2.3 in connection with such Demand Registration (but not from its obligation to pay the Registration Expenses in connection therewith pursuant to Section 2.5), and in the case of a determination to delay registration, the Company shall delay registering all Registrable Securities under this Section 2.3, for the same period as the delay in registering the Registrable Securities proposed to be included by the Demand Initiating Existing Holders that initiated the applicable Demand

Registration. For the avoidance of doubt, (i) none of the Demand Initiating Existing Holders shall have any liability or obligation to any other Holders following their determination to terminate, withdraw or delay any Demand Registration initiated by them under Section 2.2 and (ii) none of the Demand Initiating Existing Holders that initiated the applicable Demand Registration shall have any liability or obligation to any other Holder following their determination to terminate, withdraw or delay any Demand Registration initiated by them under this Section 2.3.

(e) Restrictions on Demand Registrations. Notwithstanding the rights and obligations set forth elsewhere in this Section 2.3, in no event shall the Company be obligated to take any action to effect more than two Demand Registrations in any calendar year initiated by any of the Holders, together with their respective designated transferees or successors pursuant to Section 2.9, excluding (A) Demand Registrations that are not deemed to be effected pursuant to Section 2.3(b) and (B) Demand Registrations that are abandoned by the Holders and/or their respective designated transferees or successors pursuant to Section 2.9; provided, that, for the avoidance of doubt, any Demand Registration for the Company to file a Registration Statement substantially concurrently with the offering of Registrable Securities pursuant to a Shelf Take-Down thereunder, such substantially concurrent Registration Statement and Shelf Take-Down shall be deemed to be one Demand Registration for purposes of this Section 2.3(e).

Section 2.4 Piggyback Registration.

(a) If at any time or from time to time the Company shall determine to register any of its equity securities, either for its own account or for the account of security holders (other than (1) in a registration relating solely to employee benefit plans, (2) a Registration Statement on Form S-4, Form F-4, Form S-8 or Form F-8 (or any successor forms), (3) a registration pursuant to which the Company is offering to exchange its own securities for other securities, (4) a Registration Statement relating solely to dividend reinvestment or similar plans, (5) a Shelf Registration Statement pursuant to which only the initial purchasers and subsequent transferees of debt securities of the Company or any Subsidiary that are convertible for Share Equivalents and that are initially issued pursuant to Rule 144A or Regulation S (or any successor provision) of the Securities Act may resell such notes and sell the Share Equivalents into which such notes may be converted, or (6) a registration pursuant to Section 2.1, Section 2.2 or Section 2.3 hereof), the Company will:

(i) promptly (but in any event at least 10 Business Days prior to the date the relevant Registration Statement is initially filed) give to each Holder written notice thereof; and

(ii) include in such registration (and any related qualification under state securities laws or other compliance), and in any underwritten offering involved therein, all the Registrable Securities specified in a written request or requests made within seven Business Days after receipt of such written notice from the Company by any Holder or Holders, except as set forth in Section 2.4(b) below.

For the avoidance of doubt, the inclusion of the Registrable Securities of any Holder in such Registration Statement pursuant to this Section 2.4 shall in all cases be subject to Section 2.9.

(b) Underwriting. If the Company intends to distribute the Registrable Securities covered by its registration by means of an underwritten offering, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 2.4(a)(i). In such event, the right of any Holder to registration pursuant to this Section 2.4 shall be conditioned upon such Holder's participation in such underwritten offering and the inclusion of such Holder's Registrable Securities in the underwritten offering to the extent provided herein. The Company shall, together with all participating Holders of Registrable Securities of the Company (if any) proposing (and permitted) to distribute their securities through such underwritten offering, enter into an underwriting agreement in customary form (containing such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type) with the managing underwriter or underwriters selected for such underwriting by the Company. Such underwriting agreement shall contain such representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of the Holders party thereto as are customarily made by issuers to selling stockholders in secondary underwritten public offerings. No Holder shall be entitled to participate in such underwritten offering unless such Holder completes and executes all questionnaires, powers of attorney, indemnities and other documents required under the terms of such underwriting agreement. Notwithstanding any other provision of this Section 2.4, if the managing underwriter or underwriters of a proposed underwritten offering of the Registrable Securities included in a registration pursuant to this Section 2.4 shall advise the Company and the Existing Holders that have requested to participate in such registration that the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the number of shares of Registrable Securities that may be included in such registration shall be (1) first, 100% of the securities that the Company proposes to sell, (2) second, and only if all the securities referred to in clause (1) have been included, the number of Registrable Securities that the Existing Holders proposed to include in such registration, which, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect in such registration, with such number to be allocated *pro rata* among such Existing Holders that have requested to participate in such registration based on the relative number of Registrable Securities then held by each such Existing Holder (provided, that any securities thereby allocated to an Existing Holder that exceed such Holder's request shall be reallocated among the remaining requesting Existing Holders in like manner) and (3) third, only if all of the Registrable Securities referred to in clause (2) have been included in such registration, any other securities eligible for inclusion in such registration that, in the opinion of the managing underwriter or underwriters, can be sold without having such adverse effect in such registration. No securities excluded from the underwriting by reason of the managing underwriter's or underwriters' marketing limitation shall be included in such registration.

(c) Right to Terminate, Withdraw or Delay Registration. The Company shall have the right to terminate, withdraw or delay any registration initiated by it (and not a Holder) under this Section 2.4 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration and, thereupon, (i) in the case of a determination to terminate or withdraw any registration, the Company shall be relieved of its obligation to register any Registrable Securities under this Section 2.4 in connection with such registration (but not from its obligation to pay the Registration Expenses in connection therewith pursuant to Section 2.5), without prejudice, however, to the rights of the Existing Holders who had

elected to participate in such registration to request that such registration be effected as a Demand Registration under Section 2.3, and (ii) in the case of a determination to delay registration, in the absence of a request by the Existing Holders who had elected to participate in such registration that such registration be effected as a Demand Registration under Section 2.3, the Company shall be permitted to delay registering any Registrable Securities under this Section 2.4, for the same period as the delay in registering the other equity securities covered by such registration.

Section 2.5 Expenses of Registration. All Registration Expenses shall be borne by the Company; provided, however, that the Company shall not be required to pay (1) stock transfer taxes or underwriters' discounts or selling commissions relating to Registrable Securities or (2) the costs and expenses of legal counsel of the MD Holders or the SLP Holders.

Section 2.6 Obligations of the Company. In connection with the Company's registration obligations under this Article II and subject to the applicable terms and conditions set forth therein, the Company shall use its reasonable best efforts to effect such registration to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall:

(a) prepare and file with the SEC a Registration Statement with respect to such Registrable Securities, including all exhibits and financial statements required under the Securities Act to be filed therewith, and before filing any such Registration Statement, the Prospectus or any Free Writing Prospectus, or any amendments or supplements thereto, (i) furnish to the underwriters, if any, and the participating Existing Holders, if any, copies of all such documents prepared to be filed, which documents shall be subject to the review of such underwriters and such Existing Holders and their respective counsel and (ii) except in the case of a registration under Section 2.4, not file any Registration Statement or Prospectus or amendments or supplements thereto to which any Existing Holder or underwriters, if any, shall reasonably object;

(b) subject to Section 2.1(b) in the case of a Shelf Registration Statement, use its reasonable best efforts to cause such Registration Statement to become effective as soon as practicable, and keep such Registration Statement effective for the later of (i) until the Holder or Holders of Registrable Securities covered by such Registration Statement have completed the distribution relating thereto or (ii) for such longer period as may be prescribed herein;

(c) prepare and file with the SEC such pre- and post-effective amendments to such Registration Statement, supplements to the Prospectus and such amendments or supplements to any Free Writing Prospectus as may be (x) reasonably requested by any participating Existing Holder, (y) reasonably requested by any other participating Holder (to the extent such request relates to information relating to such Holder), or (z) necessary to keep such registration effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(d) permit any Holder and its counsel that (in the good faith reasonable judgment of such Holder) might be deemed to be a controlling person of the Company (a “Control Holder”) to participate in good faith in the preparation of such Registration Statement and to cooperate in good faith to include therein material, furnished to the Company in writing, that in the reasonable judgment of such Holder and its counsel should be included;

(e) promptly incorporate in a Prospectus supplement, Free Writing Prospectus or post-effective amendment to the applicable Registration Statement such information as the managing underwriter or underwriters and any participating Existing Holder agree should be included therein relating to the plan of distribution with respect to such Registrable Securities, and make all required filings of such Prospectus supplement, Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Free Writing Prospectus or post-effective amendment;

(f) furnish to the Holders of Registrable Securities covered by such Registration Statement and each underwriter, if any, without charge, such numbers of copies of the Registration Statement and the related Prospectus and any Free Writing Prospectus and any amendment or supplement thereto, including all exhibits thereto and documents incorporated by reference therein and a preliminary prospectus, in conformity with the requirements of the Securities Act (it being understood that the Company consents to the use of such Prospectus, any Free Writing Prospectus and any amendment or supplement thereto by such Holders and the underwriters, if any, in connection with the offering and sale of the Registrable Securities thereby), and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities;

(g) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form (containing such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type), with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement;

(h) notify each Holder of Registrable Securities covered by such Registration Statement and the managing underwriter or underwriters, if any, and (if requested) confirm such advice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (i) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or Free Writing Prospectus or any amendment or supplement thereto has been filed, (ii) of any written comments by the SEC or any request by the SEC or any other federal or state governmental authority for amendments or supplements to such Registration Statement, Prospectus or Free Writing Prospectus or for additional information, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or any Free Writing Prospectus or the initiation or threatening of any proceedings for such purposes, (iv) if, at any time, the representations

and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects, (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction and (vi) of the receipt by the Company of any notification with respect to the initiation or threatening of any proceeding for the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction;

(i) promptly notify each Holder of Registrable Securities covered by such Registration Statement and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement, the Prospectus included in such Registration Statement (as then in effect) or any Free Writing Prospectus contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus, any preliminary Prospectus or any Free Writing Prospectus, in light of the circumstances under which they were made) not misleading, when any Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement, Prospectus or Free Writing Prospectus in order to comply with the Securities Act and, in either case as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to such Holders or the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement, Prospectus or Free Writing Prospectus that shall correct such misstatement or omission or effect such compliance;

(j) use its reasonable best efforts to prevent the issuance of any stop order suspending the effectiveness of any Registration Statement or of any order preventing or suspending the use of any preliminary or final prospectus and, if any such order is issued, to obtain the withdrawal of any such order as soon as practicable;

(k) use its reasonable best efforts to cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(l) make available for inspection by each Holder including Registrable Securities in such registration, any underwriter participating in any distribution pursuant to such registration, and any attorney, accountant or other agent retained by such Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, as such parties may reasonably request, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Holder, underwriter, attorney, accountant or agent in connection with such Registration Statement;

(m) use its reasonable best efforts to register or qualify, and cooperate with the Holders of Registrable Securities covered by such Registration Statement, the underwriters, if any, and their respective counsel, in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "Blue Sky" or securities laws of each state and other jurisdiction of the United States as any such Holder or underwriters, if any, or their respective counsel reasonably request in writing, and do any and all other things reasonably necessary or advisable to keep such registration or qualification in effect for such period as required by Section 2.1(b); provided, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or take any action which would subject it to taxation service of process in any such jurisdiction where it is not then so subject;

(n) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities and provide the applicable transfer agent with printed certificates for the Registrable Securities which are in a form eligible for deposit with The Depository Trust Company;

(o) make such representations and warranties to the Holders including Registrable Securities in such registration and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in secondary underwritten public offerings;

(p) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as any Existing Holder participating in such registration or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the registration and disposition of such Registrable Securities;

(q) obtain for delivery to the Holders of Registrable Securities covered by such Registration Statement and to the underwriters, if any, an opinion(s) and negative assurance letter(s) from counsel for the Company, dated the effective date of the Registration Statement or, in the event of an underwritten offering, the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions and negative assurance letters shall be reasonably satisfactory to such Holders or underwriters, as the case may be, and their respective counsel;

(r) in the case of an underwritten offering, obtain for delivery to the Company and the underwriters, with copies to the Holders of Registrable Securities included in such Registration, a cold comfort letter from the Company's independent certified public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(s) use its reasonable best efforts to list the Registrable Securities that are Share Equivalents covered by such Registration Statement with any securities exchange or automated quotation system on which the Share Equivalents are then listed;

(t) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement from and after a date not later than the effective date of such Registration Statement;

(u) cooperate with Holders including Registrable Securities in such registration and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold, such certificates to be in such denominations and registered in such names as such Holders or the managing underwriters may request at least two Business Days prior to any sale of Registrable Securities;

(v) cooperate with each Holder of Registrable Securities covered by such Registration Statement and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the FINRA;

(w) use its reasonable best efforts to comply with all applicable securities laws and make available to its Holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(x) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by any Existing Holder or Control Holder participating in such registration, by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, accountant or other agent retained by such Existing Holder(s) or Control Holder(s) or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of the Company, and cause all of the Company's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement as shall be necessary to enable them to exercise their due diligence responsibility; provided, that any such Person gaining access to information regarding the Company pursuant to this Section 2.6(x) shall agree to hold in strict confidence and shall not make any disclosure or use any information regarding the Company that the Company determines in good faith to be confidential, and of which determination such Person is notified, unless (w) the release of such information is requested or required by law or by deposition, interrogatory, requests for information or documents by a governmental entity, subpoena or similar process, (x) such information is or becomes publicly known other than through a breach of this or any other agreement of which such Person has actual knowledge, (y) such information is or becomes available to such Person on a non-confidential basis from a source other than the Company or (z) such information is independently developed by such Person; and

(y) in the case of a marketed underwritten offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the underwriters and otherwise to facilitate, cooperate with and participate in each proposed offering contemplated herein and customary selling efforts related thereto.

Section 2.7 Indemnification.

(a) The Company agrees to indemnify and hold harmless, to the fullest extent permitted by applicable law, each Holder of Registrable Securities, each of such Holder's respective direct or indirect partners, managers, members or stockholders and each of such partner's, manager's, member's or stockholder's partners, managers, members or stockholders and, with respect to all of the foregoing Persons, each of their respective Affiliates, officers, directors, employees, trustees, beneficiaries or agents and each Person, if any, who controls such Persons within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, with respect to any registration, qualification, compliance or sale effected pursuant to this Article II,

and each underwriter, if any, and each Person who controls any underwriter, of the Registrable Securities held by or issuable to such Holder (collectively, the “Company Indemnifiable Persons”), against all claims, losses, damages and liabilities (or actions in respect thereto) to which they may become subject under the Securities Act, the Exchange Act, or other federal or state law arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any Prospectus, offering circular, Free Writing Prospectus or other similar document (including any related Registration Statement, notification, or the like) incident to any such registration, qualification, compliance or sale effected pursuant to this Article II, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any violation or alleged violation by the Company of any federal, state or common law rule or regulation applicable to the Company or any of its Subsidiaries in connection with any such registration, qualification, compliance or sale, (iii) any failure to register or qualify Registrable Securities in any state where the Company or its agents have affirmatively undertaken or agreed in writing (including pursuant to Section 2.6(m)) that the Company (the undertaking of any underwriter being attributed to the Company) will undertake such registration or qualification on behalf of the Holders of such Registrable Securities (provided, that in such instance the Company shall not be so liable if it has undertaken its reasonable best efforts to so register or qualify such Registrable Securities) or (iv) any actions or inactions or proceedings in respect of the foregoing whether or not any such Company Indemnifiable Person is a party thereto, and the Company will reimburse, as incurred, each such Company Indemnifiable Person for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; provided, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or omission made in reliance and in conformity with written information furnished to the Company by such Holder or underwriter expressly for use therein. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any Company Indemnifiable Person.

(b) Each Holder (if Registrable Securities held by or issuable to such Holder are included in such registration, qualification, compliance or sale pursuant to this Article II) agrees (severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by applicable law, the Company, each of its officers, directors, employees, stockholders, Affiliates and agents and each Person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, each underwriter, if any, and each Person who controls any underwriter, of the Company’s securities covered by such a Registration Statement, and each other Holder, each of such other Holder’s respective direct or indirect partners, members or stockholders and each of such partner’s, member’s or stockholder’s partners, members or stockholders and, with respect to all of the foregoing Persons, each of their respective Affiliates, officers, directors, employees, trustees or agents and each Person, if any, who controls such Persons within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the “Holder Indemnifiable Persons”), against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any Prospectus, offering circular, Free Writing Prospectus or other similar document (including any related Registration Statement, notification, or the like) incident to any such registration, qualification, compliance or sale effected

pursuant to this Article II, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse, as incurred, each such Holder Indemnifiable Persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) was made in such Registration Statement, Prospectus, offering circular, Free Writing Prospectus or other document, in reliance upon and in conformity with written information furnished to the Company by such Holder expressly for use therein that was not corrected in a subsequent writing prior to or concurrently with the sale of the Registrable Securities to the Person asserting the claim; provided, however, that the aggregate liability of each Holder hereunder shall be limited to the gross proceeds after underwriting discounts and commissions received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Each Company Indemnifiable Person and Holder Indemnifiable Person entitled to indemnification under this Section 2.7 (the “Indemnified Party”) shall give written notice to the party required to provide such indemnification (the “Indemnifying Party”) of any claim as to which indemnification may be sought promptly after such Indemnified Party has actual knowledge thereof (and in any event, within 15 Business Days) and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom with counsel reasonably satisfactory to the Indemnified Party; provided, that the Indemnified Party may participate in such defense at the Indemnifying Party’s expense if (i) the Indemnified Party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it or other Indemnified Parties that are different from or in addition to those available to the Indemnifying Party or (ii) in the reasonable judgment of the Indemnified Party (based upon the advice of its counsel) a conflict of interest may exist between the Indemnified Party and the Indemnifying Party with respect to such claim or any litigation resulting therefrom (in which case, if the Indemnified Party notifies the Indemnifying Party in writing that the Indemnified Party elects to employ separate counsel at the Indemnifying Party’s expense, the Indemnifying Party shall not have the right to assume the defense of such claim or any litigation resulting therefrom on behalf of the Indemnified Party); provided, further, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Article II, except to the extent that such failure to give notice materially prejudices the Indemnifying Party in the defense of any such claim or any such litigation. An Indemnifying Party, in the defense of any such claim or litigation, may, without the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that (i) includes as a term thereof the giving by the claimant or plaintiff therein to such Indemnified Party of an unconditional release from all liability with respect to such claim or litigation and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of such Indemnified Party; provided, that any sums payable in connection with such settlement are paid in full by the Indemnifying Party. If such defense is not assumed by the Indemnifying Party, the Indemnifying Party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld. It is understood that the Indemnifying Party or Parties shall not, except as specifically set forth in this Section 2.7(c), in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one

counsel has been authorized in writing by the Indemnifying Party or Parties, (y) an Indemnified Party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other Indemnified Parties, or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an Indemnified Party) between such Indemnified Party and the other Indemnified Parties, in each of which cases the Indemnifying Party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) If for any reason the indemnification provided for in Section 2.7(a) or Section 2.7(b) is unavailable to an Indemnified Party or insufficient in respect of any claims, losses, damages and liabilities referred to therein, then the Indemnifying Party shall contribute to the amount paid or payable by the Indemnified Party as a result of such claims, losses, damages and liabilities (i) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party or Parties, on the other hand, in connection with the acts, statements or omissions that resulted in such claims, losses, damages and liabilities, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 2.7(d) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 2.7(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an Indemnified Party as a result of the claims, losses, damages and liabilities referred to in Section 2.7(a) and Section 2.7(b) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.7(d), in connection with any Registration Statement filed by the Company, any Holder of Registrable Securities covered by such Registration Statement shall not be required to contribute any amount in excess of the dollar amount of the gross proceeds (less underwriting discounts and commissions) received by such Holder under the sale of Registrable Securities giving rise to such contribution obligation less any amount paid by such Holders pursuant to Section 2.7(b). If indemnification is available under this Section 2.7, the Indemnifying Parties shall indemnify each Indemnified Party to the full extent provided in Section 2.7(a) and Section 2.7(b) without regard to the provisions of this Section 2.7(d).

(e) The indemnities provided in this Section 2.7 (i) shall survive the transfer of any Registrable Securities by such Holder and (ii) are not exclusive and shall not limit any rights or remedies which may be available to any Indemnified Party at law or in equity or pursuant to any other agreement.

Section 2.8 Information by Holder. Each Holder of Registrable Securities included in any registration shall promptly furnish to the Company such information regarding such Holder and the distribution proposed by such Holder as the Company may reasonably request and as shall be required in connection with any registration, qualification or compliance referred to in this Article II.

Section 2.9 Transfer of Registration Rights; Additional Holders; General Transfer Restrictions on Exercise of Rights.

(a) The rights of a Holder contained in Section 2.1, Section 2.2, Section 2.3 and Section 2.4 hereof to cause the Company to register Registrable Securities of such Holder may be assigned in respect of those Registrable Securities (i) conveyed by an Existing Holder to its Permitted Transferees or (ii) conveyed by any other Holder solely with the prior written consent of the Existing Holders and the Company (which consent of the Company shall not be unreasonably withheld, delayed or conditioned); provided, that such transferee shall only be admitted as a party hereunder upon his, her or its execution and delivery of a Joinder Agreement and the acceptance thereof by the Company, whereupon such Person will be treated as a Holder for all purposes of this Agreement, with the same rights, benefits and obligations hereunder as the transferring Holder with respect to the transferred Registrable Securities (except that if the transferee was a Holder prior to such transfer, such transferee shall have the same rights, benefits and obligations with respect to such transferred Registrable Securities as were applicable to Registrable Securities held by such transferee prior to such transfer). Notwithstanding anything herein to the contrary, for the avoidance of doubt, any registration rights or allocations provided under this Agreement to (x) a MD Holder may be assigned without limitation by such MD Holder to any other MD Holder and (y) a SLP Holder may be assigned without limitation by such SLP Holder to any other SLP Holder. Further, notwithstanding anything herein to the contrary, in the case of any transfer of Registrable Securities by the MD Holders after MD's death to an individual or Person other than an (i) individual or entity described in clause (i)(A), (i)(B), (i)(C) or (i)(D) of the definition of "Permitted Transferee" or (ii) MD Fiduciary, such Registrable Securities shall not be deemed to be owned by the MD Holders for purposes of this Agreement.

Section 2.10 Delay of Registration. No Holder shall have any right to obtain, and hereby waives any right to seek, an injunction restraining or otherwise delaying any registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Article II.

Section 2.11 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the MD Holders and the SLP Holders, enter into any agreement with respect to its Securities that is inconsistent with the rights granted to the Holders by this Agreement, including by allowing any holder or prospective holder of any Securities of the Company (a) to include any Securities in any registration initiated by the MD Holders or the SLP Holders and filed under Section 2.1, Section 2.2, Section 2.3 or Section 2.4 hereof, (b) to include any Securities in any other registration filed under Section 2.1, Section 2.2, Section 2.3 or Section 2.4 hereof, unless, in each case, under the terms of such agreement, such holder or prospective holder may include such Securities in any such registration only to the extent that the inclusion of such Securities will not diminish the amount of Registrable Securities held by the Holders that are included in such registration or (c) to require the Company to effect a registration pursuant to demand registration rights.

Section 2.12 Reporting. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the reasonable request of any of the Existing Holders, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rules 144, 144A or Regulation S under the Securities Act), and it will take such further action as any Existing Holder may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rules 144, 144A or Regulation S under the Securities Act, as such Rules may be amended from time to time, or (ii) any similar or analogous rule or regulation hereafter adopted by the SEC, including making and keeping current public information available, within the meaning of Rule 144 (or any similar or analogous rule or regulation hereafter adopted by the SEC) promulgated under the Securities Act, at all times after it has become subject to the reporting requirements of the Exchange Act.

Upon the reasonable request of a Holder, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

Section 2.13 Blackout Periods.

(a) Offerings Blackout Periods. If requested by the managing underwriter or underwriters in an underwritten offering and agreed to by each participating Holder in such transaction, each of the Company and each Holder participating in such transaction will enter into a customary lock-up agreement not to take or commit to take any actions that are, or would constitute, a Blackout Period Restriction; provided that if any Existing Holder is released from its Blackout Period Restrictions pursuant to this Section 2.13(a), the other Existing Holders subject to such Blackout Period Restrictions shall be simultaneously released, on a *pro rata* basis.

(b) Certain Matters. The Company agrees to use its reasonable best efforts to obtain from each holder of restricted securities of the Company which securities are the same as or similar to the Registrable Securities being registered, or any restricted securities convertible into or exchangeable or exercisable for any of such securities, an agreement not to effect any public sale or distribution of such securities during any such period referred to in Section 2.13(b), except as part of any such registration, if permitted. Without limiting the foregoing (but subject to Section 2.11), if after the date hereof the Company grants any Person (other than a Holder) any rights to demand or participate in a registration, the Company agrees that the agreement with respect thereto shall include such Person's agreement to comply with any Blackout Period Restrictions required by this Section 2.13 as if it were a Holder hereunder. If requested by the managing underwriter or underwriters of any such underwritten offering, the Company and each Holder shall, and shall cause each other Person subject to the Blackout Period Restrictions referred to in this Section 2.13 to, execute a customary agreement reflecting its agreement set forth in this Section 2.13. The Company shall impose stop-transfer instructions with respect to the Securities subject to the foregoing restriction until the end of the period referenced above.

(c) Clear Market. With respect to any underwritten offerings of Registrable Securities of the Existing Holders, the Company agrees to enter into an underwriting agreement containing customary clear market provisions with the managing underwriter or underwriters selected by the Demand Initiating Existing Holders or Initiating Shelf Take-Down Holders, as applicable, that initiated the applicable Demand Registration or Underwritten Shelf Take-Down.

(d) Additional Restrictions. In addition to the foregoing, for so long as a Holder or Holders are entitled to designate a MSD Director Nominee or SLP Director Nominee (each as defined in Section 3(a)(i) of the Stockholders Agreement), as the case may be, such MSD Director Nominee or SLP Director Nominee, as applicable, shall, for the avoidance of doubt, remain subject in all respects to the restrictions imposed by the Company on members of the Board with respect to sales or other transfers of Securities.

Section 2.14 Discontinuance of Distributions and Use of Prospectus and Free Writing Prospectus. Each Holder of Registrable Securities included in any Registration Statement agrees that, upon delivery of any notice by the Company of the happening of any event of the kind described in Section 2.6(h)(iii), (v), or (vi) or Section 2.6(i), such Holder will forthwith discontinue disposition of Registrable Securities pursuant to such Registration Statement until (a) such Holder's receipt of the copies of the supplemented or amended Prospectus or Free Writing Prospectus contemplated by Section 2.6(i), (b) such Holder is advised in writing by the Company that the use of the Prospectus or Free Writing Prospectus, as the case may be, may be resumed, (c) such Holder is advised in writing by the Company of the termination, expiration or cessation of such order or suspension referenced in Section 2.6(h)(iii) or Section 2.6(h)(v) or (d) such Holder is advised in writing by the Company that the representations and warranties of the Company in such applicable underwriting agreement are true and correct in all material respects. If so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus or any Free Writing Prospectus covering such Registrable Securities current at the time of delivery of such notice. In the event the Company shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus or Free Writing Prospectus contemplated by Section 2.6(i) or is advised in writing by the Company that the use of the Prospectus or Free Writing Prospectus may be resumed.

ARTICLE III
MISCELLANEOUS

Section 3.1 Term. This Agreement shall terminate (a) with respect to all Holders, with the prior written consent of the MD Holders and the SLP Holders, or (b) with respect to any Holder, at such time as such Holder, together with its Affiliates, does not beneficially own any Registrable Securities. Notwithstanding the foregoing, the provisions of Section 2.7, Section 2.12 and all of this Article III shall survive any such termination.

Section 3.2 Further Assurances. From time to time, at the reasonable request of a party hereto and without further consideration, each party hereto shall execute and deliver such additional documents and take all such further action as may be necessary or appropriate to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

Section 3.3 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes and replaces any prior understanding, agreement or statement of intent, in each case, written or oral, of any and every nature with respect thereto. In the event of any inconsistency between this Agreement and any document executed or delivered to effect the purposes of this Agreement, including the certificate of incorporation and bylaws (or equivalent organizational and governing documents) of any Person, this Agreement shall govern as among the parties hereto.

Section 3.4 Specific Performance. Subject to Section 2.10, the parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that, in the event of breach by any party, damages would not be an adequate remedy and each of the other parties shall be entitled to specific performance and injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity. The parties hereto further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief.

Section 3.5 Governing Law. This Agreement and all claims or causes of action (whether in tort, contract or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement) shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

Section 3.6 Submissions to Jurisdictions; Waiver of Jury Trials.

(a) Each of the parties hereto hereby irrevocably acknowledges and consents that any legal action or proceeding brought with respect to this Agreement or any of the obligations arising under or relating to this Agreement shall be brought and determined exclusively in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), and each of the parties hereto hereby irrevocably submits to and accepts with regard to any such action or proceeding, for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any

Federal court of the United States of America sitting in the State of Delaware). Each party hereby further irrevocably waives any claim that the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware) lacks jurisdiction over such party, and agrees not to plead or claim, in any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby brought in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), that any such court lacks jurisdiction over such party.

(b) Each party irrevocably consents to the service of process in any legal action or proceeding brought with respect to this Agreement or any of the obligations arising under or relating to this Agreement by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party, at its address for notices as provided in Section 3.12 of this Agreement, such service to become effective 10 days after such mailing. Each party hereby irrevocably waives any objection to such service of process and further irrevocably waives and agrees not to plead or claim in any action or proceeding commenced hereunder or under any other documents contemplated hereby, that service of process was in any way invalid or ineffective. Subject to Section 3.6(c), the foregoing shall not limit the rights of any party to serve process in any other manner permitted by applicable law. The foregoing consents to jurisdiction shall not constitute general consents to service of process in the State of Delaware for any purpose except as provided above and shall not be deemed to confer rights on any Person other than the respective parties to this Agreement.

(c) Each of the parties hereto hereby waives any right it may have under the laws of any jurisdiction to commence by publication any legal action or proceeding with respect to this Agreement or any of the obligations under or relating to this Agreement. To the fullest extent permitted by applicable law, each of the parties hereto hereby irrevocably waives the objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding with respect to this Agreement or any of the obligations arising under or relating to this Agreement in the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware), and hereby further irrevocably waives and agrees not to plead or claim that the Court of Chancery in the State of Delaware (or, only if the Court of Chancery in the State of Delaware declines to accept jurisdiction over a particular matter, any Federal court of the United States of America sitting in the State of Delaware) is not a convenient forum for any such suit, action or proceeding.

(d) The parties hereto agree that any judgment obtained by any party hereto or its successors or assigns in any action, suit or proceeding referred to above may, in the discretion of such party (or its successors or assigns), be enforced in any jurisdiction, to the extent permitted by applicable law.

(e) EACH OF THE PARTIES HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE

PARTIES (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 3.6(e).

Section 3.7 Obligations. All obligations hereunder shall be satisfied in full without set-off, defense or counterclaim.

Section 3.8 Consents, Approvals and Actions.

(a) MD Holders. All actions required to be taken by, or approvals or consents of, the MD Stockholders or the MD Holders under this Agreement (including with respect to any amendments pursuant to Section 3.9), shall be taken by consent or approval by, or agreement of, MD or his permitted assignee; provided, that upon the occurrence and during the continuation of a Disabling Event, such approval or consent shall be taken by consent or approval by, or agreement of, the holders of a majority of Common Stock held by the MD Stockholders, and in each case, such consent, approval or agreement shall constitute the necessary action, approval or consent by the MD Stockholders or the MD Holders, as applicable.

(b) SLP Holders. All actions required to be taken by, or approvals or consents of, the SLP Stockholders or the SLP Holders under this Agreement (including with respect to any amendments pursuant to Section 3.9), shall be taken by consent or approval by, or agreement of, the holders of a majority of Common Stock held by the SLP Stockholders, and such consent, approval or agreement shall constitute the necessary action, approval or consent by the SLP Stockholders or the SLP Holders, as applicable.

(c) Transferee Holders. All actions required to be taken by, or approvals or consents of, the Transferee Holders under this Agreement (including with respect to any amendments pursuant to Section 3.9) shall be taken by consent or approval by, or agreement of, the holders of a majority of the outstanding Registrable Securities held by the Transferee Holders, taken together, at such time that provide such consent, approval or action in writing at such time.

Section 3.9 Amendment and Waiver.

(a) Any amendment, modification, supplement or waiver to or of any provision of this Agreement shall be in writing and shall require the prior written approval of the Company; provided, (i) that if any such amendment, modification, supplement or waiver adversely affects the MD Holders, it shall require the prior written consent of the holders of a majority of the Registrable Securities held by the MD Holders and their designated transferees or successors pursuant to Section 2.9 in the aggregate, (ii) that if any such amendment, modification, supplement or waiver adversely affects the SLP Holders, it shall require the prior written consent of the holders of a majority of the Registrable Securities held by the SLP Holders and their designated

transferees or successors pursuant to Section 2.9 in the aggregate and (iii) if the express terms of any such amendment, modification, supplement or waiver disproportionately and adversely affects a Holder (other than the Existing Holders), it shall require the prior written consent of the holders of a majority of the Registrable Securities held by such affected Holders and their designated transferees or successors pursuant to Section 2.9 in the aggregate; provided, that the immediately preceding proviso shall not apply with respect to (i) in the case of Transferee Holders, amendments that do not apply to Transferee Holders or (ii) amendments to reflect the addition of a new third-party holding Registrable Securities (other than a designated transferee of Registrable Securities as a party hereto pursuant to Section 2.9). Notwithstanding the foregoing, waivers only require written approval of the waiving party with respect to which such rights are applicable.

(b) Notwithstanding the foregoing, any addition of a designated transferee of Registrable Securities as a party hereto pursuant to Section 2.9 shall not constitute an amendment hereto and the applicable Joinder Agreement need be executed only by the Company and such transferee, recipient or additional Transferee Holder.

(c) Any failure by any party at any time to enforce any of the provisions of this Agreement shall not be construed a waiver of such provision or any other provisions hereof. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 3.10 Binding Effect. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the parties' successors and permitted assigns.

Section 3.11 Third Party Beneficiaries. Except for Section 2.7 and Section 3.13 (which will be for the benefit of the Persons set forth therein, and any such Person will have the rights provided for therein), this Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto, and it does not create or establish any third party beneficiary hereto.

Section 3.12 Notices. Any and all notices, designations, offers, acceptances or other communications provided for herein shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by facsimile (with written confirmation of transmission), e-mail (with written confirmation of transmission), nationally-recognized overnight courier, which shall be addressed:

(a) in the case of the Company, to its principal office to the attention of its General Counsel (email [REDACTED]), with a copy (which shall not constitute actual or constructive notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Barbara L. Becker
Sae M. Muzumdar
Andrew Kaplan
Email: bbecker@gibsondunn.com
Email: smuzumdar@gibsondunn.com
Email: akaplan@gibsondunn.com;

(b) in the case of the Holders identified below, to the following respective addresses, e-mail addresses or facsimile numbers:

If to any of the SLP Holders, to:

c/o Silver Lake Partners
2775 Sand Hill Road
Suite 100
Menlo Park, CA 94025
Attention: Karen King
Facsimile: (650) 233-8125
E-mail: [REDACTED]

and

c/o Silver Lake Partners
55 Hudson Yards
550 West 34th Street
40th Floor
New York, NY 10001
Attention: Andrew J. Schader
Facsimile: (212) 981-3535
E-mail: [REDACTED]

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

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Kenneth B. Wallach
Hui Lin
Facsimile: (212) 455-2502
Email: kwallach@stblaw.com
Email: hui.lin@stblaw.com

If to any of the MD Holders, to:

Michael S. Dell
c/o Dell Inc.
One Dell Way
Round Rock, TX 78682
Facsimile: [REDACTED]

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

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Attention: Steven A. Rosenblum
Andrew J. Nussbaum
Gordon S. Moodie
Facsimile: (212) 403-2000
Email: sarosenblum@wlrk.com
Email: ajnussbaum@wlrk.com
Email: gsmoodie@wlrk.com

and

MSD Capital, L.P.
645 Fifth Avenue
21st Floor
New York, NY 10022-5910
Attention: Marc R. Lisker
Marcello Liguori
Facsimile: [REDACTED]
Email: [REDACTED]
Email: [REDACTED]

(c) in the case of any Transferee Holder, to the address, e-mail address or facsimile number of such Transferee Holder set forth in its Joinder Agreement (if applicable);

(d) in the case of any other Holder, to the address, e-mail address or facsimile number appearing in the books and records of the Company or in its Joinder Agreement (if applicable).

Any and all notices, designations, offers, acceptances or other communications shall be conclusively deemed to have been given, delivered or received (i) in the case of personal delivery, on the day of actual delivery thereof, (ii) in the case of facsimile or e-mail, on the day of transmittal thereof if given during the normal business hours of the recipient, and on the Business Day during which such normal business hours next occur if not given during such hours on any day and (iii) in the case of dispatch by nationally-recognized overnight courier, on the next Business Day following the disposition with such nationally-recognized overnight courier. By notice complying with the foregoing provisions of this Section 3.12, each party shall have the right to change its mailing address, e-mail address or facsimile number for the notices and communications to such party.

Section 3.13 No Third Party Liability. This Agreement may only be enforced against the named parties hereto. All claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the entities that are expressly identified as parties hereto; and no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, portfolio company in which any such party or any of its investment fund Affiliates have made a debt or equity investment (and vice versa), agent, attorney or representative of any party hereto (including any Person negotiating or executing this Agreement on behalf of a party hereto), unless party to this Agreement, shall have any liability or obligation with respect to this Agreement or with respect any claim or cause of action (whether in contract or tort) that may arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including a representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement).

Section 3.14 No Partnership. Nothing in this Agreement and no actions taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the parties or constitute any party the agent of any other party for any purpose.

Section 3.15 Severability. If any portion of this Agreement shall be declared void or unenforceable by any court or administrative body of competent jurisdiction, such portion shall be deemed severable from the remainder of this Agreement, which shall continue in all respects to be valid and enforceable.

Section 3.16 Counterparts. This Agreement may be executed in any number of counterparts (which delivery may be via facsimile transmission or e-mail if in .pdf format), each of which shall be deemed an original, but all of which together shall constitute a single instrument. The words “execution,” “signed,” “signature,” “delivery” and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has executed this Registration Rights Agreement or caused this Registration Rights Agreement to be signed by its officer thereunto duly authorized as of the date first written above.

COMPANY:

VMWARE, INC.

By: /s/ Craig Norris
Name: Craig Norris
Title: Vice President and Assistant Secretary

[Signature Page to Registration Rights Agreement]

MD STOCKHOLDER / MD HOLDER:

/s/ Michael S. Dell

MICHAEL S. DELL

MD STOCKHOLDER / MD HOLDER:

SUSAN LIEBERMAN DELL SEPARATE PROPERTY TRUST

By: Hexagon Trust Company, as Trustee

By: /s/ Marc R. Lisker

Name: Marc R. Lisker

Title: President

SLP STOCKHOLDER / SLP HOLDER:

SILVER LAKE PARTNERS V DE (AIV),
L.P.

By: Silver Lake Technology Associates V, L.P., its General Partner

By: SLTA V (GP), L.L.C., its General Partner

By: Silver Lake Group, L.L.C., its Managing Member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

[Signature Page to Registration Rights Agreement]

SLP STOCKHOLDER / SLP HOLDER:

SILVER LAKE PARTNERS IV, L.P.

By: Silver Lake Technology Associates IV, L.P., its General Partner

By: SLTA IV (GP), L.L.C., its General Partner

By: Silver Lake Group, L.L.C., its Managing Member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SLP STOCKHOLDER / SLP HOLDER:

SILVER LAKE TECHNOLOGY INVESTORS IV, L.P.

By: Silver Lake Technology Associates IV, L.P., its General Partner

By: SLTA IV (GP), L.L.C., its General Partner

By: Silver Lake Group, L.L.C., its Managing Member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SLP STOCKHOLDER / SLP HOLDER:

SILVER LAKE TECHNOLOGY INVESTORS V, L.P.

By: Silver Lake Technology Associates V, L.P., its General Partner

By: SLTA V (GP), L.L.C., its General Partner

By: Silver Lake Group, L.L.C., its Managing Member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

[Signature Page to Registration Rights Agreement]

SLP STOCKHOLDER / SLP HOLDER:

SL SPV-2, L.P.

By: SLTA SPV-2, L.P., its General Partner

By: SLTA spv-2 (GP), L.L.C., its General Partner

By: Silver Lake Group, L.L.C., its Managing Member

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

SLP STOCKHOLDER / SLP HOLDER:

SILVER LAKE GROUP, L.L.C.

By: /s/ Egon Durban

Name: Egon Durban

Title: Co-Chief Executive Officer

[Signature Page to Registration Rights Agreement]

COVENANT NOT TO SUE AND RELEASE

This COVENANT NOT TO SUE AND RELEASE ("Agreement"), effective as of November 1, 2021 ("Effective Date"), is by and between Dell Technologies Inc., a Delaware corporation having an office at 176 South Street, Hopkinton, MA 01748-9103 ("Dell") and VMware, Inc., a Delaware corporation having an office at 3401 Hillview Avenue, Palo Alto, CA 94304 ("VMware"). Dell and VMware are hereinafter referred to together as the "Parties" and individually as a "Party".

WHEREAS, Dell is currently the indirect owner of a majority of the issued and outstanding common stock of VMware;

WHEREAS, the Parties have entered into that certain Separation and Distribution Agreement, dated as of April 14, 2021 (the "SDA"), pursuant to which the Parties will consummate a series of transactions to effectuate the separation of Dell and VMware on the Effective Date (the "Separation");

WHEREAS, in connection with the Separation, the Parties are simultaneously entering into a Commercial Framework Agreement, dated as of the date hereof (the "Commercial Framework Agreement"); and

WHEREAS, in connection with the Separation and the Commercial Framework Agreement, the Parties desire to grant certain rights and perform certain obligations described below with respect to certain of their patents. Capitalized terms used herein have the meaning set forth in Article V.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

ARTICLE I**PATENT COVENANTS/RELEASES**

Section 1.1 Dell Covenant. Dell, on behalf of itself and its current and future Controlled Affiliates (collectively, the "Dell Parties"), hereby covenants and agrees that none of the Dell Parties shall, at any time during the Term, bring, assert, pursue, maintain, or provide funding or advice in support of, any Action (or join as a party to any such Action to support any of the allegations in clauses (a)-(c) below) anywhere in the world against: (a) VMware or its current and future Controlled Affiliates (collectively, the "VMware Parties"), alleging that the making, having made, use, offer for sale, importation or sale of any of the VMware Parties' Captured Products by the VMware Parties infringes, or induces or contributes to the infringement of, the Dell Patents; (b) current or future (both direct and indirect) customers of the VMware Parties (collectively, "VMware Customers"), alleging that the use of the VMware Parties' Captured Products by the VMware Customers infringes, or induces or contributes to the infringement of, the Dell Patents; or (c) current or future channel partners, resellers, authorized VMware Customers, and other distributors of the VMware Parties' Captured Products (collectively, "VMware Distributors"), alleging that such VMware Distributors' distribution, use, offer for sale, importation or sale of the VMware Parties' Captured Products, made pursuant to agreements between such VMware Distributors and the VMware Parties, infringes, or induces or contributes to the infringement of, the Dell Patents, whether such Captured Products are distributed, used, offered for sale, imported, or sold on a standalone basis or as part of a bundled, combination, or integrated solution or product suite.

Section 1.2 VMware Covenant. VMware, on behalf of the VMware Parties, hereby covenants and agrees that none of the VMware Parties shall, at any time during the Term, bring, assert, pursue, maintain, or provide funding or advice in support of, any Action (or join as a party to any such Action to support any of the allegations in clauses (a)-(c) below) anywhere in the world against: (a) any of the Dell Parties, alleging that the making, having made, use, offer for sale, importation or sale of any of the Dell Parties' Captured Products by the Dell Parties infringes, or induces or contributes to the infringement of, the VMware Patents; (b) current or future (both direct and indirect) customers of the Dell Parties (collectively, "Dell Customers"), alleging that the use by the Dell Customers infringes, or induces or contributes to the infringement of, the VMware Patents; or (c) current or future channel partners, resellers, authorized Dell Customers, and other distributors of the Dell Parties' Captured Products (collectively, "Dell Distributors"), alleging that such Dell Distributors' distribution, use, offer for sale, importation or sale of the Dell Parties' Captured Products, made pursuant to agreements between such Dell Distributors and the Dell Parties, infringes, or induces or contributes to the infringement of, the VMware Patents, whether such Captured Products are distributed, used, offered for sale, imported, or sold on a standalone basis or as part of a bundled, combination, or integrated solution or product suite.

Section 1.3 Additional Provisions on Patent Covenants.

(a) No Laundering. The covenants set forth in Section 1.1 and Section 1.2 are intended to cover only Captured Products and are not intended to cover patent laundering activities of Third Parties, i.e., any products that otherwise meet the definition of Captured Products are not covered by Section 1.1 or Section 1.2, as applicable, to the extent such products are manufactured by a Party on behalf of a Third Party, for resale to such Third Party, from designs licensed or received, in whole or in part, from such Third Party.

(b) Third Party Components. The Dell Parties' covenants in Section 1.1 and the VMware Parties' covenants in Section 1.2 cover the VMware Parties and the Dell Parties (and their respective Customers and Distributors, to the extent covered by such covenants), respectively, with respect to all Third Party products, services, systems, methods and components (including software) (collectively, "Third Party Components") incorporated or embedded in any of VMware Parties' or Dell Parties' (as applicable) Captured Products, including the VMware Parties' or Dell Parties' acts of incorporating or embedding such Third Party Components into such Captured Products, whether infringement (or the inducement or contribution to the infringement) results from the Dell Parties' or VMware Parties' (or any of their respective Customers' or Distributors', as applicable) making, (subject to Section 1.3(a)) having made, use, offer for sale, importation or sale of the Third Party Component (i) itself as incorporated or embedded in any Captured Product, or (ii) as a combination with other portions of any Captured Product, when the Third Party Component is incorporated or embedded in the Captured Product.

(c) Third Party Reservations. Except to the extent consistent with the "have made" rights under Section 1.1 and Section 1.2, and without limiting the covenants under Section 1.1 and Section 1.2 with respect to Customers and Distributors, as applicable, with respect to Third Party Components, the Dell Parties and the VMware Parties reserve the right to bring an Action asserting infringement of the Dell Patents or VMware Patents, as applicable, against any Third Parties that make, have made, use, offer for sale, import or sell any (i) Third Party Components incorporated or embedded in any Captured Products or (ii) elements of any bundled, combination, or integrated solution or product suite that includes Captured Products (but not any Captured Products themselves).

Section 1.4 Releases.

(a) Pre-Separation. Dell, on behalf of the Dell Parties, hereby irrevocably releases, acquits and discharges: (i) the VMware Parties from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products made, having been made, used, offered for sale, imported or sold by the VMware Parties at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the Dell Patents; (ii) past and current VMware Customers from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products used by such VMware Customers at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the Dell Patents; and (iii) past and current VMware Distributors from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products distributed, used, offered for sale, imported or sold by such VMware Distributors at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the Dell Patents. VMware, on behalf of the VMware Parties, hereby irrevocably releases, acquits and discharges: (a) the Dell Parties from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products made, having been made, used, offered for sale, imported or sold by the Dell Parties at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the VMware Patents; (b) past and current Dell Customers from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products used by such Dell Customers at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the VMware Patents; and (c) past and current Dell Distributors from any and all Actions, and any and all Losses resulting therefrom, that any Existing Products distributed, used, offered for sale, imported or sold by such Dell Distributors at any time prior to the Effective Date infringed, induced or contributed to the infringement of, any of the VMware Patents. Each Party agrees that the above releases exhaust its and its current and future Controlled Affiliates' released rights against the other Party's, and its current and future Controlled Affiliates', Distributors and Customers.

(b) During the Term. After expiration or termination of this Agreement, either Party or its current and future Controlled Affiliates may bring an Action for patent infringement against the other Party, its current and future Controlled Affiliates, and its and their Distributors and Customers, as applicable, except with respect to the activities that have been released under this Agreement. Effective immediately upon the making, having made, use, offer for sale, importation or sale of Captured Products under the covenants in Section 1.1 or Section 1.2, each Party, on behalf of itself and its current and future Controlled Affiliates, hereby irrevocably releases, acquits and discharges the other Party, its current and future Controlled Affiliates, and its and their Distributors and Customers, as applicable, from any and all Actions, and any and all Losses resulting therefrom, for any acts that occurred during the Term that were covered by the covenants in Section 1.1 or Section 1.2. Each Party agrees that the above releases exhaust its and its current and future Controlled Affiliates' released rights against the other Party's, and its current and future Controlled Affiliates', Distributors and Customers. Further, each Party, on behalf of itself and its current and future Controlled Affiliates, hereby irrevocably waives the right to seek damages from the other Party or its current or future Controlled Affiliates and their Customers or Distributors for infringement of, in the case of the Dell Parties, the Dell Patents and, in the case of the VMware Parties, the VMware Patents, which infringement occurred during the Term, solely to the extent such infringement was covered by the covenants set forth in Section 1.1 or Section 1.2, as applicable.

(c) California Disclaimer. Each Party, on behalf of itself and its current and future Controlled Affiliates, having specific intent to release all potential claims and allegations described in this Section 1.4, whether known or unknown, hereby acknowledges and expressly and irrevocably waives the provisions of Section 1542 of the California Civil Code (and similar provisions in other jurisdictions), which provides: A

GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Each Party, on behalf of itself and its current and future Controlled Affiliates, understands and agrees that Section 1542 (and similar provisions in other jurisdictions), if applicable herein, gives such Party (on behalf of itself and its current and future Controlled Affiliates) the right not to release existing claims of which it is not now aware and does not suspect to exist, unless it voluntarily chooses to waive such right. Even though such Party is aware of such right, such Party, on behalf of itself and its current and future Controlled Affiliates, nevertheless hereby voluntarily waives the right described in Section 1542 (and similar provisions in other jurisdictions) for any and all Actions, and any and all Losses resulting therefrom, that are covered by the releases set forth in this Section 1.4, and expressly waives any rights under any other statutes or common law principles of similar effect. If, contrary to the specific intent of a Party, any Actions, or any Losses resulting therefrom, released under this Section 1.4 are deemed to exist or survive despite the releases provided in this Section 1.4, each Party, on behalf of itself and its current and future Controlled Affiliates, hereby forever expressly and irrevocably waives entitlement to any and all such Actions, and any and all Losses resulting therefrom, and it is expressly agreed that the provisions of Section 1542 (and similar provisions in other jurisdictions) do not apply.

Section 1.5 No Implied Licenses. Nothing contained in this Agreement shall be construed as conferring any (a) license to the other Party, including license rights by implication, estoppel or otherwise, to the Dell Patents or VMware Patents, or (b) licenses, covenants or other rights under any intellectual property rights other than the Dell Patents or VMware Patents expressly granted in this Agreement. Neither Party is required under this Agreement to furnish or disclose to the other Party any know-how, technical or other information.

Section 1.6 Infringement Suits. Neither Party shall have any obligation hereunder to maintain or to assert or enforce against any other Person any of the Dell Patents or VMware Patents, as applicable.

ARTICLE II

TERM AND TERMINATION

Section 2.1 Term. The term of this Agreement commences on the Effective Date and shall remain in full force and effect until the later of (a) three years from the Effective Date and (b) the expiration or termination of the Commercial Framework Agreement (the "Term"), unless the Parties agree in writing, in their sole discretion, to an earlier termination of this Agreement.

Section 2.2 No Termination for Breach; Specific Performance. Without limiting a Party's other rights and remedies hereunder, neither Party has the right to terminate this Agreement due to a breach of this Agreement by the other Party, and a Party's sole remedy for breach by the other Party of this Agreement is enforcement of its rights hereunder.

Section 2.3 Patent Challenge. During the Term, if a Party (or any of its current or future Controlled Affiliates) directly or indirectly initiates a challenge in writing (including by bringing any Action or joining as a party to an Action to support such a challenge) regarding the ownership, validity or enforceability of any of the Dell Patents or VMware Patents, as applicable, anywhere in the world, or directs or assists any other Person to do same (any such challenge, direction or assistance, a "Patent Challenge"), the Patents that are the subject of the Patent Challenge will be deemed excluded

from the scope of the covenants set forth in Section 1.1 or Section 1.2 and the releases in Section 1.4, as applicable (such exclusion, a “Challenge Exclusion”), unless such Patent Challenge (a) is successfully withdrawn or terminated within thirty (30) days after notice from the other Party or (b) is brought in response to an allegation of patent infringement in an Action, as applicable: (i) brought by any Dell Party against any of the VMware Parties, the VMware Customers or the VMware Distributors, in each case solely to the extent such allegation relates to a product or service of any VMware Party; or (ii) brought by any VMware Party against any of the Dell Parties, the Dell Customers or the Dell Distributors, in each case solely to the extent such allegation relates to a product or service of any Dell Party. Any testimony, documents, or other materials required to be provided by a Party or its current or future Controlled Affiliates (or its or their Customers or Distributors) pursuant to a subpoena, court order or otherwise in any Action shall not cause a Challenge Exclusion if (x) such activities are in furtherance of a claim unrelated to a Patent Challenge or (y) such requirement is not the result of prior activities of such Party or its current or future Controlled Affiliates that constitute a Patent Challenge.

Section 2.4 Injunctive Relief. The Parties agree that irreparable harm would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, which would make difficult the assessment of the monetary damage that a Party would sustain by the other Party’s breach of this Agreement. The Parties further agree that the non-breaching Party would suffer irreparable harm due to delay if, as a condition to obtaining an injunction, restraining order or other equitable remedy with respect to such breach, the non-breaching Party were required to participate in mediation or arbitration proceedings with the other Party or demonstrate that such non-breaching Party would suffer irreparable harm. It is accordingly agreed that the obligations of the Parties under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in accordance therewith, and the non-breaching Party shall be entitled to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement without proof of actual damages or otherwise (and each Party hereby waives any requirement for the securing or posting of any bond in connection with such remedy) and agrees not to assert, and hereby waives, any defense to the effect that a remedy of injunctive relief or specific performance is unenforceable, invalid or contrary to law or that a remedy of monetary damages would provide an adequate remedy, this being in addition to any other remedy to which they are entitled at law or in equity, and each Party’s sole remedy for breach of this Agreement is enforcement of its rights under this Agreement.

Section 2.5 Survival. Sections 1.4, 2.4, this Section 2.5 and Articles III, IV (other than Section 4.1) and Article V shall survive any expiration or termination of this Agreement.

ARTICLE III

WARRANTY/DISCLAIMER

Section 3.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that, as of the Effective Date neither it nor its Controlled Affiliates have, between the effective date of the SDA and the Effective Date: (a) accelerated the timing to make any product or service commercially available with the sole or primary purpose of including such product or service within the covenants set forth in Section 1.1 or Section 1.2, (b) delayed the prosecution, allowance or issuance of a pending patent application with the sole or primary purpose of excluding the prospective corresponding patent from the definition of Dell Patents or VMware Patents, as applicable, or (c) assigned or transferred any patents (or granted any exclusive license in any patents) to entities that are not Dell Parties or VMware Parties, respectively, with the sole or primary purpose of excluding the patents from the definition of Dell Patents or VMware Patents, as applicable. In the event a Party has violated the foregoing representation and warranty set forth in this Section, the affected products or services shall be excluded from the above covenants and/or the affected patents shall be included in the definition of Dell Patents or VMware Patents, as applicable. The representations and warranties of the Parties set forth in Article IV and Article V of the SDA shall apply to this Agreement, *mutatis mutandis*.

Section 3.2 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.1, EACH PARTY ACKNOWLEDGES AND AGREES THAT THE COVENANTS GRANTED HEREUNDER ARE GRANTED ON AN "AS IS, WHERE IS" BASIS AND THAT NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PATENTS COVERED BY SUCH COVENANTS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OWNERSHIP, TITLE, ABSENCE OF LIENS, ENFORCEABILITY OR NON-INFRINGEMENT.

Section 3.3 Indemnity. The indemnification rights and obligations of the Parties and the limitation of liability set forth in Section 9.1(c), Section 9.2(c) and Section 9.10 of the SDA shall apply to this Agreement, *mutatis mutandis*.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1 Assignment.

(a) Neither this Agreement nor any obligation or right hereunder may be assigned, delegated or transferred by either Party, by operation of law or otherwise, without the prior written consent of the other Party in its sole discretion, except for an assignment to a successor entity or affiliate resulting from such Party's internal corporate reorganization; *provided that* such Party or its applicable assignee or successor retains Control of all of the Controlled Affiliates that such Party controlled immediately prior to the consummation of such transaction. In the event of a permitted assignment, delegation or transfer of this Agreement, this Agreement shall inure to the benefit of and be binding upon the Parties. Any purported assignment, delegation or transfer of this Agreement in violation of this Section 4.1(a) shall be null and void *ab initio*.

(b) Subject to Section 4.1(c), either Party or its current or future Controlled Affiliates (as applicable, the "Assigning Party") may assign, transfer or grant an Exclusive License under any of such Party's or its Controlled Affiliates' Patents (or any rights thereunder) to any other Person (including any Third Party) without the consent of the other Party. Subject to Section 4.1(c), each Party, on behalf of itself and its current and future Controlled Affiliates, hereby irrevocably agrees that, if any of the Dell Patents or VMware Patents, as applicable (or any rights thereunder), are assigned or transferred, or licensed pursuant to an Exclusive License, to any Third Party, such assignment, transfer or Exclusive License will not include the right

to seek damages from the other Party or its Controlled Affiliates (or its or their respective Customers or Distributors) for past infringement of any applicable Patents, solely to the extent such infringement was covered by the covenants set forth in Section 1.1 or Section 1.2, as applicable (collectively, the “Released Damages”); *provided that*, if an express exclusion of the right to seek or collect damages for past infringement of patents is required by Law in any applicable jurisdiction in order to preclude the applicable Third Party from seeking to collect, or collecting, any and all such Released Damages, then the applicable Assigning Party shall ensure that such assignment, transfer or Exclusive License expressly excludes the right of such Third Party to seek or collect any and all Released Damages, and *provided further that* the Parties hereby agree that any such assignment, transfer or Exclusive License shall be automatically subject to the releases set forth in Section 1.4, whether or not such assignment, transfer or Exclusive License expressly excludes the right of the applicable Third Party to seek or collect Released Damages.

(c) Neither Dell nor any of its current or future Controlled Affiliates may, while SecureWorks is under Dell’s Control, sell, assign or transfer, or grant any Exclusive License with respect to, any of the Dell Patents (or any rights thereunder), to SecureWorks or any of its subsidiaries (any such transaction, a “SecureWorks Transfer”), except solely to the extent that such SecureWorks Transfer is made expressly in writing subject to the Dell Parties’ covenants set forth in Section 1.1 and the Dell Parties’ releases set forth in Section 1.4, and the Parties hereby agree that any such SecureWorks Transfer shall be subject to the Dell Parties’ covenants set forth in Section 1.1 and the Dell Parties’ releases set forth in Section 1.4 without the need for any further writing by the Parties or SecureWorks.

(d) During the Term, in the event that any of the Dell Parties or VMware Parties acquires new patents, businesses, products or services after the Effective Date, the rights and obligations of the acquiring Person under this Agreement shall not be extended to any such newly acquired patents, businesses, products or services. In the event that any of the Dell Parties or VMware Parties acquires any Third Party after the Effective Date: (i) such Third Party’s patents shall not be covered by the covenants set forth in Section 1.1 or Section 1.2, as applicable; (ii) such Third Party (as a future Controlled Affiliate of the acquiring Person) will be bound by the covenants set forth in Section 1.1 and Section 1.2, as applicable, solely with respect to Dell Patents or VMware Patents, as applicable; and (iii) such Third Party (as a future Controlled Affiliate of the acquiring Person) will receive the benefits of the covenants set forth in Section 1.1 or Section 1.2, as applicable, with respect to Captured Products, but not with respect to such Third Party’s products or services.

(e) In the event of a Change in Control of a Party, the other Party shall have the right to terminate this Agreement in its entirety upon notice to the Party undergoing such Change in Control.

(f) In the case of any assignment, transfer, or grant of Exclusive License with respect to a Party’s or its Controlled Affiliates’ Patents (or any rights thereunder), including any SecureWorks Transfer, any failure (i) by an applicable Assigning Party to expressly exclude from the applicable assignment, transfer, or grant of Exclusive License the right to seek or collect past damages in accordance with the terms and conditions of Section 4.1(b), or (ii) by any Dell Party to make any SecureWorks Transfer subject to the Dell Parties’ covenants set forth in Section 1.1 and the Dell Parties’ releases set forth in Section 1.4, in each case, will not render the applicable assignment, transfer, grant of Exclusive License, or SecureWorks Transfer null and void, but will constitute a breach by the applicable failing Party of its undertaking or obligation under this Agreement, for which the other Party may seek indemnification for any and all related Losses in accordance with the terms and conditions of Section 3.3. Without limiting the obligations of the Dell Parties set forth in Section 4.1(c), the Parties intend and agree that the covenants in Section 1.1 and Section 1.2 are not liens on or licenses to the Dell Patents or VMware Patents, and this Agreement is not intended to automatically “run with” any of the Dell Patents or VMware Patents if they are sold, transferred or Exclusively Licensed to any Person other than a current or future Controlled Affiliate.

Section 4.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. Copies of executed counterparts transmitted by electronic signature (including by means of e-mail in .pdf format) shall be considered original executed counterparts for purposes of this Section 4.2.

Section 4.3 Disputes. The provisions of Section 11.3 of the SDA (but not any other provisions of Article XI of the SDA) shall apply to this Agreement, *mutatis mutandis*, including with respect to any dispute as to whether the filing of an Action by a Party or any of its Controlled Affiliates would violate any of the covenants set forth in Section 1.1 or Section 1.2 or the releases set forth in Section 1.4; *provided that*, upon the initiation of any such Action, the provisions of Section 2.4 and Section 4.4 of this Agreement shall govern, and the Parties shall no longer be required to comply with the procedures set forth in Section 11.3 of the SDA.

Section 4.4 Governing Law; Jurisdiction. This Agreement will be governed by and construed and interpreted in accordance with the internal laws of the State of Delaware, irrespective of the choice of laws principles of the State of Delaware, as to all matters, including matters of validity, construction, effect, enforceability, performance, and remedies. Each Party agrees that, subject to the following sentence, it shall bring any Action between the Parties or involving any member of the Dell Parties or the VMware Parties arising out of or related to this Agreement exclusively in the Delaware state or federal courts of competent jurisdiction (the "Chosen Courts"), and with respect to any such Action (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (b) waives any objection to laying venue in any such claim in the Chosen Courts, (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party, and (d) agrees that service of process or summons upon such Party in any such action, claim, or proceeding will be effective if notice is given in accordance with Section 4.6. This Section 4.4 shall not prohibit a Party from responding in the same court to any Action brought by a Party or its current or future Controlled Affiliates in breach of this Agreement.

Section 4.5 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATION, EXECUTION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

Section 4.6 Notices. All notices or other communications under this Agreement will be in writing and deemed to be duly given (a) when delivered personally by hand (with written confirmation of receipt), (b) when sent by e-mail (with written confirmation of receipt), or (c) one day following the day sent by a nationally recognized overnight courier (with written confirmation of receipt), to the following addresses:

if to Dell:

Dell Inc.
One Dell Way, RR1-33
Round Rock, TX 78682 Attention General Counsel
E-Mail: [REDACTED]

With a copy to:

Simpson Thacher & Bartlett LLP
2475 Hanover Street
Palo Alto, CA 94304
Attn: Atif Azher and Lori Lesser
Email: azher@stblaw.com and llesser@stblaw.com

if to VMware:

VMware, Inc.
3401 Hillview Avenue
Palo Alto, CA 94304 Attention: General Counsel
E-Mail: [REDACTED]

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166

Attn: Barbara L. Becker
Sae Muzumdar
Andrew Kaplan

Email: bbecker@gibsondunn.com
smuzumdar@gibsondunn.com
akaplan@gibsondunn.com

Section 4.7 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any Party. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 4.8 Amendment; Waiver. This Agreement may be amended, supplemented, or otherwise modified only by a written instrument executed by both Parties. No waiver by either Party of any of the provisions hereof will be effective unless explicitly set forth in writing and executed by the Party so waiving. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of any Party. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, or a failure or delay by any Party in exercising any right, power or privilege hereunder, will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 4.9 Entire Agreement. This Agreement comprises the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, oral or written, negotiations, discussions, writings, understandings, commitments, and conversations with respect to such subject matter.

Section 4.10 Interpretation. In this Agreement, unless an express contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) reference to any gender includes every other gender; (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended, modified, supplemented or restated, and in effect from time to time in accordance with the terms thereof subject to compliance with the requirements set forth herein; (e) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (f) "herein," "hereby," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement and not to any particular article, section or other provision hereof or thereof; (g) "including" (and with correlative meaning "include") means including, without limiting the generality of, any description preceding such term; (h) the headings are for convenience of reference only and shall not affect the construction or interpretation hereof or thereof; (i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to and including;" (j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; (k) the use of "current and future" with respect to "Controlled Affiliates" means, with respect to a Party, those Controlled Affiliates of such Party as of the Effective Date, as well as any Person that becomes a Controlled Affiliate of a Party during the Term; (l) the use of "current" in this Agreement means current as of the Effective Date; and (m) any consent required herein from a Party may be given or withheld in such Party's sole discretion, unless otherwise indicated.

Section 4.11 Third Party Beneficiaries. The terms and conditions of Section 12.7 of the SDA shall apply to this Agreement, *mutatis mutandis*.

ARTICLE V

DEFINITIONS

Section 5.1 “Action” means any claim, action (judicial, administrative or otherwise), suit, countersuit, arbitration, inquiry, proceeding or investigation by any Person or any Governmental Authority or before any Governmental Authority (including the International Trade Commission or US Patent and Trademark Office or foreign equivalent) or any arbitration or mediation tribunal.

Section 5.2 “Agreement” has the meaning set forth in the Preamble.

Section 5.3 “Assigning Party” has the meaning set forth in Section 4.1(b).

Section 5.4 “Business Day” means any day on which commercial banks are generally open for business in New York, New York, other than a Saturday, a Sunday or a day observed as a holiday under the Laws of the State of New York or under the federal Laws of the United States of America.

Section 5.5 “Captured Products” means, when used in reference to a Party, all Existing Products and Future Version Products (but excluding New Products) of such Party and its current Controlled Affiliates.

Section 5.6 “Challenge Exclusion” has the meaning set forth in Section 2.3.

Section 5.7 “Change in Control” means, with respect to a Party, (a) the consummation by such Party of a consolidation, merger, amalgamation, share exchange, equity contribution, reorganization or other business combination or transaction (in one or a series of related transactions) involving such Party in which, immediately following such transaction, either (i) less than 50 percent of the directors of such Party were directors of such Party immediately prior to the consummation of such transaction or (ii) the holders (excluding the acquiror and persons acting with the acquiror) in such transaction) of the voting securities of such Party outstanding immediately prior to such transaction cease to hold at least 50% of the combined voting power of the securities of such Party or the surviving Person or any parent thereof outstanding immediately after such merger or consolidation); (b) the acquisition by a Person, or group of Persons acting in concert, of Control of such Party (including by means of merger, consolidation, business combination, share exchange or other reorganization in one or a series of related); *provided that* the entry into, or consummation of, a bona fide internal restructuring or reorganization of any kind by such Party shall not be deemed to be the acquisition of Control of such Party for purposes of this clause (b); or (c) the direct or indirect sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of such Party and its subsidiaries’ assets (determined on a consolidated basis) (including by means of merger, consolidation, other business combination, exclusive license of all rights, share exchange or other reorganization); *provided that*, in each case, any transaction solely between and among such Party and one or more of its wholly-owned subsidiaries shall not be considered a Change in Control hereunder, so long as such Party or its applicable wholly-owned subsidiary retains Control of all of the Controlled Affiliates that such Party controlled immediately prior to the consummation of such transaction.

Section 5.8 “Chosen Courts” has the meaning set forth in Section 4.4.

Section 5.9 “Commercial Framework Agreement” has the meaning set forth in the Recitals.

Section 5.10 “Control” means, with respect to a Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of a majority of the voting securities of such Person or the right to nominate or appoint a majority of the directors of such Person; *provided that* the existence of any approval or consent rights shall not be taken into account for purposes of determining the existence of Control.

Section 5.11 “Controlled Affiliate” means, when used in reference to a Party, an entity that, directly or indirectly, through one or more intermediaries, is Controlled (or controlled by contract) by such Party; *provided that* SecureWorks shall not be deemed a Controlled Affiliate of Dell for purposes of this Agreement.

Section 5.12 “Customer” means, as context demands, a VMware Customer or a Dell Customer.

Section 5.13 “Dell” has the meaning set forth in the Preamble.

Section 5.14 “Dell Customers” has the meaning set forth in Section 1.2.

Section 5.15 “Dell Distributors” has the meaning set forth in Section 1.2.

Section 5.16 “Dell Parties” has the meaning set forth in Section 1.1.

Section 5.17 “Dell Patents” means all issued, abandoned or expired patents throughout the world that exist and are owned on the Effective Date by Dell or any of its current Controlled Affiliates; *provided that* any of the foregoing owned by SecureWorks shall not be included in Dell Patents.

Section 5.18 “Distributor” means, as context demands, a VMware Distributor or a Dell Distributor.

Section 5.19 “Effective Date” has the meaning set forth in the Preamble.

Section 5.20 “Exclusive License” means a license under any of the Dell Patents or the VMware Patents, as applicable, pursuant to which a Dell Party or a VMware Party, as applicable, grants to the applicable licensee all rights under the applicable Dell Patents or VMware Patents, which grant is tantamount to an assignment of such Dell Patents or VMware Patents to the licensee, and which confers standing to sue to enforce such Dell Patents or VMware patents solely on the applicable licensee.

Section 5.21 “Existing Products” means, when used in reference to a Party, the versions of the Party’s (and its current Controlled Affiliates’) products and services, whether or not customized for a particular environment or platform, that bear brands of the Party or its current Controlled Affiliates and that are or have been commercially available (as opposed to a beta or other version used primarily for testing and user feedback purposes prior to commercial availability) to Customers and/or Distributors on or prior to the Effective Date. A Party’s (or its current Controlled Affiliates’) branded product or service remains an Existing Product even if it is subsequently or jointly branded by a Distributor or Customer.

Section 5.22 “Future Version Product” means, when used in reference to a Party, all future versions of an Existing Product that bear brands of the Party or its current Controlled Affiliates and maintain substantially the same core functionality and substantially the same componentry of such Existing Product. Any future version of vSAN that is re-architected to run on non-VMware platforms, including, hypervisors, operating systems or container platforms, shall be considered to be a New Product; and integrating or bundling two or more Existing Products shall not, in and of itself, cause the integrated or bundled version to be excluded as a Future Version Product.

Section 5.23 “Governmental Authority” means any government, court of competent jurisdiction, regulatory or administrative agency, commission or other governmental authority or instrumentality, whether Federal, state, local, domestic, foreign or multinational.

Section 5.24 “Laws” means all U.S. and non-U.S. laws, statutes, ordinances, rules, regulations, declarations, decrees, directives, legislative enactments, executive orders, circulars and court (or other governmental, administrative or regulatory) orders.

Section 5.25 “Losses” means any and all liabilities, losses, obligations, damages, payments, costs, expenses and fees (including settlements, judgments, fines, penalties, and reasonable attorneys’ fees, court costs and other litigation expenses).

Section 5.26 “New Product” means any product or service, regardless of product or service name or brand, that is not an Existing Product or a Future Version Product.

Section 5.27 “Party” and “Parties” have the meanings set forth in the Preamble.

Section 5.28 “Patent Challenge” has the meaning set forth in Section 2.3.

Section 5.29 “Patents” means, as context demands, the Dell Patents or the VMware Patents.

Section 5.30 “Person” means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, or any other legal entity.

Section 5.31 “Released Damages” has the meaning set forth in Section 4.1(b).

Section 5.32 “SecureWorks” means SecureWorks, Inc.

Section 5.33 “SecureWorks Transfer” has the meaning set forth in Section 4.1(c).

Section 5.34 “Term” has the meaning set forth in Section 2.1.

Section 5.35 “Third Party” means a Person other than the Dell Parties or the VMware Parties.

Section 5.36 “Third Party Components” has the meaning set forth in Section 1.3(b).

Section 5.37 “VMware” has the meaning set forth in the Preamble.

Section 5.38 “VMware Customers” has the meaning set forth in Section 1.1.

Section 5.39 “VMware Distributors” has the meaning set forth in Section 1.1.

Section 5.40 “VMware Parties” has the meaning set forth in Section 1.1.

Section 5.41 “VMware Patents” means all issued, abandoned or expired patents throughout the world that exist and are owned on the Effective Date by VMware or any of its current Controlled Affiliates.

Section 5.42 “SDA” has the meaning set forth in the Recitals.

Section 5.43 “Separation” has the meaning set forth in the Recitals.

Remainder of page intentionally left blank.

WHEREFORE, the Parties have signed this Agreement by their duly authorized representatives as of the Effective Date.

DELL TECHNOLOGIES INC.

By: /s/ Robert Potts
Name: Robert Potts
Title: Senior Vice President and Assistant Secretary

VMWARE, INC.

By: /s/ Craig Norris
Name: Craig Norris
Title: Vice President and Assistant Secretary

Signature page to Covenant Not to Sue and Release

AMENDMENT TO LETTER AGREEMENT

November 1, 2021

Reference is hereby made to that certain Letter Agreement (the "Letter Agreement"), dated as of July 1, 2018, by and between Dell Technologies Inc. ("Dell") and VMware, Inc. ("**VMware**"). This Amendment to Letter Agreement (the "Amendment") is being entered into in connection with the consummation of the transactions contemplated by that certain Separation and Distribution Agreement, dated as of April 14, 2021, by and between Dell and VMware. Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Letter Agreement.

1. The penultimate paragraph of the Letter Agreement (for the avoidance of doubt, relating to termination) is deleted in its entirety and replaced with the following:

This letter agreement shall terminate on the earlier of (i) the 10 year anniversary of the date hereof and (ii) the date that the MSD Stockholders and the SLP Stockholders (each as defined in the Stockholders Agreement) no longer hold shares of Class A common stock of the Company. No provision of this Agreement may be amended, modified or waived except by a written instrument signed by Diamond and the Company; provided that any amendment, modification or waiver of this Agreement shall require the prior written approval of a special committee of the Board of Directors comprised solely of independent and disinterested directors. For purposes of this paragraph, the term "Stockholders Agreement" means that certain Stockholders Agreement of the Company dated as of [•], by and between the Company, the MSD Stockholders and the SLP Stockholders.

This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely in such state. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the Court of Chancery of the State of Delaware for any action arising out of or relating to this letter agreement and the transactions contemplated hereby.

This Amendment may be signed in one or more counterparts (including by fax or .pdf), which, when taken together, shall constitute one and the same instrument.

The parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

This Amendment shall be effective immediately upon the execution and delivery of this Amendment by the parties hereto.

[Signature Page Follows]

DELL TECHNOLOGIES INC.

By: /s/ Robert Potts

Name: Robert Potts

Title: Senior Vice President and Assistant Secretary

VMWARE, INC.

By: /s/ Craig Norris

Name: Craig Norris

Title: Vice President and Assistant Secretary

[Signature Page to Amendment to Letter Agreement]

DELL TECHNOLOGIES INC.
One Dell Way, RR1-33
Round Rock, Texas 78682

November 1, 2021

VMware, Inc.
3401 Hillview Avenue
Palo Alto, CA 94304

RE: Separation and Distribution Agreement

Ladies and Gentlemen:

Reference is made to that certain Separation and Distribution Agreement, dated as of April 14, 2021 (as amended, restated, supplemented or modified from time to time, the "Separation and Distribution Agreement"), by and between Dell Technologies Inc., a Delaware corporation ("Dell") and VMware, Inc., a Delaware corporation ("VMware" and together with Dell, the "Parties"). Capitalized terms used but not defined in this letter agreement shall have the meanings assigned to them in the Separation and Distribution Agreement.

1. Notwithstanding anything to the contrary set forth (or to be set forth at the Separation Effective Time) on Schedule 2.5 of the Separation and Distribution Agreement or otherwise contained in the Separation and Distribution Agreement, the Parties hereby agree that Section 2.3(a) (*Selection of Auditors*), Section 2.3(h) (*Notice of Change in Accounting Principles*) and Section 4.1 (*Release of Pre-IPO Date Claims*) of the Amended and Restated Master Transaction Agreement, dated January 9, 2018, among the Parties and EMC Corporation, as amended, supplemented or otherwise modified from time to time in accordance with its terms, shall not terminate and shall instead continue in full force and effect in accordance with their terms.
2. Notwithstanding anything to the contrary contained in Section 2.6 of the Separation and Distribution Agreement or otherwise therein, the Parties hereby agree that the Parties shall, and shall cause the members of their respective Groups to, settle all intercompany accounts between any member of the Dell Group, on the one hand, and any member of the VMware Group, on the other hand as follows: (a) with respect to intercompany accounts through and including September 24, 2021, no later than the Separation Effective Time and (b) with respect to intercompany accounts from September 25, 2021 through the Separation Effective Time, no later than December 17, 2021.

-
3. In furtherance of the foregoing, the Schedules to the Separation and Distribution Agreement are hereby amended as set forth on Exhibit A hereto.
 4. Notwithstanding anything to the contrary contained in Section 3.3(a) of the Separation and Distribution Agreement or otherwise therein, the Parties hereby agree that the Distribution Effective Time shall be 4:01 p.m., Eastern Time, on the Distribution Date.

This letter agreement, together with (i) the Separation and Distribution Agreement and (ii) the letter agreement regarding the Separation and Distribution Agreement, dated October 7, 2021, between the Parties, constitutes the entire agreement between the Parties and with respect to the subject matter set forth herein and supersedes any previous agreements or understandings with respect thereto between the Parties. The provisions of Article XII (Miscellaneous) of the Separation and Distribution Agreement shall apply to this letter agreement, *mutatis mutandis*.

[SIGNATURE PAGES FOLLOW]

Please indicate your acceptance of the terms of this letter agreement by signing where set forth below.

Very truly yours,

DELL TECHNOLOGIES INC.

By: /s/ Robert Potts

Name: Robert Potts

Title: Senior Vice President and Assistant Secretary

[LETTER AGREEMENT REGARDING SEPARATION AND DISTRIBUTION AGREEMENT]

ACKNOWLEDGED AND AGREED as of the date set forth above:

VMWARE, INC.

By: /s/ Craig Norris

Name: Craig Norris

Title: Vice President and Assistant Secretary

[LETTER AGREEMENT REGARDING SEPARATION AND DISTRIBUTION AGREEMENT]

A New Chapter for VMware: Spin-Off from Dell Technologies Completed

VMware Gains Operational and Financial Flexibility while Maintaining Strategic Partnership with Dell Technologies

Company Poised to Lead in Multi-Cloud Services for All Apps, Enabling Digital Innovation with Enterprise Control

PALO ALTO, Calif. – Nov. 1, 2021 – VMware (NYSE: VMW) and Dell Technologies today announced the completion of the spin-off of VMware from Dell Technologies. The spin-off from Dell Technologies provides VMware increased freedom to execute its multi-cloud strategy, a simplified capital structure and governance model, and additional operational and financial flexibility.

The terms of the spin-off included an \$11.5 billion special cash dividend (the “Special Dividend”) that resulted in a \$27.40 per share dividend payment on November 1, 2021 (the “Payment Date”) to all VMware stockholders as of close of business on October 29, 2021 (the “Record Date”). The ex-dividend date will be November 2, 2021, the first trading day following the Payment Date.

“VMware’s mission is to deliver the trusted software foundation that accelerates our customers’ innovation,” said Raghu Raghuram, chief executive officer, VMware. “As a standalone company, we will continue to bring our multi-cloud strategy to life by providing our customers the power to accelerate their business and control their destiny in this new era.”

VMware and Dell will continue to partner to provide differentiated solutions for their customers. The previously announced commercial agreement between VMware and Dell preserves and enhances the go-to-market synergies jointly developed over the last several years with continued support and services for their mutual customers.

About VMware

VMware is a leading provider of multi-cloud services for all apps, enabling digital innovation with enterprise control. As a trusted foundation to accelerate innovation, VMware software gives businesses the flexibility and choice they need to build the future. Headquartered in Palo Alto, California, VMware is committed to building a better future through the company’s 2030 Agenda. For more information, please visit www.vmware.com/company.

Forward-Looking Statements

This press release contains forward-looking statements including, among other things, statements about and relating to the ex-dividend date; expected benefits of the spin-off for VMware and its customers; benefits to customers of VMware’s multi-cloud strategy; the VMware and Dell Technologies’ partnership; and the commercial agreement between VMware and Dell Technologies. These forward-looking statements are subject to the safe harbor provisions created by the Private Securities Litigation Reform Act of 1995. Actual results could differ materially from those projected in the forward-looking statements as a result of certain risk factors, including but not limited to: (1) the impact of the COVID-19 pandemic on VMware’s operations, financial condition, VMware’s customers, the business environment and the global and regional economies; (2) the ability of VMware to adapt its offerings, business operations and go-to-market activities to changes in how

customers consume information technology resources, such as through subscription and SaaS offerings; (3) the effect of the spin-off and changes in VMware's and Dell Technologies' commercial relationships and go-to-market and technology collaborations on VMware's ability to maintain relationships with its customers, suppliers and on VMware's operating results and business generally; (4) changes to VMware's and Dell Technologies' respective financial conditions and strategic directions that could adversely impact their commercial relationship and collaborations; (5) the continued risk of litigation and regulatory actions; (6) adverse changes in general economic or market conditions; (7) delays or reductions in consumer, government and information technology spending; (8) competitive factors, including but not limited to pricing pressures, industry consolidation, entry of new competitors into the industries in which VMware competes, as well as new product and marketing initiatives by VMware's competitors; (9) rapid technological changes in the virtualization software and cloud, end user, edge security and mobile computing and telecom industries; (10) VMware's customers' uncertain acceptance of emerging technologies and ability to transition to new products, platforms, services, solutions and computing strategies in the industries in which VMware competes; (11) VMware's ability to enter into, maintain and extend strategically effective partnerships, collaborations and alliances; (12) VMware's ability to protect its proprietary technology; (13) the ability to successfully integrate into VMware acquired companies and assets and smoothly transition services related to divested assets from VMware; (14) changes to product and service development timelines; (15) risks associated with cyber-attacks, information security and data privacy; (16) disruptions resulting from key management changes; (17) risks associated with international sales such as fluctuating currency exchange rates and increased trade barriers; (18) changes in VMware's financial condition; and (19) other business effects, including those related to industry, market, economic, political, regulatory and global health conditions. These forward-looking statements are made as of the date of this press release, are based on current expectations and are subject to uncertainties and changes in condition, significance, value and effect as well as other risks detailed in documents filed with the Securities and Exchange Commission, including VMware's most recent reports on Form 10-K and Form 10-Q and current reports on Form 8-K that VMware may file from time to time, which could cause actual results to vary from expectations. VMware assumes no obligation to, and does not currently intend to, update any such forward-looking statements after the date of this release.

Contacts:

Paul Ziots
VMware Investor Relations
pziots@vmware.com
650-427-3267

Michael Thacker
VMware Global PR
mthacker@vmware.com
650-427-4454