

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-K**

(Mark One)

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

For the fiscal year ended December 31, 2016

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-35480

**Enphase Energy, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**20-4645388**

(I.R.S. Employer  
Identification No.)

**1420 N. McDowell Blvd**

**Petaluma, CA 94954**

(Address of principal executive offices) (Zip Code)

**(707) 774-7000**

(Registrant's telephone number, including area code)

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

Title of each class:

Common Stock, par value \$0.00001 per share

Name of each exchange on which registered

The NASDAQ Stock Market LLC

**Securities registered pursuant to Section 12(g) of the Act: None**

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 30, 2016, based upon the closing price of \$1.99 of the registrant's common stock as reported on the NASDAQ Global Market, was approximately \$56.1 million. Excludes approximately 18.6 million shares of the registrant's common stock held by current executive officers, directors, and holders of five percent or more of the outstanding common stock in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 6, 2017, there were 82,525,301 shares of the registrant's common stock outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Certain information called for by Part III of this Form 10-K is incorporated by reference to the Proxy Statement for the registrant's 2017 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission not later than 120 days after December 31, 2016.

**ENPHASE ENERGY, INC.**  
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PART I

This Annual Report on Form 10-K contains "forward-looking statements" as defined under securities laws. Forward-looking statements include statements that are not historical facts and can be identified by terms such as "anticipates," "believes," "could," "seeks," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "should," "will," "would" or similar expressions and the negatives of those terms. These forward-looking statements are contained principally in Item 1, Business; Item 1A, Risk Factors; Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; and other sections of this Annual Report on Form 10-K. Our actual results or experience could differ significantly from the forward-looking statements. Factors that could cause or contribute to these differences include those discussed in Item 1A, Risk Factors, as well as those discussed elsewhere in this Annual Report on Form 10-K.

Forward-looking statements are inherently uncertain and you should not place undue reliance on these statements, which speak only as of the date that they were made. These cautionary statements should be considered in connection with any written or oral forward-looking statements that we may issue in the future. We do not undertake any obligation to release publicly any revisions to these forward-looking statements after completion of the filing of this Annual Report on Form 10-K to reflect later events or circumstances or to reflect the occurrence of unanticipated events.

In this report, unless otherwise indicated or the context otherwise requires, "Enphase Energy," "Enphase," "the Company," "we," "us," and "our" refer to Enphase Energy, Inc., a Delaware corporation, and its subsidiaries.

**Item 1. Business**

**Our Company**

We deliver simple, innovative and reliable energy management solutions that advance the worldwide potential of renewable energy. Our semiconductor-based microinverter system converts direct current (DC) electricity to alternating current (AC) electricity at the individual solar module level, and brings a system-based, high technology approach to solar energy generation leveraging our design expertise across power electronics, semiconductors, networking, and cloud-based software technologies. Our technology was designed to increase energy production, simplify design and installation, improve system uptime and reliability, reduce fire risk, and provide a platform for intelligent energy management. Since inception, we have shipped more than 13 million microinverters, representing over 3 gigawatts of solar photovoltaic (PV) generating capacity, and more than 580,000 Enphase residential and commercial systems have been deployed in over 100 countries.

We were incorporated as PVI Solutions, Inc. in March 2006 in the State of Delaware and changed our name to Enphase Energy, Inc. in July 2007.

**Industry Background**

Historically, traditional central inverters were the only inverter technology used for solar photovoltaic, or PV installations. In an installation consisting of a traditional central inverter, the solar PV modules are connected in series strings. In a large installation, there are multiple series strings connected in parallel. The aggregated voltage from each of these strings is then fed into a large central inverter. As compared to microinverter systems, we believe that traditional central inverters have a number of design and performance challenges limiting innovation and their ability to reduce the cost of solar systems, including the following:

- *Productivity limits.* If solar modules are wired using a traditional central inverter—group or "string" of modules are wired in series—an entire string's output is limited by the output of the lowest-performing module. Because of its string design, there is a single point of failure risk with the traditional central inverter approach.
- *Reliability issues.* Traditional central inverters are the single most common component of solar installations to fail, resulting in system downtime and adversely impacting total energy output. As a result, central inverters typically carry warranties of only 5 to 10 years.
- *Complex design and installation requirements.* The central inverter-based solar PV installation requires greater effort on the part of the installer, both in terms of design and on-site labor. Central inverter installations require string design and calculations for safe and reliable operation, as well as

specialized equipment such as DC combiners, conduits and disconnects. In addition, the use of high-voltage DC requires specialized knowledge and training and safety precautions to install central inverter technology.

- *Lack of monitoring.* The majority of solar installations with central inverter technology offer limited monitoring capabilities. A failure of the central inverter will often go unnoticed for days or even weeks. If a module fails or is not performing to specification, the resulting loss of energy can go unnoticed for an extended period of time.
- *Safety issues.* Central inverter solar PV installations have a wide distribution of high-voltage (600 volts to 1,000 volts) DC wiring. If damaged, DC wires can generate sustained electrical arcs, reaching temperatures of more than 5,000 °F. This creates the risk of fire for solar PV installation owners and injury for installers and maintenance personnel.

These challenges of traditional central inverters have a direct impact on the cost and expected return on investment of solar installations to both installers and system owners:

- *Installer.* Solar PV installers aim for simple installation design, fast installation times and maximum system performance and predictability. The installation of high-voltage DC central inverter technology, however, requires significant preparation, precautionary safety measures, time-consuming string calculations, extensive design expertise and specialized installation equipment, training and knowledge. Together, these factors significantly increase complexity and cost of installation and limit overall productivity for the installer.
- *System owner.* Solar system owners aim for high energy production, low cost, high reliability, and low maintenance requirements, as well as reduced fire risks. With traditional central inverters, owners often are unable to optimize the size or shape of their solar PV installations due to string design limitations. As such, they experience performance loss from shading and other obstructions, can face frequent system failures and lack the ability to effectively monitor the performance of their solar PV installation. In addition, central inverter installations operate at high-voltage DC which bears significant fire risks. Further, due to their large size, central inverter installations can affect architectural aesthetics of the house or commercial building.

## Our Products

We design, develop, manufacture and sell home energy solutions that connect solar generation, energy storage and management on one intelligent platform. We have revolutionized the solar industry by bringing a systems approach to solar technology and by pioneering a semiconductor-based microinverter that converts energy at the individual solar module level and, combined with our proprietary networking and software technologies, provides advanced energy monitoring and control. This is vastly different than the central inverter approach that only converts energy of the entire array of solar modules from a single high voltage electrical unit, and lacks intelligence about the energy producing capacity of the solar array. In 2016 we expanded our product offerings by launching the Enphase AC Battery, a home-based energy storage system that homeowners can add to new or existing solar PV systems.

With the introduction of the Enphase Home Energy Solution, we bring a high technology, networked approach to solar generation plus energy storage, by leveraging our design expertise across power electronics, semiconductors and cloud-based software technologies. Our integrated approach to energy solutions maximizes a home's energy potential while providing advanced monitoring and remote maintenance capabilities. Unlike our core competitors, who utilize a single-point or traditional inverter, or offer separate components of solutions, we have built-in system redundancy in both PV generation and energy storage, eliminating the risk that comes with a single-point of failure. Further, the nature of our cloud-based, monitored system allows for remote firmware and software updates, enabling cost-effective remote maintenance and ongoing utility compliance.

The Enphase Home Energy Solution consists of four key components -- Enphase microinverters, the AC Battery, an Envoy gateway, and Enlighten cloud-based software:

- Enphase microinverters provide highly reliable power conversion at the individual solar module level by introducing a digital architecture that incorporates custom application specific integrated circuits, or ASICs, specialized power electronics devices, and an embedded software subsystem that maximizes energy production from each module. The Enphase Home Energy Solution with IQ, to be introduced in 2017, provides a path to substantially lower unit cost, a simplified installation process, and higher

performance and enhanced features. We have announced manufacturer partnerships that integrate our next generation IQ microinverter into a PV module to create an AC Module that will further simplify system design and installation.

- The Enphase AC Battery, a key part of the Enphase Home Energy Solution, applies the modular architecture developed for our microinverter to energy storage. Our approach delivers low up-front costs resulting from the AC Battery's system design and the ease and speed of installation. The AC battery balances safety and performance and is warranted for 10 years.
- The Envoy bi-directional communications gateway is installed at the system location and serves as a hub providing three critical roles: collecting and sending data to Enlighten software, receiving and distributing microinverter firmware or software updates, and managing the use of energy within the system. Homeowners can maximize the value of their solar PV system, taking advantage of self-consumption and time-of-use tariff management opportunities with an expandable platform for evolving uses of energy storage, such as residential peak shaving and grid services. One Envoy is typically sold with each solar installation and can support up to 600 Enphase microinverters, making it compatible for both residential and commercial applications.
- Our Enlighten cloud-based software provides the capabilities to remotely monitor, manage, and maintain an individual system or a fleet of systems. The software collects and analyzes system performance information to enable owners and operators to realize the highest performance of their solar PV system. Two versions of the monitoring software are available: MyEnlighten, designed for consumers, provides performance assurance and Enlighten Manager, available for the solar professional, provides detailed diagnostic capabilities, as well as fleet management tools.

Key benefits of our Home Energy Solution include:

*Truly Integrated.* The Enphase Home Energy Solution is a fully integrated solar generation plus storage offering from one provider. Designed and manufactured to work together, the Home Energy Solution is a truly integrated home energy solution.

*Higher Performance.* Our microinverter system delivers higher performance by maximizing the energy production of each module. A microinverter at each module overcomes issues such as module-mismatch and soiling or shading which can have a significant impact on string inverter systems. Enphase microinverters also provide greater system availability with no single-point of failure. An independent analysis from PV Evolution Labs has concluded an Enphase microinverter system yields higher performance over systems with string inverters or traditional inverters. We believe that our microinverter systems achieve higher energy production and can generate superior returns on investment relative to competitive solutions for system owners.

*Simplified Design and Installation.* The all-AC infrastructure simplifies the design process and eliminates the typical costs of a complicated DC voltage system for PV or Storage. In addition, our microinverters are installed on the roof and hidden from view, with minimal impact to the aesthetics of a home or building. We also offer additional tools, such as the Enphase Installer Toolkit mobile app or the Enphase AC Combiner Box, to further improve installation time and reduce balance of system materials costs.

*Enhanced Safety.* Microinverters and AC Batteries are safer because they process low voltage DC and are isolated to the module level, leading to an all-AC architecture. Our microinverter system does not contain any of the high voltages common to string inverter systems. High voltage arc faults associated with string or traditional inverters are the leading cause of fires of solar PV installations. Microinverter technology mitigates this safety risk.

*Reduced Operations and Maintenance Costs.* Our microinverter system is highly reliable with one million power-on hours of testing incorporated into our microinverter design. This high reliability, plus a distributed architecture means ongoing operations and maintenance do not require emergency truck rolls, unlike string inverter or traditional inverters which have a 100% probability of failure leading to full replacement within 10 to 12 years. In addition, with module-level monitoring capabilities, remote maintenance can pinpoint issues, thus reducing any time on site. Finally, the networked-nature of our

system enables us to remotely update the firmware and software of the microinverters, reducing ongoing utility compliance costs.

## **Our Strategy**

Our objective is to be the leading provider of energy management solutions for the solar industry worldwide. Key elements of our strategy include:

- *Grow market share in our core markets.* We intend to capitalize on our market leadership in the microinverter category and our momentum with installers and owners to expand our market share position in our core markets.
- *Enter new geographic markets.* We intend to further increase our market share in Europe, the Asia Pacific region and Latin America. In addition, we intend to expand into new markets with new and existing products and local go-to-market capabilities.
- *Expand our product offerings.* We continue to make R&D investments to develop all components of our energy management solution and remain committed to providing our partners with best-in-class power electronics, storage solutions, communications, and load control all managed by a cloud-based energy management system.
- *Increase power and efficiency and reduce cost per Watt.* Our engineering team is focused on continuing to increase average power conversion efficiency above 97% and AC output power beyond 280 watts. We intend to continue to leverage our semiconductor integration, power electronics expertise and manufacturing economies of scale to further reduce cost per watt.
- *Extend our technological innovation.* We distinguish ourselves from other inverter companies with our systems-based and high technology approach, and the ability to leverage strong research and development capabilities.

## **Customers and Sales**

We currently offer microinverter systems targeting the residential and commercial markets in the United States, Canada, Mexico and certain Central American markets, the United Kingdom, France, the Benelux region, certain other European markets, Australia, New Zealand and certain other Asian markets. We sell our microinverter systems primarily to solar distributors who resell to installers and integrators, who in turn integrate our products into complete solar PV installations for residential and commercial system owners. We work with many of the leading solar and electrical distributors. In addition to our distributors, we sell directly to large installers, OEMs and strategic partners. Our OEM customers include solar module manufacturers who bundle our products and solutions with their solar module products and resell to both distributors and installers. Strategic partners include a variety of companies including industrial equipment suppliers and providers of solar financing solutions. In 2016, CED Greentech accounted for approximately 18% of net revenues. Historically, revenues generated from the U.S. market have represented more than 80% of our total revenue.

## **Manufacturing, Quality Control and Key Suppliers**

We outsource the manufacturing of our products to manufacturing partners. Flextronics International Ltd. assembles and tests our microinverter, AC Battery and Envoy products. Prices for such services are mutually agreed to by the parties on a quarterly basis, and we are obligated to purchase manufactured products and raw materials that cannot be resold upon the termination of the agreement. Flextronics also provides receiving, kitting, storage, transportation, inventory visibility and other value-added logistics services at locations managed by Flextronics. Phoenix Contact GmbH & Co. KG manufactures our custom AC cables. ELIY Power Co., Ltd. provides the chemistry for our AC Battery storage solution. In addition, we rely on several unaffiliated companies to supply certain components used in the fabrication of our microinverter system.

## **Customer Service**

We maintain high levels of customer engagement through our customer support group and the Enlighten cloud-based software portal, and have cultivated an organizational focus on customer satisfaction. Our dedicated customer support group focuses on responding to inbound inquiries regarding any of our products and services.

## **Research and Development**

We devote substantial resources to research and development with the objective of developing new products and systems, adding new features to existing products and systems and reducing unit costs. Our development strategy is to identify features, products and systems for both software and hardware that reduce the

cost and optimize the effectiveness of our energy management solutions for our customers. We measure the effectiveness of our research and development against metrics, including product unit cost, efficiency, reliability, power output and ease-of-use.

Our research and development expenses were \$50.7 million, \$50.8 million and \$45.4 million for the years ended December 31, 2016, 2015 and 2014, respectively.

#### **Intellectual Property**

Our success depends, in part, on our ability to maintain and protect our proprietary technologies. We rely primarily on patent, trademark, copyright and trade secrets laws in the United States and similar laws in other countries, confidentiality agreements and procedures and other contractual arrangements to protect our technology. As of December 31, 2016, we had 92 issued U.S. patents, 57 issued foreign patents, 23 pending U.S. patent applications and 14 pending foreign counterpart patent applications. Our issued patents are scheduled to expire between years 2027 and 2033.

We license certain power line communications technology and software for integration into our ASICs pursuant to a fully-paid, royalty-free license, which includes the right for us to source directly from the licensor's suppliers or manufacture certain ASIC hardware should the licensor fail, under certain conditions, to deliver such technology in the future. This license includes a limited exclusivity period during which the licensor has agreed not to license the licensed technology to any third party manufacturer of electronic components or systems for use in the solar energy market. The license carries a seventy-five year term, subject to earlier termination upon mutual agreement of the parties, or by us in connection with the insolvency of the licensor.

We also license digital intellectual property cores, or IP blocks, for integration into and distribution with certain electronic components built into our products, including our ASICs, complex programmable logic devices, or CPLDs, and field-programmable gate arrays, or FPGAs. This is a fully-paid, non-exclusive, non-transferable, royalty-free license providing for the integration of such digital IP blocks in an unlimited number of electronic component designs and the distribution of such electronic components with our products. Other than in connection with the distribution of our products, our use of such digital IP blocks is limited to certain of our business sites. The license is perpetual, subject to earlier termination by either party upon the termination, suspension or insolvency of the other party's business, or by the licensor upon a breach of the license agreement by us. In addition, we license open source software from third parties for integration into our Envoy products. Such open source software is licensed under open source licenses. These licenses are perpetual and require us to attribute the source of the software to the original software developer, which we provide via our website.

We continually assess the need for patent protection for those aspects of our technology, designs and methodologies and processes that we believe provide significant competitive advantages. A majority of our patents relate to DC to AC power conversion for alternative energy power systems, as well as power system monitoring, control and management systems.

With respect to, among other things, proprietary know-how that is not patentable and processes for which patents are difficult to enforce, we rely on trade secret protection and confidentiality agreements to safeguard our interests. We believe that many elements of our microinverter manufacturing process involve proprietary know-how, technology or data that are not covered by patents or patent applications, including technical processes, test equipment designs, algorithms and procedures.

All of our research and development personnel have entered into confidentiality and proprietary information agreements with us. These agreements address intellectual property protection issues and require our employees to assign to us all of the inventions, designs and technologies they develop during the course of employment with us.

We also require our customers and business partners to enter into confidentiality agreements before we disclose any sensitive aspects of our microinverter, technology or business plans.

#### **Seasonality**

Historically, sales of our products in the second, third and, to a lesser extent, fourth quarters have been positively affected by seasonal customer demand trends, including solar economic incentives, weather patterns and construction cycles, followed by a seasonally softer first quarter. Although these seasonal factors are common in the solar sector, historical patterns should not be considered a reliable indicator of our future sales activity or performance.

## Competition

The markets for our products are highly competitive, and we compete with traditional inverter manufacturers and new technology start-ups. The principal areas in which we compete with other companies include:

- Product performance and features;
- Total cost of ownership;
- Breadth of product line;
- Local sales and distribution capabilities;
- Module compatibility and interoperability;
- Reliability and duration of product warranty;
- Technological expertise;
- Brand recognition and customer service and support;
- Compliance with industry standards and certifications;
- Compliance with current and planned local electrical codes;
- Integration with storage offerings;
- Size and financial stability of operations;
- Size of installed base; and
- Local manufacturing and product content.

Competitors in the inverter market are, amongst others, SMA Solar Technology AG, Fronius International GmbH, ABB Ltd. and SolarEdge Technologies, Inc., and other emerging companies offering alternative microinverter, DC to DC optimizer and other power electronic solutions. We principally compete with the large, incumbent solar inverter companies because traditional central inverter solutions can be used as alternatives to our microinverter solution. We believe, however, that our microinverter solutions offer significant advantages and competitive differentiation relative to traditional central or string inverter technology, even when traditional central or string inverter technology is supplemented by DC-to-DC optimizers. Competitors in the storage market are currently emerging and may include producers of battery cells and other integrated storage systems.

## Employees

As of December 31, 2016, we had 430 full-time employees. Of the full-time employees, 202 were engaged in research and development, 136 in sales and marketing, 46 in a general and administrative capacity and 46 in manufacturing and operations. Of these employees, 357 were in the United States, 21 in Europe, 33 in New Zealand, 17 in Australia and two employees in Canada.

None of our U.S., New Zealand, U.K., and Australia employees are represented by a labor union with respect to his or her employment with us; however, our employees in France are represented by a collective bargaining agreement. We have not experienced any employment-related work stoppages, and we consider our relations with our employees to be good.

## Available Information

We file electronically with the U.S. Securities and Exchange Commission, or SEC, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act. We make available on our website at [www.enphase.com](http://www.enphase.com) (under "Investors-Financial Information-SEC Filings"), free of charge, copies of these reports as soon as reasonably practicable after filing these reports with, or furnishing them to, the SEC. The contents of our websites are not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

## Item 1A. Risk Factors

*We have identified the following risks and uncertainties that may have a material adverse effect on our business, financial condition or results of operations. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are not material may also significantly impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and related notes.*

### ***We may not be able to raise additional capital to execute on our current or future business opportunities on favorable terms, if at all, or without dilution to our stockholders.***

We have disclosed our conclusion under ASU 2014-15, "Presentation of Financial Statements - Going Concern" that there is substantial doubt about our ability to continue as a going concern and our plans to mitigate the conditions that led to that conclusion. Therefore, we may need to raise additional capital to execute on our current or future business strategies, including to:

- fund our operations;
- invest in our research and development efforts;
- expand our operations into new product markets and new geographies;
- acquire complementary businesses, products, services or technologies; or
- otherwise pursue our strategic plans and respond to competitive pressures.

We do not know what forms of financing, if any, will be available to us, and the determination that there is substantial doubt about our ability to continue as a going concern could impair our ability to raise financing, if needed. If financing is not available on acceptable terms, if and when needed, our ability to fund our operations, enhance our research and development and sales and marketing functions, develop and enhance our products, respond to unanticipated events, including unanticipated opportunities, or otherwise respond to competitive pressures would be significantly limited. In any such event, our business, financial condition and results of operations could be materially harmed, and we may be unable to continue our operations. Moreover, if we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our stockholders could be significantly diluted, and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we fail to raise sufficient additional capital if needed, we may not be able to completely execute our business plan and may not be able to continue as a going concern.

### ***We have a history of losses which may continue in the future, and we cannot be certain that we will achieve or sustain profitability or be able to continue as a going concern.***

We have incurred substantial net losses since our inception, and we may continue to incur additional losses in the future. For the years ended December 31, 2016, 2015 and 2014, we incurred net losses of \$67.5 million, \$22.1 million and \$8.1 million, respectively. At December 31, 2016, we had an accumulated deficit of \$250.5 million. Our revenue growth may slow or revenue may decline for a number of possible reasons, many of which are outside our control, including a decline in demand for our offerings, increased competition, a decrease in the growth of the solar industry or our market share, or our failure to capitalize on growth opportunities. If we fail to generate sufficient revenue to support our operations, we may not be able to achieve or sustain profitability. In connection with the issuance of our consolidated financial statements for the year ended December 31, 2016, we concluded that there is substantial doubt regarding our ability to continue as a going concern. While we have taken and continue to take steps to improve our financial position since December 31, 2016 (including raising additional capital and further reducing expenses), there can be no assurance that these steps will be sufficient and we could fail to continue as a going concern. Furthermore, if we require additional capital to finance our operations, this determination could impair our ability to finance our operations through the sale of equity, incurring debt, or other financing alternatives.

### ***The rapidly changing solar industry makes it difficult to evaluate our current business and future prospects.***

The rapidly changing solar industry makes it difficult to evaluate our current business and future prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing

companies in rapidly changing industries, including increased expenses as we continue to grow our business. If we do not manage these risks and overcome these difficulties successfully, our business will suffer.

Since we began commercial shipments of our products, our revenue, gross profit and results of operations have varied and are likely to continue to vary from quarter to quarter due to a number of factors, many of which are not within our control. It is difficult for us to accurately forecast our future revenue and gross profit and plan expenses accordingly and, therefore, it is difficult for us to predict our future results of operations.

***If demand for solar energy solutions does not continue to grow or grows at a slower rate than we anticipate, our business will suffer.***

Our microinverter and AC Battery storage systems are utilized in solar photovoltaic, or PV, installations, which provide on-site distributed power generation. As a result, our future success depends on continued demand for solar energy solutions and the ability of solar equipment vendors to meet this demand. The solar industry is an evolving industry that has experienced substantial changes in recent years, and we cannot be certain that consumers and businesses will adopt solar PV systems as an alternative energy source at levels sufficient to continue to grow our business. Traditional electricity distribution is based on the regulated industry model whereby businesses and consumers obtain their electricity from a government regulated utility. For alternative methods of distributed power to succeed, businesses and consumers must adopt new purchasing practices. The viability and continued growth in demand for solar energy solutions, and in turn, our products, may be impacted by many factors outside of our control, including:

- market acceptance of solar PV systems based on our product platform;
- cost competitiveness, reliability and performance of solar PV systems compared to conventional and non-solar renewable energy sources and products;
- availability and amount of government subsidies and incentives to support the development and deployment of solar energy solutions;
- the extent to which the electric power industry and broader energy industries are deregulated to permit broader adoption of solar electricity generation;
- the cost and availability of key raw materials and components used in the production of solar PV systems;
- prices of traditional utility-provided energy sources;
- levels of investment by end-users of solar energy products, which tend to decrease when economic growth slows; and
- the emergence, continuance or success of, or increased government support for, other alternative energy generation technologies and products.

If demand for solar energy solutions does not grow, demand for our customers' products as well as demand for our products will decrease, which would have an adverse impact on our ability to increase our revenue and grow our business.

Short-term demand and supply imbalances, especially for solar module technology, have recently caused prices for solar technology solutions to decline rapidly. Furthermore, competition in the solar industry has increased due to the emergence of lower-cost manufacturers along the entire solar value chain causing further price declines, excess inventory and oversupply. These market disruptions may continue to occur and may increase pressure to reduce prices, which could adversely affect our business and financial results.

***The loss of, or events affecting, one of our major customers could reduce our sales and have a material adverse effect on our business, financial condition and results of operations.***

In 2016, CED Greentech accounted for approximately 18% of total net revenues. In 2015, CED Greentech and Vivint Solar, Inc. accounted for approximately 17% and 12% of total net revenues, respectively. Our customers' decisions to purchase our products are influenced by a number of factors outside of our control, including retail energy prices and government regulation and incentives, among others. Although we have agreements with some of our largest customers, these agreements generally do not have long-term purchase commitments and are generally terminable by either party after a relatively short notice period. In addition, these customers may decide to no longer use, or to reduce the use of, our products and services for other reasons that may be out of our control. For example, beginning in 2015, Vivint Solar, Inc. implemented a multi-sourcing

strategy, and therefore, is not sole-sourcing our microinverters, which has resulted in and may continue to result in a reduction in our revenue generated from sales to Vivint. In addition, adverse events affecting our customers could also adversely affect our revenue and results of operations (for instance, the recent filing of a voluntary petition for bankruptcy protection by one of our customers prevented us from timely collection of our accounts receivable from that customer). The loss of, or events affecting, Vivint or one or more of our other large customers have had, could have and could continue to have a material adverse effect on our business, financial condition and results of operations.

***Our gross profit may fluctuate over time, which could impair our ability to achieve or maintain profitability.***

Our gross profit has varied in the past and is likely to continue to vary significantly from period to period. Our gross profit may be adversely affected by numerous factors, some of which are beyond our control, including:

- changes in customer, geographic or product mix;
- increased price competition, including the impact of customer and competitor discounts and rebates;
- our ability to reduce and control product costs, including our ability to make product cost reductions in a timely manner to offset declines in our product prices;
- warranty costs and reserves, including changes resulting from changes in estimates related to the long-term performance of our products, product replacement costs and warranty claim rates;
- loss of cost savings due to changes in component or raw material pricing or charges incurred due to inventory holding periods if product demand is not correctly anticipated;
- introduction of new products;
- ordering patterns from our distributors;
- price reductions on older products to sell remaining inventory;
- our ability to reduce production costs, such as through technology innovations, in order to offset price declines in our products over time;
- changes in shipment volume;
- changes in distribution channels;
- excess and obsolete inventory and inventory holding charges;
- expediting costs incurred to meet customer delivery requirements; and
- fluctuations in foreign currency exchange rates.

Fluctuations in gross profit may adversely affect our ability to manage our business or achieve or maintain profitability.

***We are under continuous pressure to reduce the prices of our products, which has adversely affected, and may continue to adversely affect, our gross margins.***

The solar power industry has been characterized by declining product prices over time. We have reduced the prices of our products in the past, and we expect to continue to experience pricing pressure for our products in the future, including from our major customers. In addition, we have reduced our prices ahead of planned cost reductions of our products, which has adversely affected our gross margins. When seeking to maintain or increase their market share, our competitors may also reduce the prices of their products. In addition, our customers may have the ability or seek to internally develop and manufacture competing products at a lower cost than we would otherwise charge, which would add additional pressure on us to lower our selling prices. If we are unable to offset any future reductions in our average selling prices by increasing our sales volume, reducing our costs and expenses or introducing new products, our gross margins would continue to be adversely affected.

Given the general downward pressure on prices for our products driven by competitive pressure and technological change, a principal component of our business strategy is reducing the costs to manufacture our products to remain competitive. If our competitors are able to drive down their manufacturing costs faster than we can or increase the efficiency of their products, our products may become less competitive even when adjusted for efficiency. Further, if raw materials costs and other third-party component costs were to increase, we may not meet our cost reduction targets. If we cannot effectively execute our cost reduction roadmap, we may not be able to remain price competitive, which would result in lost market share and lower gross margins.

***The inverter industry is highly competitive and we expect to face increased competition as new and existing competitors introduce products, which could negatively impact our results of operations and market share.***

The market for PV inverter solutions is highly competitive. To date, we have competed primarily against central and string inverter manufacturers, but as the solar industry rapidly grows, new solutions and technologies are emerging that will directly compete with our business. Competitors in the inverter market include, amongst others, SMA Solar Technology AG, Fronius International GmbH, ABB Ltd. and SolarEdge Technologies, Inc.. Other existing or emerging companies, such as Huawei Technologies Co. Ltd., may also begin offering alternative microinverter, DC to DC optimizer and other power electronic solutions.

Competition has intensified, and we expect the trend to continue as new and existing competitors enter the microinverter market, or market and sell related products, such as DC to DC optimizers that can be used in conjunction with central or string inverters. SMA Solar Technology AG and ABB Ltd. market and sell microinverter products, and several new entrants to the microinverter market have recently announced plans to ship or have already shipped products. We believe that a number of companies have developed or are developing microinverters and other products that will compete directly with our microinverter systems in the module-level power electronics, or MLPE market, including low-cost manufacturers such as Huawei Technologies Co. Ltd.. In addition, central and string inverter manufacturers continue to reduce their prices, putting additional pressure on us and other alternative technologies.

Several of our existing and potential competitors are significantly larger than we are and may have greater financial, marketing, distribution, and customer support resources, and may have significantly broader brand recognition, especially in certain markets. In addition, some of our competitors have more resources and experience in developing or acquiring new products and technologies and creating market awareness for these offerings. Further, certain competitors may be able to develop new products more quickly than we can and may be able to develop products that are more reliable or that provide more functionality than ours. In addition, some of our competitors have the financial resources to offer competitive products at aggressive or below-market pricing levels, which could cause us to lose sales or market share or require us to lower prices of our products in order to compete effectively. Suppliers of solar products, particularly solar modules, have experienced eroding prices over the last several years and as a result many have faced margin compression and declining revenues. If we have to reduce our prices by more than we anticipate, or if we are unable to offset any future reductions in our average selling prices by increasing our sales volume, reducing our costs and expenses or introducing new products, our revenues and gross profit would suffer.

We also may face competition from some of our customers or potential customers who evaluate our capabilities against the merits of manufacturing products internally. For instance, SunPower Corporation acquired a microinverter company SolarBridge Technologies, Inc. in November of 2014. Other solar module manufacturers could also develop or acquire competing inverter technology or attempt to develop components that directly perform DC to AC conversion in the module itself. Due to the fact that such customers may not seek to make a profit directly from the manufacture of these products, they may have the ability to manufacture competitive products at a lower cost than we would charge such customers. As a result, these customers or potential customers may purchase fewer of our microinverter systems or sell products that compete with our microinverters systems, which would negatively impact our revenue and gross profit.

***Developments in alternative technologies or improvements in distributed solar energy generation may have a material adverse effect on demand for our offerings.***

Significant developments in alternative technologies, such as advances in other forms of distributed solar PV power generation, storage solutions such as batteries, the widespread use or adoption of fuel cells for residential or commercial properties or improvements in other forms of centralized power production may have a material adverse effect on our business and prospects. Any failure by us to adopt new or enhanced technologies or processes, or to react to changes in existing technologies, could result in product obsolescence, the loss of competitiveness of our products, decreased revenue and a loss of market share to competitors.

***Our microinverter systems, including our AC Battery storage solution, may not achieve broader market acceptance, which would prevent us from increasing our revenue and market share.***

If we fail to achieve broader market acceptance of our products, there would be an adverse impact on our ability to increase our revenue, gain market share and achieve and sustain profitability. Our ability to achieve broader market acceptance for our products will be impacted by a number of factors, including:

- our ability to produce microinverter systems and AC Battery storage products that compete favorably against other solutions on the basis of price, quality, reliability and performance;
- our ability to timely introduce and complete new designs and timely quality and certify our products;
- whether installers, system owners and solar financing providers will continue to adopt our microinverter systems, which have a relatively limited history with respect to reliability and performance;
- whether installers, system owners and solar financing providers will adopt our AC Battery storage solution, which is a new technology with a limited history with respect to reliability and performance;
- the ability of prospective system owners to obtain long-term financing for solar PV installations based on our product platform on acceptable terms or at all;
- our ability to develop products that comply with local standards and regulatory requirements, as well as potential in-country manufacturing requirements; and
- our ability to develop and maintain successful relationships with our customers and suppliers.

In addition, our ability to achieve increased market share will depend on our ability to increase sales to established solar installers, who have traditionally sold central or string inverters. These installers often have made substantial investments in design, installation resources and training in traditional central or string inverter systems, which may create challenges for us to achieve their adoption of our microinverter systems.

***The reduction, elimination or expiration of government subsidies and economic incentives for on-grid solar electricity applications could reduce demand for solar PV systems and harm our business.***

The market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government and economic incentives that vary by geographic market. Because our customers' sales are typically into the on-grid market, the reduction, elimination or expiration of government subsidies and economic incentives for on-grid solar electricity may negatively affect the competitiveness of solar electricity relative to conventional and non-solar renewable sources of electricity, and could harm or halt the growth of the solar electricity industry and our business.

In general, the cost of solar power currently exceeds retail electricity rates, and we believe this tendency will continue in the near term. As a result, national, state and local government bodies in many countries, most notably Australia, Canada, France, Belgium, Germany, Italy, Japan, the People's Republic of China, Spain and the United States, have provided incentives in the form of feed-in tariffs, or FITs, rebates, tax credits and other incentives to system owners, distributors, system integrators and manufacturers of solar PV systems to promote the use of solar electricity in on-grid applications and to reduce dependency on other forms of energy. Many of these government incentives expire, phase out over time, terminate upon the exhaustion of the allocated funding, require renewal by the applicable authority or are being changed by governments due to changing market circumstances or changes to national, state or local energy policy.

Electric utility companies or generators of electricity from other non-solar renewable sources of electricity may successfully lobby for changes in the relevant legislation in their markets that are harmful to the solar industry. Reductions in, or eliminations or expirations of, governmental incentives in regions that we focus our sales efforts could result in decreased demand for and lower revenue from solar PV systems there, which would adversely affect sales of our products. In addition, our ability to successfully penetrate new geographic markets may depend on new countries adopting and maintaining incentives to promote solar electricity, to the extent such incentives are not currently in place. Additionally, electric utility companies may establish pricing structures or interconnection requirements that could adversely affect our sales and be harmful to the solar and distributed rooftop solar generation industry.

***Actions by the new presidential administration with regard to the solar energy sector or international trade agreements could materially harm our business, financial condition and results of operations.***

The recent change in the U.S. presidential administration may create regulatory uncertainty in the clean energy sector generally and the solar energy sector in particular. If the new administration and/or the U.S. Congress take action to eliminate or reduce legislation, regulations and incentives supporting solar energy, such actions may result in a decrease in demand for solar energy in the United States and other geographical markets, which could materially harm our business, financial condition and results of operations.

Furthermore, a significant portion of our business activities are conducted in foreign countries, including Mexico, Canada and China. During the 2016 election campaign, the new president made comments suggesting that he was not supportive of certain existing international trade agreements, including the North American Free Trade Agreement ("NAFTA"). At this time, it remains unclear what the new administration or the U.S. Congress may or may not do with respect to these international trade agreements. If the new administration takes action to impose any border tariff or to withdraw from or materially modify NAFTA or certain other international trade agreements, our business, financial condition and results of operations could be adversely affected.

***\*If we do not forecast demand for our products accurately, we may experience product shortages, delays in product shipment, excess product inventory, or difficulties in planning expenses, any of which will adversely affect our business and financial condition.***

We manufacture our products according to our estimates of customer demand. This process requires us to make multiple forecasts and assumptions relating to the demand of our distributors, their end customers and general market conditions. Because we sell most of our products to distributors, who in turn sell to their end customers, we have limited visibility as to end-customer demand. We depend significantly on our distributors to provide us visibility into their end-customer demand, and we use these forecasts to make our own forecasts and planning decisions. If the information from our distributors turns out to be incorrect, then our own forecasts may also be inaccurate. Furthermore, we do not have long-term purchase commitments from our distributors or end customers, and our sales are generally made by purchase orders that may be canceled, changed or deferred without notice to us or penalty. As a result, it is difficult to forecast future customer demand to plan our operations.

If we overestimate demand for our products, or if purchase orders are canceled or shipments are delayed, we may have excess inventory that we cannot sell. We may have to make significant provisions for inventory write-downs based on events that are currently not known, and such provisions or any adjustments to such provisions could be material. Conversely, if we underestimate demand, we may not have sufficient inventory to meet end-customer demand, and we may lose market share, damage relationships with our distributors and end customers and forgo potential revenue opportunities. Obtaining additional supply in the face of product shortages may be costly or impossible, particularly in the short term and in light of our outsourced manufacturing processes, which could prevent us from fulfilling orders in a timely and cost efficient manner or at all. In addition, if we overestimate our production requirements, our contract manufacturers may purchase excess components and build excess inventory. If our contract manufacturers, at our request, purchase excess components that are unique to our products and are unable to recoup the costs of such excess through resale or return or build excess products, we could be required to pay for these excess parts or products and recognize related inventory write-downs.

In addition, we plan our operating expenses, including research and development expenses, hiring needs and inventory investments, in part on our estimates of customer demand and future revenue. If customer demand or revenue for a particular period is lower than we expect, we may not be able to proportionately reduce our fixed operating expenses for that period, which would harm our operating results for that period.

***Our focus on a limited number of specific markets increases risks associated with the modification, elimination or expiration of governmental subsidies and economic incentives for on-grid solar electricity applications.***

To date, we have generated the majority of our revenues from North America and expect to continue to generate a substantial amount of our revenues from North America in the future. There are a number of important incentives that are expected to phase-out or terminate in the future, which could adversely affect sales of our products. A substantial majority of our revenues come from the United States, which has both federal and state incentives. For instance, the Renewable Energy and Job Creation Act of 2008 currently provides a 30% federal tax credit for residential and commercial solar installations through December 31, 2019 and reduced tax credits of 26% and 22% through December 31, 2020 and 2021 respectively, before being reduced to 10% for commercial installations and 0% for residential installations beginning in 2022. These tax credits could be reduced or

eliminated as part of tax code changes or regulatory reform initiatives by the new Congress and presidential administration.

In addition, net energy metering tariffs are being evaluated and in some instances modified which may have a negative impact on future inverter sales. We derive a significant portion of our revenues from California's residential solar market and the existing California net energy metering tariff has been very successful in incentivizing the installation of residential solar systems. California, however, is re-evaluating existing incentives, tariffs and rates for residential systems in order to accommodate a sustainable growth trajectory for residential solar and to also encourage the adoption of other distributed energy resources, such as energy storage, that provide additional benefits to the consumer and the electricity grid. There is a risk that future regulatory changes do not adequately stimulate future growth in the residential solar market. We also sell our products in Europe. A number of European countries, including Germany, Belgium, Spain, Italy and the United Kingdom have adopted reductions or concluded their FIT programs. Certain countries, notably Greece and Spain, have proposed or enacted taxes levied on renewable energy. These and related developments have significantly impacted the solar industry in Europe and may adversely affect the future demand for the solar energy solutions in Europe.

We also sell our products in Australia. In 2012 Australia enacted a Renewable Energy Target (RET) that is intended to ensure that 33,000 Gigawatt-hours of Australia's electricity comes from renewable sources by 2020. In 2013, Australia elected a new national government. The new leadership pledged to revise national energy policy, including potentially reducing Australia's renewable energy target and revising certain renewable energy financing mechanisms. In July 2014, the new leadership successfully repealed the tax on carbon emissions. This has been replaced with the Direct Action Plan, which primarily provides funding to corporations to reduce emissions. States and territories in Australia have different feed in tariffs, and the gradual reduction of feed in tariffs in some states may reduce the incentive for homeowners to export unused solar energy produced back to the grid.

We also sell our products in Ontario, Canada. The Government of Ontario has the authority to change the FITs for future contracts at its discretion and has the authority to modify, suspend, or discontinue the program at any time. Suspension of the FIT program in Ontario directly impacted and could continue to impact our business. Furthermore, any future suspension or modification of the program could negatively affect our business, financial condition and results of operations.

We believe the Federal and State tax credits, applicable federal and state grants, applicable tariffs and other incentive programs have had a positive effect on our sales since inception. However, unless these programs are further extended or modified to allow for continued growth in the residential solar market, the phase-out of such programs could adversely affect sales of our products in the future. The reductions in incentives and uncertainty around future energy policy, including local content requirements, have negatively affected and may continue to negatively affect our business, financial condition, and results of operations as we seek to increase our business domestically and abroad. Additionally, as we further expand to other countries, changes in incentive programs or electricity policies could negatively affect returns on our investments in those countries as well as our business, financial condition, and results of operations.

***Changes in current laws or regulations or the imposition of new laws or regulations, or new interpretations thereof, by federal or state agencies or foreign governments could impair our ability to compete in international markets.***

Changes in current laws or regulations applicable to us or the imposition of new laws and regulations in the United States, Canada, Mexico and certain Central American markets, France, the Benelux region, certain other European markets, Australia, New Zealand and certain other Asian markets, could materially and adversely affect our business, financial condition and results of operations. In addition, changes in our products or changes in export and import laws and implementing regulations may create delays in the introduction of new products in international markets, prevent our customers from deploying our products internationally or, in some cases, prevent the export or import of our products to certain countries altogether.

For example, the Italian energy authority (AEEG) enacted a new set of interconnection standards for solar energy installations that became effective in July 2012, which has negatively impacted our sales in Italy. We continue to explore potential solutions to meet these requirements. However, in the event that we cannot

implement a solution in the near term the total market available for our microinverter products in Italy, and our business as a result, may continue to be adversely impacted.

In addition, several states or territories, including California, Hawaii and Queensland, Australia, have either implemented or are considering implementing new restrictions on incentives or rules regulating the installation of solar systems that we may not be able to currently comply with. In the event that we cannot comply with these or other new regulations or implement a solution to such noncompliance as they arise, the total market available for our microinverter products in such states, and our business as a result, may be adversely impacted.

While we are not aware of any other current or proposed export or import regulations that would materially restrict our ability to sell our products in countries where we offer our products for sale, any change in export or import regulations or related legislation, shift in approach to the enforcement or scope of existing regulations, or change in the countries, persons or technologies targeted by these regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. In such event, our business and results of operations could be adversely affected.

***The threat of continuing global economic, capital markets and credit disruptions, including sovereign debt issues, pose risks for our business.***

The threat of continuing global economic, capital markets and credit disruptions, including the sovereign debt issues in Europe, pose risks for our business. These risks include slower economic activity and investment in projects that make use of our products and services. These economic developments, particularly decreased credit availability, have reduced demand for solar products. The European sovereign debt crisis has caused and may continue to cause European governments to reduce, eliminate or allow to expire government subsidies and economic incentives for solar energy, which could limit our growth or cause our net sales to decline and materially and adversely affect our business, financial condition, and results of operations. These conditions, including reduced incentives, continued decreases in credit availability, as well as continued economic instability, have and may continue to adversely impact our business, financial condition and results of operations as we seek to increase our sales in Europe.

***A drop in the retail price of electricity derived from the utility grid or from alternative energy sources, or a change in utility pricing structures, may harm our business, financial condition and results of operations.***

We believe that a system owner's decision to purchase a solar PV system is strongly influenced by the cost of electricity generated by solar PV installations relative to the retail price of electricity from the utility grid and the cost of other renewable energy sources, including electricity from solar PV installations using central inverters. Decreases in the retail prices of electricity from the utility grid would make it more difficult for all solar PV systems to compete. In particular, growth in unconventional natural gas production and an increase in global liquefied natural gas capacity are expected to keep natural gas prices relatively low for the foreseeable future. Persistent low natural gas prices, lower prices of electricity produced from other energy sources, such as nuclear power, or improvements to the utility infrastructure could reduce the retail price of electricity from the utility grid, making the purchase of solar PV systems less economically attractive and lowering sales of our products. In addition, energy conservation technologies and public initiatives to reduce demand for electricity also could cause a fall in the retail price of electricity from the utility grid. Moreover, technological developments by our competitors in the solar components industry, including manufacturers of central inverters and DC to DC optimizers, could allow these competitors or their partners to offer electricity at costs lower than those that can be achieved from solar PV installations based on our product platform, which could result in reduced demand for our products. Additionally, as increasing adoption of distributed generation places pressure on traditional utility business models or utility infrastructure, utilities may change their pricing structures to make installation or operation of solar distributed generation more costly. Such measures can include grid access fees, costly or lengthy interconnection studies, limitations on distributed generation penetration levels, or other measures. If the cost of electricity generated by solar PV installations incorporating our microinverter systems is high relative to the cost of electricity from other sources, our business, financial condition and results of operations may be harmed.

***Problems with product quality or product performance may cause us to continue to incur additional warranty expenses and may damage our market reputation and cause our revenue and gross profit to decline.***

We have offered 15-year limited warranties for our first and second generation microinverters and offer a limited warranty of up to 25 years on each subsequent generation microinverters. Our limited warranties cover defects in materials and workmanship of our microinverters under normal use and service conditions for up to 25 years following installation. As a result, we bear the risk of warranty claims long after we have sold the product and recognized revenue. Our estimated costs of warranty for previously sold products may change to the extent future products are not compatible with earlier generation products under warranty.

While we offer warranties of up to 25 years, our microinverters have only been in use since mid-2008, when we first commenced commercial sales of our products. Although we conduct accelerated life cycle testing to measure performance and reliability, our microinverter systems have not been tested over the full warranty cycle and do not have a sufficient operating history to confirm how they will perform over their estimated useful life. In addition, under real-world operating conditions, which may vary by location and design, as well as insolation, soiling and weather conditions, a typical solar PV installation may perform in a different way than under standard test conditions. If our products perform below expectations or have unexpected reliability problems, we may be unable to gain or retain customers and could face substantial warranty expense.

We are required to make assumptions and apply judgments, based on our accelerated life cycle testing and the limited operating history of our products, regarding a number of factors, including the durability and reliability of our products, our anticipated rate of warranty claims and the costs of replacement of defective products. Our assumptions have proved and could in the future prove to be materially different from the actual performance of our products, which has caused and may in the future cause us to incur substantial expense to repair or replace defective products. Increases in our estimates of future warranty obligations due to actual product failure rates, field service obligations and rework costs incurred in correcting product failures have caused and could in the future cause us to materially increase the amount of warranty obligations, and have had and may have in the future a corresponding negative impact on our results of operations.

We also depend significantly on our reputation for reliability and high-quality products and services, exceptional customer service and our brand name to attract new customers and grow our business. If our products and services do not perform as anticipated or we experience unexpected reliability problems or widespread product failures, our brand and reputation could be significantly impaired and we may lose, or be unable to gain or retain, customers.

***Defects and poor performance in our products could result in loss of customers, decreased revenue and unexpected expenses, and we may face warranty, indemnity and product liability claims arising from defective products.***

Our products must meet stringent quality requirements and may contain undetected errors or defects, especially when first introduced or when new generations are released. Errors, defects or poor performance can arise due to design flaws, defects in raw materials or components or manufacturing difficulties, which can affect both the quality and the yield of the product. These errors or defects may be dangerous, as defective power components may cause power overloads, potentially resulting in explosion or fire. As we develop new generations of our products and enter new markets, we face higher risk of undetected defects because our testing protocols may not be able to fully test the products under all possible operating conditions. In the past, we have experienced defects in our products due to certain errors in the manufacturing and design process. Any actual or perceived errors, defects or poor performance in our products could result in the replacement or recall of our products, shipment delays, rejection of our products, damage to our reputation, lost revenue, diversion of our engineering personnel from our product development efforts in order to address or remedy any defects and increases in customer service and support costs, all of which could have a material adverse effect on our business and operations.

Furthermore, defective, inefficient or poorly performing power components may give rise to warranty, indemnity or product liability claims against us that exceed any revenue or profit we receive from the affected products. We could incur significant costs and liabilities if we are sued and if damages are awarded against us. We currently maintain a moderate level of product liability insurance, and there can be no assurance that this insurance will provide sufficient coverage in the event of a claim. Also, we cannot predict whether we will be able to maintain this coverage on acceptable terms, if at all, or that a product liability claim would not harm our business or financial condition. Costs or payments we may make in connection with warranty and product liability claims or product recalls may adversely affect our financial condition and results of operations.

Our Enlighten web-based monitoring service, which our customers use to track and monitor the performance of their solar PV systems based on our product platform, may contain undetected errors, failures, or bugs, especially when new versions or enhancements are released. We have from time to time found defects in our service and new errors in our existing service may be detected in the future. Any errors, defects, disruptions in service or other performance problems with our monitoring service could harm our reputation and may damage our customers' businesses.

***If we are unable to effectively manage our workforce, our business and operating results may suffer.***

We have experienced, and expect to experience in the future, volatility in our sales and operations. Our historical growth and our more recent cost reduction initiatives have placed, and are expected to continue to place, significant demands on our management as well as our financial and operational resources, to:

- manage a dynamic organization;
- expand third-party manufacturing, testing and distribution capacity;
- execute on our cost reduction efforts and product initiatives with reduced headcount;
- build additional custom manufacturing test equipment;
- manage an increasing number of relationships with customers, suppliers and other third parties;
- increase our sales and marketing efforts;
- train and manage a dynamic employee base;
- broaden our customer support capabilities; and
- implement new and upgrade existing operational and financial systems.

We cannot assure you that our current and planned operations, personnel, systems, internal procedures and controls will be adequate to support our future operations. If we cannot manage our sales and operations effectively, we may be unable to take advantage of market opportunities, execute our business strategies or respond to competitive pressures, any of which could have a material adverse effect on our financial condition, results of operations, business or prospects.

***Our recent and planned expansion into new markets could subject us to additional business, financial and competitive risks.***

We currently offer microinverter systems targeting the residential and commercial markets in the United States, Canada, Mexico and certain Central American markets, the United Kingdom, France, the Benelux region, certain other European markets, Australia, New Zealand and certain other Asian markets. We recently introduced our AC Battery storage solution in Australia, the United States, and the United Kingdom. We intend to expand into other international markets. Our success in these new geographic and product markets will depend on a number of factors, such as:

- acceptance of microinverters in markets in which they have not traditionally been used;
- our ability to compete in new product markets to which we are not accustomed;
- our ability to manage manufacturing capacity and production;
- willingness of our potential customers to incur a higher upfront capital investment than may be required for competing solutions;
- timely qualification and certification of new products;
- our ability to reduce production costs in order to price our products competitively over time;
- availability of government subsidies and economic incentives for solar energy solutions;
- accurate forecasting and effective management of inventory levels in line with anticipated product demand; and
- our customer service capabilities and responsiveness.

Further, new geographic markets and the larger commercial and utility-scale installation markets have different characteristics from the markets in which we currently sell products, and our success will depend on our ability to properly address these differences. These differences may include:

- differing regulatory requirements, including tax laws, trade laws, labor, safety, local content, recycling and consumer protection regulations, tariffs, export quotas, customs duties or other trade restrictions;
- limited or unfavorable intellectual property protection;
- risk of change in international political or economic conditions;
- restrictions on the repatriation of earnings;
- fluctuations in the value of foreign currencies and interest rates;
- difficulties and increased expenses in complying with a variety of U.S. and foreign laws, regulations and trade standards, including the Foreign Corrupt Practices Act;
- potentially longer sales cycles;
- higher volume requirements;
- increased customer concentrations;
- warranty expectations and product return policies; and
- cost, performance and compatibility requirements.

Failure to develop and introduce these new products successfully, to generate sufficient revenue from these products to offset associated research and development, marketing and manufacturing costs, or to otherwise effectively anticipate and manage the risks and challenges associated with our potential expansion into new product and geographic markets, could adversely affect our revenues and our ability to achieve or sustain profitability.

***Ordering patterns from our distributors may cause our revenue to fluctuate significantly from period to period.***

Our distributors place purchase orders with us based on their assessment of end-customer demand and their forecasts. Because these forecasts may not be accurate, channel inventory held at our distributors may fluctuate significantly due to the difference between their forecasts and actual demand. As a result, distributors adjust their purchase orders placed with us in response to changing channel inventory levels, as well as their assessment of the latest market demand trends. We have limited visibility into future end customer demand. A significant decrease in our distributors' channel inventory in one period may lead to a significant rebuilding of channel inventory in subsequent periods, or vice versa, which may cause our quarterly revenue and operating results to fluctuate significantly. This fluctuation may cause our results to fall short of analyst or investor expectations in a certain period, which may cause our stock price to decline.

***We depend upon a small number of outside contract manufacturers. Our operations could be disrupted if we encounter problems with these contract manufacturers.***

We do not have internal manufacturing capabilities, and rely upon a small number of contract manufacturers to build our products. In particular, we rely on contract manufacturers for the manufacture of microinverter products, cabling and our communications gateway related to our microinverter systems. Our reliance on a small number of contract manufacturers makes us vulnerable to possible capacity constraints and reduced control over component availability, delivery schedules, manufacturing yields and costs. We do not have long-term supply contracts with our other manufacturing partners. Consequently, these manufacturers are not obligated to supply products to us for any period, in any specified quantity or at any certain price.

The revenues that our contract manufacturers generate from our orders may represent a relatively small percentage of their overall revenues. As a result, fulfilling our orders may not be considered a priority in the event of constrained ability to fulfill all of their customer obligations in a timely manner. In addition, the facilities in which the vast majority of our microinverters, related cabling and communications gateway products are manufactured are located outside of the United States. We believe that the location of these facilities outside of the United States increases supply risk, including the risk of supply interruptions or reductions in manufacturing quality or controls.

If any of our contract manufacturers were unable or unwilling to manufacture our products in required volumes and at high quality levels or renew existing terms under supply agreements, we would have to identify, qualify and select acceptable alternative contract manufacturers. An alternative contract manufacturer may not be available to us when needed or may not be in a position to satisfy our quality or production requirements on commercially reasonable terms, including price. Any significant interruption in manufacturing would require us to reduce our supply of products to our customers, which in turn would reduce our revenues, harm our relationships with our customers and damage our relationships with our distributors and end customers and cause us to forgo potential revenue opportunities.

***Manufacturing problems could result in delays in product shipments to customers and could adversely affect our revenue, competitive position and reputation.***

We may experience delays, disruptions or quality control problems in our manufacturing operations. Our product development, manufacturing and testing processes are complex and require significant technological and production process expertise. Such processes involve a number of precise steps from design to production. Any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be researched, identified and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased production costs and delays. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations.

A disruption could also occur in our manufacturing partner's fabrication facility due to any number of reasons, such as equipment failure, contaminated materials or process deviations, which could adversely impact manufacturing yields or delay product shipments. As a result, we could incur additional costs that would adversely affect our gross profit, and product shipments to our customers could be delayed beyond the shipment schedules requested by our customers, which would negatively affect our revenue, competitive position and reputation.

Additionally, manufacturing yields depend on a number of factors, including the stability and manufacturability of the product design, manufacturing improvements gained over cumulative production volumes and the quality and consistency of component parts. Capacity constraints, raw materials shortages, logistics issues, labor shortages, changes in customer requirements, manufacturing facilities or processes, or those of some third-party contract manufacturers and suppliers of raw materials and components have historically caused, and may in the future cause, reduced manufacturing yields, negatively impacting the gross profit on, and our production capacity for, those products. Moreover, an increase in the rejection and rework rate of products during the quality control process before, during or after manufacture would result in our experiencing lower yields, gross profit and production capacity.

The risks of these types of manufacturing problems are further increased during the introduction of new product lines, which has from time to time caused, and may in the future cause, temporary suspension of production lines while problems are addressed or corrected. Since our business is substantially dependent on a limited number of product lines, any prolonged or substantial suspension of manufacturing production lines could result in a material adverse effect on our revenue, gross profit, competitive position, and distributor and customer relationships.

***We depend on sole source and limited source suppliers for key components and products. If we are unable to source these components on a timely basis, we will not be able to deliver our products to our customers.***

We depend on sole source and limited source suppliers for key components of our products. For example, our ASICs are purchased from a sole source supplier or developed for us by sole source suppliers. Similarly, the battery cells for our AC Battery storage products are also currently sole sourced. Any of the sole source and limited source suppliers upon whom we rely could experience quality and reliability issues, could stop producing our components, cease operations or be acquired by, or enter into exclusive arrangements with, our competitors. We generally do not have long-term supply agreements with our suppliers, and our purchase volumes may currently be too low for us to be considered a priority customer by most of our suppliers. As a result, most of these suppliers could stop selling to us at commercially reasonable prices, or at all. Any such quality or reliability issue, or interruption or delay may force us to seek similar components or products from alternative sources, which may

not be available on commercially reasonable terms, including price, or at all. Switching suppliers may require that we redesign our products to accommodate new components, and may potentially require us to re-qualify our products, which would be costly and time-consuming. Any interruption in the quality or supply of sole source or limited source components for our products would adversely affect our ability to meet scheduled product deliveries to our customers and could result in lost revenue or higher expenses and would harm our business.

***If we or our contract manufacturers are unable to obtain raw materials in a timely manner or if the price of raw materials increases significantly, production time and product costs could increase, which may adversely affect our business.***

The manufacturing and packaging processes used by our contract manufacturers depend on raw materials such as copper, aluminum, silicon and petroleum-based products. From time to time, suppliers may extend lead times, limit supplies or increase prices due to capacity constraints or other factors. Certain of our suppliers have the ability to pass along to us directly or through our contract manufacturers any increases in the price of raw materials. If the prices of these raw materials rise significantly, we may be unable to pass on the increased cost to our customers. While we may from time to time enter into hedging transactions to reduce our exposure to wide fluctuations in the cost of raw materials, the availability and effectiveness of these hedging transactions may be limited. Due to all these factors, our results of operations could be adversely affected if we or our contract manufacturers are unable to obtain adequate supplies of raw materials in a timely manner or at reasonable cost. In addition, from time to time, we or our contract manufacturers may need to reject raw materials that do not meet our specifications, resulting in potential delays or declines in output. Furthermore, problems with our raw materials may give rise to compatibility or performance issues in our products, which could lead to an increase in customer returns or product warranty claims. Errors or defects may arise from raw materials supplied by third parties that are beyond our detection or control, which could lead to additional customer returns or product warranty claims that may adversely affect our business and results of operations.

***If potential owners of solar PV systems based on our product platform are unable to secure financing on acceptable terms, we could experience a reduction in the demand for our solar PV systems.***

Many owners of solar PV systems depend on financing to purchase their systems. The limited use of microinverters to date, coupled with our relatively smaller size and capitalization compared to some of our competitors, could result in lenders refusing to provide the financing necessary to purchase solar PV systems based on our product platform on favorable terms, or at all. Moreover, in the case of debt financed projects, even if lenders are willing to finance the purchase of these systems, an increase in interest rates or a change in tax incentives could make it difficult for owners to secure the financing necessary to purchase a solar PV system on favorable terms, or at all. In addition, we believe that a significant percentage of owners purchase solar PV systems as an investment, funding the initial capital expenditure through a combination of upfront cash and financing. Difficulties in obtaining financing for solar PV systems on favorable terms, or increases in interest rates or changes in tax incentives, could lower an investor's return on investment in a solar PV system, or make alternative solar PV systems or other investments more attractive relative to solar PV systems based on our product platform. Any of these events could result in reduced demand for our products, which could have a material adverse effect on our financial condition and results of operations. In addition, a significant share of residential solar installations has been provided through third party financing structures, such as power purchase or lease agreements. Our sales growth may depend on sales to developers of third party solar finance offerings who provide solar as a service via power purchase agreements or leasing structures. The third party finance market for residential solar in the United States and elsewhere is or may become highly concentrated, with a few significant finance companies and several smaller entrants. If we are unable develop relationships and gain a significant share of inverter sales to the major finance companies or new entrants, our overall sales growth could be constrained.

***We rely primarily on distributors, large installers and providers of solar financing to assist in selling our products, and the failure of these customers to perform as expected could reduce our future revenue.***

We sell our microinverter systems primarily through distributors, as well as through direct sales to solar equipment installers and sales to developers of third party solar finance offerings. We do not have exclusive arrangements with these third parties and, as a result, many of our customers also use or market and sell products from our competitors, which may reduce our sales. Our customers may generally terminate their relationships with us at any time, or with short notice. Our customers may fail to devote resources necessary to

sell our products at the prices, in the volumes and within the time frames that we expect, or may focus their marketing and sales efforts on products of our competitors. In addition, participants in the solar industry are becoming increasingly focused on vertical integration of the solar financing and installation process, which may lead to an overall reduction in the number of potential parties who may purchase and install our products.

Our future performance depends on our ability to effectively manage our relationships with our existing customers, as well as to attract additional customers that will be able to market and support our products effectively, especially in markets in which we have not previously distributed our products. Termination of agreements with current customers, failure by these customers to perform as expected, or failure by us to cultivate new customer relationships, could hinder our ability to expand our operations and harm our revenue and operating results.

***We may fail to capture customers in the new product and geographic markets that we are pursuing.***

We are pursuing opportunities in energy management and energy storage which are highly competitive markets. We have made investments in our infrastructure, increased our operating costs and forgone other business opportunities in order to seek opportunities in these areas and will continue to do so. Any new product is subject to certain risks, including component sourcing, strategic partner selection and execution, customer acceptance, competition, product differentiation, market timing, challenges relating to economies of scale in component sourcing and the ability to attract and retain qualified personnel. There can be no assurance that we will be able to develop and grow these or any other new concepts to a point where they will become profitable, or generate positive cash flow. If we fail to execute on our plan with respect to new product introductions, these new potential business segments fail to translate into revenue in the quantities or timeline projected, thus, having a materially adverse impact on our revenue, operating results and financial stability. In addition, we are pursuing new geographic markets. The inability to capture new customers in the high-growth geographic markets could have a material adverse effect on our business, financial condition or results of operations.

***Our success in an "AC module" version of our microinverter system may depend in part upon our ability to continue to work closely with leading solar module manufacturers.***

We are currently working on variants of our microinverter system that will enable an "AC module" for direct attachment of the microinverter to the solar modules. The market success of such solutions will depend in part on our ability to continue to work closely with solar module manufacturers to design solar modules that are compatible with such direct attachment of our microinverter. We may not be able to encourage solar module manufacturers to work with us on the development of such compatible solutions combining our microinverter system and solar modules for a variety of reasons, including differences in marketing or selling strategy, competitive considerations, lack of competitive pricing, and technological compatibility. In addition, our ability to form effective partnerships with solar module manufacturers may be adversely affected by the substantial changes faced by many of these manufacturers due to declining prices and revenues from sales of solar modules.

***If we fail to retain our key personnel or if we fail to attract additional qualified personnel, we may not be able to achieve our anticipated level of growth and our business could suffer.***

Our future success and ability to implement our business strategy depends, in part, on our ability to attract and retain key personnel, and on the continued contributions of members of our senior management team and key technical personnel, each of whom would be difficult to replace. All of our employees, including our senior management, are free to terminate their employment relationships with us at any time. Competition for highly skilled technical people is extremely intense, and we face challenges identifying, hiring and retaining qualified personnel in many areas of our business. If we fail to retain our senior management and other key personnel or if we fail to attract additional qualified personnel, we may not be able to achieve our strategic objectives and our business could suffer.

***If we fail to protect, or incur significant costs in defending, our intellectual property and other proprietary rights, our business and results of operations could be materially harmed.***

Our success depends to a significant degree on our ability to protect our intellectual property and other proprietary rights. We rely on a combination of patent, trademark, copyright, trade secret and unfair competition laws, as well as confidentiality and license agreements and other contractual provisions, to establish and protect

our intellectual property and other proprietary rights. We have applied for patent and trademark registrations in the United States and in certain other countries, some of which have been issued. We cannot guarantee that any of our pending applications will be approved or that our existing and future intellectual property rights will be sufficiently broad to protect our proprietary technology, and any failure to obtain such approvals or finding that our intellectual property rights are invalid or unenforceable could force us to, among other things, rebrand or re-design our affected products. In countries where we have not applied for patent protection or where effective intellectual property protection is not available to the same extent as in the United States, we may be at greater risk that our proprietary rights will be misappropriated, infringed or otherwise violated.

To protect our unregistered intellectual property, including our trade secrets and know-how, we rely in part on trade secret laws and confidentiality and invention assignment agreements with our employees and independent consultants. We also require other third parties who may have access to our proprietary technologies and information to enter into non-disclosure agreements. Such measures, however, provide only limited protection, and we cannot assure that our confidentiality and non-disclosure agreements will prevent unauthorized disclosure or use of our confidential information, especially after our employees or third parties end their employment or engagement with us, or provide us with an adequate remedy in the event of such disclosure. Furthermore, competitors or other third parties may independently discover our trade secrets, in which case we would not be able to assert trade secret rights, copy or reverse engineer our products or portions thereof or develop similar technology. If we fail to protect our intellectual property and other proprietary rights, or if such intellectual property and proprietary rights are infringed, misappropriated or otherwise violated, our business, results of operations or financial condition could be materially harmed.

In the future, we may need to take legal action to prevent third parties from infringing upon or misappropriating our intellectual property or from otherwise gaining access to our technology. Protecting and enforcing our intellectual property rights and determining their validity and scope could result in significant litigation costs and require significant time and attention from our technical and management personnel, which could significantly harm our business. In addition, we may not prevail in such proceedings. An adverse outcome of any such proceeding may reduce our competitive advantage or otherwise harm our financial condition and our business.

***Third parties may assert that we are infringing upon their intellectual property rights, which could divert management's attention, cause us to incur significant costs and prevent us from selling or using the technology to which such rights relate.***

Our competitors and other third parties hold numerous patents related to technology used in our industry, and claims of patent or other intellectual property right infringement or violation have been litigated against certain of our competitors. From time to time we may also be subject to such claims and litigation. Regardless of their merit, responding to such claims can be time consuming, divert management's attention and resources and may cause us to incur significant expenses. While we believe that our products and technology do not infringe in any material respect upon any valid intellectual property rights of third parties, we cannot be certain that we would be successful in defending against any such claims. Furthermore, patent applications in the United States and most other countries are confidential for a period of time before being published, so we cannot be certain that we are not infringing third parties' patent rights or that we were the first to conceive or protect inventions covered by our patents or patent applications. An adverse outcome with respect to any intellectual property claim could invalidate our proprietary rights and force us to do one or more of the following:

- obtain from a third party claiming infringement a license to sell or use the relevant technology, which may not be available on reasonable terms, or at all;
- stop manufacturing, selling, incorporating or using our products that embody the asserted intellectual property;
- pay substantial monetary damages;
- indemnify our customers pursuant to indemnification obligations under some of our customer contracts; or
- expend significant resources to redesign the products that use the infringing technology and to develop or acquire non-infringing technology.

Any of these actions could result in a substantial reduction in our revenue and could result in losses over an extended period of time.

***Our failure to obtain the right to use necessary third-party intellectual property rights on reasonable terms, or our failure to maintain, and comply with the terms and conditions applicable to these rights, could harm our business and prospects.***

From time to time we have licensed, and in the future we may choose to or be required to license, technology or intellectual property from third parties in connection with the development of our products. We cannot assure that such licenses will be available to us on commercially reasonable terms, or at all, and our inability to obtain such licenses could require us to substitute technology of lower quality or of greater cost. In addition, we incorporate open source software code in our proprietary software. Use of open source software can lead to greater risks than use of third-party commercial software since open source licensors generally do not provide warranties or controls with respect to origin, functionality or other features of the software. Some open source software licenses require users who distribute open source software as part of their products to publicly disclose all or part of the source code in their software and make any derivative works of the open source code available for limited fees or at no cost. Although we monitor our use of open source software, open source license terms may be ambiguous, and many of the risks associated with the use of open source software cannot be eliminated. If we were found to have inappropriately used open source software, we may be required to release our proprietary source code, re-engineer our software, discontinue the sale of certain products in the event re-engineering cannot be accomplished on a timely basis or take other remedial action. Furthermore, if we are unable to obtain or maintain licenses from third parties or fail to comply with applicable open source licenses, we may be subject to costly third party claims of intellectual property infringement or ownership of our proprietary source code. Any of the foregoing could harm our business and put us at a competitive disadvantage.

***Our business has been and could continue to be affected by seasonal trends and construction cycles.***

We have been and could continue to be subject to industry-specific seasonal fluctuations, particularly in climates that experience colder weather during the winter months, such as northern Europe, Canada, and the United States. In general, we expect our products in the second, third, and fourth quarters will be positively affected by seasonal customer demand trends, including solar economic incentives, weather patterns and construction cycles, preceded by a seasonally softer first quarter. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for budgetary reasons. In addition, construction levels are typically slower in colder months. In European countries with FITs, the construction of solar PV systems may be concentrated during the second half of the calendar year, largely due to the annual reduction of the applicable minimum FIT and the fact that the coldest winter months are January through March. Accordingly, our business and quarterly results of operations could be affected by seasonal fluctuations in the future.

***\*Covenants in our credit facility and term loan may limit our flexibility in responding to business opportunities and competitive developments and increase our vulnerability to adverse economic or industry conditions.***

We are a party to a term loan agreement with affiliates of Tennenbaum Capital Partners, LLC ("TCP"). This agreement restricts our ability to take certain actions such as incurring additional debt, encumbering our tangible or intangible property, paying dividends, or engaging in certain transactions, such as mergers and acquisitions, investments and asset sales. These restrictions may limit our flexibility in responding to business opportunities, competitive developments and adverse economic or industry conditions. In addition, our obligations under these agreements are secured by substantially all of our assets (excluding intellectual property), which limits our ability to provide collateral for additional financing. A breach of any of these covenants, or a failure to pay interest or indebtedness when due under any of our credit facilities, could result in a variety of adverse consequences, including the acceleration of our indebtedness and the forfeiture of our assets subject to security interests in favor of the lenders.

**We are an “emerging growth company,” and have elected to comply with reduced public company reporting requirements applicable to emerging growth companies, which could make our common stock less attractive to investors.**

We are an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act enacted in April 2012, or the JOBS Act. We have chosen to take advantage of exemptions from various reporting requirements applicable to other public companies but not to “emerging growth companies,” including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We can continue to be an “emerging growth company” until December 31, 2017 (the last day of the fiscal year following the fifth anniversary of our initial public offering), although we could cease to be an “emerging growth company” earlier if certain events occur as specified in the JOBS Act, such as our achieving annual revenue of at least \$1 billion or our becoming a “large accelerated filer” as defined in Rule 12b-2 of the Exchange Act. We cannot predict if investors will find our common stock less attractive because we have chosen to take advantage of these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock and our stock price may be more volatile.

**If we fail to maintain an effective system of internal controls or are unable to remediate any deficiencies in our internal controls, we might not be able to report our financial results accurately or prevent fraud; in that case, our stockholders could lose confidence in our financial reporting, which would harm our business and could negatively impact the price of our stock.**

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. In addition, Section 404 of the Sarbanes-Oxley Act requires us to establish and maintain internal control over financial reporting and disclosure controls procedures. The process of implementing our internal controls and complying with Section 404 of the Sarbanes-Oxley Act has required, and will continue to require, significant attention of management. Although we are currently not required to provide an auditor’s attestation report on management’s assessment of the effectiveness of our internal control over financial reporting, otherwise required by Section 404(b) of the Sarbanes-Oxley Act, this exemption will no longer be available to us beginning with our first Annual Report on 10-K for the year in which we cease to be an “emerging growth company,” as defined in the JOBS Act. If we or our independent registered public accounting firm discover a material weakness in the future, the disclosure of that fact, even if quickly remedied, could reduce the market’s confidence in our financial statements and harm our stock price. In addition, a delay in compliance with Section 404 of the Sarbanes-Oxley Act could subject us to a variety of administrative sanctions, including SEC action, ineligibility for short form resale registration, the suspension or delisting of our common stock from the stock exchange on which it is listed and the inability of registered broker-dealers to make a market in our common stock, which would further reduce our stock price and could harm our business. To the extent any material weaknesses in our internal control over financial reporting are identified in the future, we could be required to expend significant management time and financial resources to correct such material weaknesses or to respond to any resulting regulatory investigations or proceedings

**Our ability to use net operating losses to reduce future tax payments may be limited by provisions of the Internal Revenue Code, and may be subject to further limitation as a result of future transactions.**

Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the “Code”), contain rules that limit the ability of a company that undergoes an “ownership change,” generally defined as a more than 50 percentage point increase in the percentage of its stock owned by certain stockholders over a three-year period, to utilize its net operating loss and tax credit carryforwards and certain built-in losses recognized in the years after the ownership change. These rules generally operate by focusing on ownership changes involving stockholders who directly or indirectly own 5% or more of the stock of a company and any change in ownership arising from a new issuance of stock by the company. Generally, if an ownership change occurs, the yearly taxable income limitation on the use of net operating loss and tax credit carryforwards is equal to the product of the applicable long-term tax exempt rate and the value of the company’s stock immediately before the ownership change. If these limitations apply, we may be unable to offset our taxable income with net operating losses, or our tax liability with credits, before these losses and credits expire. We recently completed a study to assess whether an

ownership change has occurred or whether there have been multiple ownership changes since we became a loss corporation under the Code. However, we do not anticipate these limitations will significantly impact our ability to utilize the net operating losses and tax credit carryforwards.

In addition, it is possible that future transactions (including issuances of new shares of our common stock and sales of shares of our common stock) will cause us to undergo one or more additional ownership changes. In that event, we generally would not be able to use our net operating losses from periods prior to this ownership change to offset future taxable income in excess of the annual limitations imposed by Sections 382 and 383 and those attributes that are already subject to limitations (as a result of our prior ownership changes) may be subject to more stringent limitations.

***Natural disasters, terrorist or cyber attacks, or other catastrophic events could harm our operations.***

Our worldwide operations could be subject to natural disasters and other business disruptions, which could harm our future revenue and financial condition and increase our costs and expenses. For example, our corporate headquarters in Petaluma, California is located near major earthquake fault lines. Further, a terrorist attack, including one aimed at energy or communications infrastructure suppliers or our cloud-based monitoring service, could hinder or delay the development and sale or performance of our products. In the event that an earthquake, tsunami, typhoon, terrorist or cyber attack, or other natural, manmade or technical catastrophe were to destroy any part of our facilities or those of our contract manufacturer, destroy or disrupt vital infrastructure systems or interrupt our operations or services for any extended period of time, our business, financial condition and results of operations would be materially and adversely affected.

***Any unauthorized access to, or disclosure or theft of personal information we gather, store or use could harm our reputation and subject us to claims or litigation.***

We receive, store and use certain personal information of our customers, and the end-users of our customers' solar PV systems, including names, addresses, e-mail addresses, credit information and energy production statistics. We also store and use personal information of our employees. We take steps to protect the security, integrity and confidentiality of the personal information we collect, store and transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite our efforts. Because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we and our suppliers or vendors may be unable to anticipate these techniques or to implement adequate preventative or mitigation measures.

Unauthorized use or disclosure of, or access to, any personal information maintained by us or on our behalf, whether through breach of our systems, breach of the systems of our suppliers or vendors by an unauthorized party, or through employee or contractor error, theft or misuse, or otherwise, could harm our business. If any such unauthorized use or disclosure of, or access to, such personal information were to occur, our operations could be seriously disrupted and we could be subject to demands, claims and litigation by private parties, and investigations, related actions, and penalties by regulatory authorities. In addition, we could incur significant costs in notifying affected persons and entities and otherwise complying with the multitude of foreign, federal, state and local laws and regulations relating to the unauthorized access to, or use or disclosure of, personal information. Finally, any perceived or actual unauthorized access to, or use or disclosure of, such information could harm our reputation, substantially impair our ability to attract and retain customers and have an adverse impact on our business, financial condition and results of operations.

***We may be subject to disruptions or failures in information technology systems and network infrastructures that could have a material adverse effect on our business and financial condition.***

We rely on the efficient and uninterrupted operation of complex information technology systems and network infrastructures to operate our business. A disruption, infiltration or failure of our information technology systems as a result of software or hardware malfunctions, system implementations or upgrades, computer viruses, cyber attacks, third-party security breaches, employee error, theft or misuse, malfeasance, power disruptions, natural disasters or accidents could cause breaches of data security, loss of intellectual property and critical data and the release and misappropriation of sensitive competitive information and partner, customer and employee personal data. We have been and may in the future be subject to fraud attempts from outside parties through our electronic systems (such as "phishing" e-mail communications to our finance, technical or other personnel), which could put

us at risk for harm from fraud, theft or other loss if our internal controls do not operate as intended. Any of these events could harm our competitive position, result in a loss of customer confidence, cause us to incur significant costs to remedy any damages and ultimately materially adversely affect our business and financial condition.

***We are dependent on ocean transportation to deliver our products in a cost efficient manner. If we are unable to use ocean transportation to deliver our products, our business and financial condition could be materially and adversely impacted.***

We rely on commercial ocean transportation for the delivery of a large percentage of our products to our customers in North America, Europe, Australia and other markets. We also rely on more expensive air transportation when ocean transportation is not available or compatible with the delivery time requirements of our customers. Our ability to deliver our products via ocean transportation could be adversely impacted by shortages in available cargo capacity, changes by carriers and transportation companies in policies and practices, such as scheduling, pricing, payment terms and frequency of service or increases in the cost of fuel, taxes and labor; and other factors, such as labor strikes and work stoppages, not within our control. If we are unable to use ocean transportation and are required to substitute more expensive air transportation, our financial condition and results of operations could be materially and adversely impacted. Material interruptions in service or stoppages in transportation, whether caused by strike, work stoppage, lock-out, slowdown or otherwise, could materially and adversely impact our business, results of operations and financial condition.

***The market price of our common stock may be volatile or may decline regardless of our operating performance.***

The market price of our common stock has been and could be subject to wide fluctuations in response to, among other things, the risk factors described in this Annual Report on Form 10-K, and other factors beyond our control, such as fluctuations in the valuation of companies perceived by investors to be comparable to us. Furthermore, the stock markets have experienced price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions, such as recessions, interest rate changes or international currency fluctuations, may negatively affect the market price of our common stock. In the past, many companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may become the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***Our financial results may vary significantly from quarter to quarter due to a number of factors, which may lead to volatility in our stock price.***

Our quarterly revenue and results of operations have varied in the past and may continue to vary significantly from quarter to quarter. This variability may lead to volatility in our stock price as research analysts and investors respond to these quarterly fluctuations. These fluctuations are due to numerous factors, including:

- fluctuations in demand for our products;
- the timing, volume and product mix of sales of our products, which may have different average selling prices or profit margins;
- changes in our pricing and sales policies or the pricing and sales policies of our competitors;
- our ability to design, manufacture and deliver products to our customers in a timely and cost-effective manner and that meet customer requirements;
- our ability to manage our relationships with our contract manufacturers, customers and suppliers;
- quality control or yield problems in our manufacturing operations;
- the anticipation, announcement or introductions of new or enhanced products by our competitors and ourselves;
- reductions in the retail price of electricity;
- changes in laws, regulations and policies applicable to our business and products, particularly those relating to government incentives for solar energy applications;
- unanticipated increases in costs or expenses;

- the amount and timing of operating costs and capital expenditures related to the maintenance and expansion of our business operations;
- the impact of government-sponsored programs on our customers;
- our exposure to the credit risks of our customers, particularly in light of the fact that some of our customers are relatively new entrants to the solar market without long operating or credit histories;
- our ability to estimate future warranty obligations due to product failure rates, claim rates or replacement costs;
- our ability to forecast our customer demand and manufacturing requirements, and manage our inventory;
- fluctuations in our gross profit;
- our ability to predict our revenue and plan our expenses appropriately; and
- fluctuations in foreign currency exchange rates.

The foregoing factors are difficult to forecast, and these, as well as other factors, could materially and adversely affect our quarterly and annual results of operations. Any failure to adjust spending quickly enough to compensate for a revenue shortfall could magnify the adverse impact of this revenue shortfall on our results of operations. Moreover, our results of operations may not meet our announced guidance or the expectations of research analysts or investors, in which case the price of our common stock could decrease significantly. There can be no assurance that we will be able to successfully address these risks.

***If research analysts do not publish research about our business or if they issue unfavorable commentary or downgrade our common stock, our stock price and trading volume could decline.***

The trading market for our common stock depends in part on the research and reports that research analysts publish about us and our business. The price of our common stock could decline if one or more research analysts downgrade our stock or if those analysts issue other unfavorable commentary or cease publishing reports about us or our business. If one or more of the research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our common stock could decrease, which could cause our stock price or trading volume to decline.

***Our affiliated stockholders, executive officers and directors own a significant percentage of our stock, and they may take actions that our other stockholders may not view as beneficial.***

Our affiliated stockholders, executive officers and directors collectively own a significant percentage of our common stock. This significant concentration of share ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. Also, as a result, these stockholders, acting together, may be able to control our management and affairs and matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as mergers, consolidations or the sale of substantially all of our assets. Consequently, this concentration of ownership may have the effect of delaying or preventing a change in control, including a merger, consolidation or other business combination involving us, or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control, even if this change in control would benefit our other stockholders.

***Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall.***

Sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. We are unable to predict the effect that sales may have on the prevailing market price of our common stock. All outstanding shares of our common stock are eligible for sale in the public market, subject in some cases to the volume limitations and manner of sale requirements of Rule 144 under the Securities Act. Sales of stock by our stockholders could have a material adverse effect on the trading price of our common stock.

Certain holders of our securities are entitled to rights with respect to the registration of their shares under the Securities Act. Registration of these shares under the Securities Act would result in the shares becoming freely

tradable without restriction under the Securities Act. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

***We currently do not intend to pay dividends on our common stock and, consequently, your only opportunity to achieve a return on your investment is if the price of our common stock appreciates.***

We currently do not plan to declare dividends on shares of our common stock in the foreseeable future. In addition, our term loan agreement restricts our ability to pay dividends. Consequently, an investor's only opportunity to achieve a return on its investment in our company will be if the market price of our common stock appreciates and the investor sells its shares at a profit.

***Our charter documents and Delaware law could prevent a takeover that stockholders consider favorable and could also reduce the market price of our stock.***

Our certificate of incorporation and our bylaws contain provisions that could delay or prevent a change in control of our company. These provisions could also make it more difficult for stockholders to elect directors and take other corporate actions, including effecting changes in our management. These provisions include:

- providing for a classified board of directors with staggered, three-year terms, which could delay the ability of stockholders to change the membership of a majority of our board of directors;
- not providing for cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- authorizing our board of directors to issue, without stockholder approval, preferred stock rights senior to those of common stock, which could be used to significantly dilute the ownership of a hostile acquiror;
- prohibiting stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- requiring the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then outstanding shares of voting stock, voting as a single class, to amend provisions of our certificate of incorporation relating to the management of our business, our board of directors, stockholder action by written consent, advance notification of stockholder nominations and proposals, forum selection and the liability of our directors, or to amend our bylaws, which may inhibit the ability of stockholders or an acquiror to effect such amendments to facilitate changes in management or an unsolicited takeover attempt;
- requiring special meetings of stockholders may only be called by our chairman of the board, if any, our chief executive officer, our president or a majority of our board of directors, which could delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- requiring advance notification of stockholder nominations and proposals, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of us.

In addition, the provisions of Section 203 of the Delaware General Corporate Law may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from engaging in certain business combinations, without approval of substantially all of our stockholders, for a certain period of time.

These provisions in our certificate of incorporation, our bylaws and under Delaware law could discourage potential takeover attempts, reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than it would be without these provisions.

#### **Item 1B. Unresolved Staff Comments**

None.

#### **Item 2. Properties**

Our corporate headquarters occupy approximately 100,000 square feet in Petaluma, California under a lease that expires in April 2022 and accommodates our principal engineering, sales, marketing, operations and

finance and administrative activities. In addition to our corporate headquarters in Petaluma, as of December 31, 2016, we leased office space in Boise, Idaho, Santa Clara, California, France, The Netherlands, Australia, New Zealand and China. At this time, we believe our facilities are adequate for our near term operational and business needs.

**Item 3. Legal Proceedings**

From time to time, we may be involved in litigation relating to claims arising out of our operations. We are not currently involved in any material legal proceedings. We may, however, be involved in material legal proceedings in the future. Such matters are subject to uncertainty and there can be no assurance that such legal proceedings will not have a material adverse effect on our business, results of operations, financial position or cash flows.

**Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

**Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock has been traded on The NASDAQ Global Market under the symbol "ENPH" since March 30, 2012. The following table sets forth the range of intra-day high and low sales prices per share of our common stock as reported on the NASDAQ Global Market for the periods indicated.

	Price Range	
	High	Low
<b>2016</b>		
First Quarter	\$ 3.73	\$ 1.76
Second Quarter	2.80	1.73
Third Quarter	2.14	1.16
Fourth Quarter	1.50	0.95
<b>2015</b>		
First Quarter	\$ 15.25	\$ 10.20
Second Quarter	14.17	7.54
Third Quarter	7.86	3.42
Fourth Quarter	5.37	1.63

**Holders**

As of March 6, 2017, there were approximately 38 holders of record of our common stock.

**Dividend Policy**

We have never paid any cash dividends on our common stock. We currently anticipate that we will retain any available funds to finance the growth and operation of our business and we do not anticipate paying any cash dividends in the foreseeable future. Furthermore, our loan and credit facility agreements restrict us from paying cash dividends on our common stock.

**Recent Sales of Unregistered Securities**

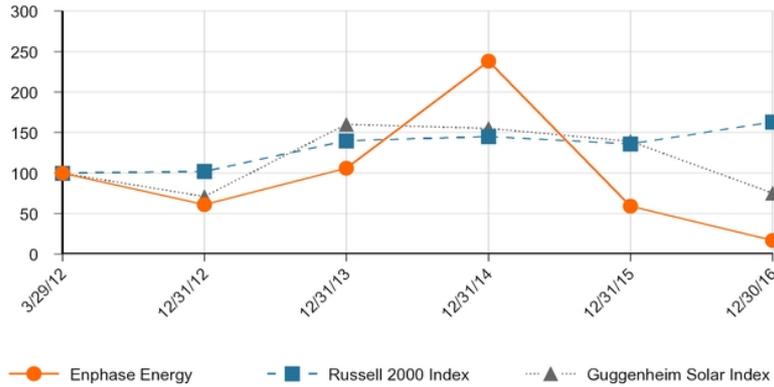
Except as previously reported in our quarterly reports on Form 10-Q and current reports on Form 8-K filed with the SEC during the year ended December 31, 2016, there were no unregistered sales of equity securities by us during the year ended December 31, 2016.

**Stock Performance Graph**

This section is not "soliciting material" and is not deemed "filed" for purposes of Section 18 of the Securities and Exchange Act of 1934 (the Exchange Act) or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Exchange Act, regardless of any general incorporation language in such filing.

The graph depicted below shows a comparison of cumulative total stockholder returns for our common stock, the Russell 2000 and the Guggenheim Solar Index for the period from March 29, 2012 (the date before our common stock began trading on the NASDAQ Global Market) to December 31, 2016. An investment of \$100 is assumed to have been made in our common stock and in each index on March 29, 2012 and its relative performance is tracked through December 31, 2016. The information shown is historical and is not necessarily indicative of future performance.

**Enphase Stock Price vs. Indices March 29, 2012 - December 31, 2016**



	3/29/12	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16
Enphase Energy, Inc.	\$ 100	\$ 61	\$ 106	\$ 238	\$ 59	\$ 17
Russell 2000 Index	\$ 100	\$ 102	\$ 140	\$ 145	\$ 136	\$ 163
Guggenheim Solar Index	\$ 100	\$ 71	\$ 160	\$ 155	\$ 139	\$ 75

**Item 6. Selected Consolidated Financial Data**

The information set forth below for the five years ended December 31, 2016 is not necessarily indicative of results of future operations, and should be read in conjunction with Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, and the consolidated financial statements and related notes thereto included in Item 8, *Consolidated Financial Statements and Supplementary Data*, of this Annual Report on Form 10-K to fully understand the factors that may affect the comparability of the information presented below.

	Years Ended December 31,				
	2016	2015	2014	2013	2012
	(in thousands, except per share data)				
<b>Consolidated Statement of Operations Data:</b>					
Net revenues	\$ 322,591	\$ 357,249	\$ 343,904	\$ 232,846	\$ 216,678
Cost of revenues	264,583	249,032	230,861	165,430	161,390
Gross profit	58,008	108,217	113,043	67,416	55,288
Operating expenses:					
Research and development	50,703	50,819	45,386	34,524	35,601
Sales and marketing	38,810	45,877	41,003	31,080	25,973
General and administrative	27,418	30,830	31,083	23,970	24,875
Restructuring and other charges	3,777	—	—	—	—
Total operating expenses	120,708	127,526	117,472	89,574	86,449
Loss from operations	(62,700)	(19,309)	(4,429)	(22,158)	(31,161)
Other income (expense), net:					
Interest expense	(2,773)	(501)	(1,863)	(2,055)	(6,436)
Other income (expense)	(514)	(893)	(994)	(837)	30
Total other expense, net	(3,287)	(1,394)	(2,857)	(2,892)	(6,406)
Loss before income taxes	(65,987)	(20,703)	(7,286)	(25,050)	(37,567)
Provision for income taxes	(1,475)	(1,379)	(766)	(863)	(651)
Net loss attributable to common stockholders	\$ (67,462)	\$ (22,082)	\$ (8,052)	\$ (25,913)	\$ (38,218)
Net loss per share attributable to common stockholders, basic and diluted	\$ (1.34)	\$ (0.49)	\$ (0.19)	\$ (0.62)	\$ (1.24)
Shares used in computing net loss per share attributable to common stockholders, basic and diluted	50,519	44,632	42,903	41,647	30,740

	As of December 31,				
	2016	2015	2014	2013	2012
	(in thousands)				
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 17,764	\$ 28,452	\$ 42,032	\$ 38,190	\$ 45,294
Total assets	163,576	165,528	152,192	116,669	122,291
Warranty obligations	31,414	30,547	29,080	30,432	21,338
Debt	33,900	17,000	—	8,677	11,061
Total stockholders' equity	1,300	41,449	46,952	40,206	56,655
<b>Additional Data:</b>					
Working capital	\$ 35,092	\$ 48,920	\$ 56,190	\$ 57,144	\$ 61,143
Gross margin percentage	18.0 %	30.3 %	32.9 %	29.0 %	25.5 %

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Forward-Looking Statements

*The following discussion and analysis of our financial condition and results of operations should be read together with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements reflecting our current expectations and involves risks and uncertainties. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "intend," "potential" or "continue" or the negative of these terms or other comparable terminology. For example, statements regarding our expectations as to future financial performance, expense levels and liquidity sources are forward-looking statements. Our actual results and the timing of events may differ materially from those discussed in our forward-looking statements as a result of various factors, including those discussed below and those discussed in the section entitled "Risk Factors" and elsewhere in this report.*

### Overview

We deliver simple, innovative and reliable energy management solutions that advance the worldwide potential of renewable energy. We were founded in March 2006 and are a market leader in the microinverter category of the U.S inverter market. Our technology was designed to increase energy production, simplify design and installation, improve system uptime and reliability, reduce fire risk, and provide a platform for intelligent energy management. Since inception, we have shipped more than 13 million microinverters, representing over 3 gigawatts of solar photovoltaic (PV) generating capacity, and more than 580,000 Enphase residential and commercial systems have been deployed in over 100 countries.

We sell our microinverter systems primarily to distributors who resell them to solar installers. We also sell directly to large installers and through original equipment manufacturers ("OEMs") and strategic partners. Historically, revenues generated from the U.S. market have represented more than 80% of our total revenue.

Our first commercial shipment occurred in mid-2008. Our net revenues were \$322.6 million, \$357.2 million and \$343.9 million for 2016, 2015 and 2014, respectively. We incurred net losses of \$67.5 million, \$22.1 million and \$8.1 million for 2016, 2015 and 2014, respectively. As of December 31, 2016, we had \$17.8 million in cash and cash equivalents and working capital of \$35.1 million.

Although we have taken and are taking actions to improve our liquidity and help us achieve profitability, the solar market is volatile, and we are subject to market dynamics that are beyond our control. Based on our cash position at December 31, 2016 and our recent operating losses, we have concluded that substantial doubt exists as to our ability to continue as a going concern within the next year. If we require additional capital to finance our operations, this determination could impair our ability to finance our operations through the sale of equity, incurring debt, or other financing alternatives. If we fail to raise sufficient additional capital if needed, we may not be able to completely execute our business plan.

We have seen a decline in the average selling price (ASP) of our products that has been more rapid in the last eight quarters than what has been typical in the past. The decline in ASP is primarily the result of our decision to lower product pricing in advance of anticipated product cost savings to grow market share. As expected, the decrease in ASP has resulted in lower net revenues, gross profit and gross margins and has negatively impacted our liquidity.

We launched our next generation microinverter, the Enphase Home Energy Solution with IQ, in March 2017. This microinverter is a major milestone in our product cost reduction initiative, and we believe it will lower our product cost and simultaneously add new features and functionality. We also introduced our AC Battery storage system in Australia in the third quarter of 2016 and in the U.S. and Europe in the fourth quarter of 2016, and we believe the solar power storage market has significant growth potential.

We have taken a number of actions to reduce our operating expenses, including a reduction in our global workforce in the third quarter of 2016 and in January 2017. We also eliminated certain projects that did not have a near-term return on investment, and we have consolidated office space at our headquarters. We expect the cumulative impact of these actions to decrease our annualized ongoing operating expenses by approximately \$40 million as compared to pre-restructuring annualized operating expenses, and we expect to realize the full benefit of these cost reduction actions in the second quarter of 2017.

Although we have taken actions to reduce our operating expenses, we also continued to invest substantial resources to support our business, including enhancing our research and development operations to drive product cost reductions as well as developing technological innovations and new products, marketing and selling our products, and expanding into new product markets and geographies. At December 31, 2016, we had 430 employees.

## **Components of Consolidated Statements of Operations**

### ***Net Revenues***

We generate net revenues from sales of our microinverter systems and related accessories, which include microinverter units, AC Battery storage systems, an Envoy communications gateway, and our Enlighten cloud-based monitoring service.

Our revenue is affected by changes in the volume and average selling prices of our microinverter systems and related accessories, supply and demand, sales incentives, and competitive product offerings. Our revenue growth is dependent on our ability to compete effectively in the marketplace by remaining cost competitive, developing and introducing new products that meet the changing technology and performance requirements of our customers, the diversification and expansion of our revenue base, and our ability to market our products in a manner that increases awareness for microinverter technology and differentiates us in the marketplace.

### ***Cost of Revenues and Gross Profit***

Cost of revenues is comprised primarily of product costs, warranty, manufacturing personnel and logistics costs, freight costs, depreciation and amortization of test equipment and hosting services costs. Our product costs are impacted by technological innovations, such as advances in semiconductor integration and new product introductions, economies of scale resulting in lower component costs, and improvements in production processes and automation. Certain costs, primarily personnel and depreciation and amortization of test equipment, are not directly affected by sales volume.

We outsource our manufacturing to third-party contract manufacturers and generally negotiate product pricing with them on a quarterly basis. We believe our contract manufacturing partners have sufficient production capacity to meet the anticipated demand for our products for the foreseeable future. However, shortages in the supply of certain key raw materials could adversely affect our ability to meet customer demand for our products. We contract with third parties, including one of our contract manufacturers, to serve as our logistics providers by warehousing and delivering our products in the United States, Europe and Asia.

Gross profit may vary from quarter to quarter and is primarily affected by our average selling prices, product cost, product mix, warranty costs and sales volume fluctuations resulting from seasonality.

### ***Operating Expenses***

Operating expenses consist of research and development, sales and marketing, general and administrative and restructuring expenses. Personnel-related costs are the most significant component of each of these expense categories and include salaries, benefits, payroll taxes, recruiting costs, sales commissions, incentive compensation and stock-based compensation.

Research and development expense includes personnel-related expenses, third-party design and development costs, testing and evaluation costs, depreciation expense and other indirect costs. Research and development employees are primarily engaged in the design and development of power electronics, semiconductors, powerline communications, networking and software functionality, and storage. We devote substantial resources to research and development programs that focus on enhancements to, and cost efficiencies in, our existing products and timely development of new products that utilize technological innovation to drive down product costs, improve functionality, and enhance reliability. We intend to continue to invest appropriate resources in our research and development efforts because we believe they are critical to maintaining our competitive position.

Sales and marketing expense consists primarily of personnel-related expenses such as salaries, commissions, stock-based compensation, employee benefits and travel. It also includes trade shows, marketing, customer support and other indirect costs. We expect to continue to make the necessary investments to enable us to execute our strategy to increase our market penetration geographically and enter into new markets by expanding our customer base of distributors, large installers, OEMs and strategic partners. We currently offer

microinverter systems targeting the residential and commercial markets in the United States, Canada, Mexico and certain Central American markets, the United Kingdom, France, the Benelux region, certain other European markets, Australia, New Zealand and certain other Asian markets. We expect to continue to expand the geographic reach of our product offerings and explore new sales channels in addressable markets in the future.

General and administrative expense consists primarily of salaries, incentive compensation, stock-based compensation and employee benefits for personnel related to our executive, finance, human resources, information technology and legal organizations. General and administrative expense also includes facilities costs and fees for professional services, which consist primarily of outside legal, accounting and information technology consulting costs.

Restructuring charges are the net of charges resulting from restructuring initiatives implemented in 2016 to improve operational performance and reduce overall operating expense and gain on divestiture of our services business. Costs included in restructuring primarily consist of severance for workforce reduction actions, non-cash charges related to the disposition of assets and impairment of property and equipment, and the establishment of lease loss reserves. See Note 9, "Restructuring and Other Charges" for additional information.

**Other Expense, Net**

Other expense, net primarily consists of interest expense and commitment fees under our revolving credit facility, term loans, and non-cash interest expense related to the amortization of deferred financing costs. Other expense, net also includes gains or losses upon conversion of foreign currency transactions into U.S. dollars.

**Provision for Income Taxes**

We are subject to income taxes in the countries where we sell our products. Historically, we have primarily been subject to taxation in the United States because we have sold the vast majority of our products to customers in the United States. As we have expanded the sale of products to customers outside the United States, we have become subject to taxation based on the foreign statutory rates in the countries where these sales took place. As sales in foreign jurisdictions increase in the future, our effective tax rate may fluctuate accordingly. Due to the history of losses we have generated in the United States since inception, we believe that it is more-likely-than-not that all of our U.S. and state deferred tax assets will not be realized as of December 31, 2016.

**Summary Consolidated Statements of Operations**

The following table sets forth a summary of our consolidated statements of operations for the periods presented (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Net revenues	\$ 322,591	\$ 357,249	\$ 343,904
Cost of revenues	264,583	249,032	230,861
Gross profit	58,008	108,217	113,043
Operating expenses:			
Research and development	50,703	50,819	45,386
Sales and marketing	38,810	45,877	41,003
General and administrative	27,418	30,830	31,083
Restructuring and other charges	3,777	—	—
Total operating expenses	120,708	127,526	117,472
Loss from operations	(62,700)	(19,309)	(4,429)
Other expense, net	(3,287)	(1,394)	(2,857)
Loss before income taxes	(65,987)	(20,703)	(7,286)
Provision for income taxes	(1,475)	(1,379)	(766)
Net loss	\$ (67,462)	\$ (22,082)	\$ (8,052)

**Comparison of 2016, 2015 and 2014**
**Net Revenues**

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Net revenues	\$ 322,591	\$ 357,249	(34,658)	(10) %	\$ 357,249	\$ 343,904	\$ 13,345	4%

**2016 Compared to 2015.** Net revenues decreased by 10% to \$322.6 million in 2016, as compared to 2015. The number of microinverter units sold increased slightly in 2016 and was approximately 3.1 million units in both 2016 and 2015. Net revenues decreased year-over-year primarily due to a decline in the average selling price per watt for microinverters shipped of approximately 24% in 2016 compared to 2015. We expect the average selling price per watt of microinverters to continue to decline.

**2015 Compared to 2014.** Net revenues increased by 4% to \$357.2 million in 2015, as compared to 2014. The number of microinverter units sold increased by 19% from 2.6 million units in 2014 to 3.1 million units in 2015. Net revenues grew year-over-year at a slower pace than units sold due to a decline in the average selling price. Average selling prices per watt for microinverters shipped declined approximately 15% in 2015 compared to 2014.

**Cost of Revenues and Gross Margin**

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Cost of revenues	\$ 264,583	\$ 249,032	\$ 15,551	6 %	\$ 249,032	\$ 230,861	\$ 18,171	8 %
Gross profit	58,008	108,217	(50,209)	(46)%	108,217	113,043	(4,826)	(4)%
Gross margin	18.0%	30.3%			30.3%	32.9%		

**2016 Compared to 2015.** Cost of revenues increased by 6% in 2016, as compared to 2015, and was primarily attributable to a shift in product mix that resulted in increased sales of higher-priced accessories, including our AC Battery storage system. Gross margin decreased by 12.3 percentage points to 18.0% in 2016, as compared to 30.3% in 2015. While we experienced an overall reduction in our product costs, the adoption of a more aggressive pricing strategy resulted in a decrease to our gross margin. In 2016, our gross margin also included the impact of higher warranty expense, as compared to 2015. The higher warranty expense in 2016 was primarily due to incremental provisions recorded for changes in estimates, which reduced gross margin by 1.2 percentage points. See Note 7, "Warranty Obligations" to the consolidated financial statements for further discussion.

**2015 Compared to 2014.** Cost of revenues increased by 8% in 2015, as compared to 2014, and was attributable to the greater volume of shipments of our products. Gross margin decreased by 2.6 percentage points to 30.3% in 2015, as compared to 32.9% in 2014. While we experienced a reduction in our product costs, the adoption of a more aggressive pricing strategy resulted in a decrease to our gross margin. In 2015 our gross margin included the benefit of lower warranty expense, as compared to 2014. The higher warranty expense in 2014 was primarily due to incremental provisions recorded for changes in estimates, which reduced gross margin by 2.4 percentage points. See Note 7, "Warranty Obligations" to the consolidated financial statements for further discussion.

### Research and Development

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Research and development	\$ 50,703	\$ 50,819	\$ (116)	0 %	\$ 50,819	\$ 45,386	\$ 5,433	12%
Percentage of net revenues	16%	14%			14%	13%		

**2016 Compared to 2015.** Research and development expenses decreased by \$0.1 million in 2016 as compared to 2015. The decrease is primarily due to decreased compensation costs and depreciation expense as a result of the restructuring actions taken in September 2016. The decrease was partially offset by higher outside professional fees utilized to support the development of new products as well as enhancements and cost reductions to existing products. Although the amount of research and development expenses may fluctuate from period to period due to the differing levels and stages of development activity, we expect it to decrease in the near-term as we realize the full benefits of our operating expense reduction initiatives.

**2015 Compared to 2014.** Research and development expenses increased by \$5.4 million in 2015 as compared to 2014. This increase was primarily due to an increase in research and development headcount, which resulted in increased expense of \$3.9 million from salaries and stock-based compensation partially offset by lower incentive compensation costs. In addition, there was an increase in outside contract services of \$1.0 million to support the development of new products as well as enhancements and cost reductions to existing products. The remaining increase of \$0.5 million was attributed to higher depreciation and amortization related to research and development equipment.

### Sales and Marketing

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Sales and marketing	\$ 38,810	\$ 45,877	\$ (7,067)	(15)%	\$ 45,877	\$ 41,003	\$ 4,874	12%
Percentage of net revenues	12%	13%			13%	12%		

**2016 Compared to 2015.** Sales and marketing expenses decreased by \$7.1 million in 2016 as compared to 2015. The decrease was primarily due to an \$8.4 million decrease in compensation costs as a result of lower headcount and a \$1.4 million decrease in travel and entertainment expenses as a result of cost savings initiatives. These decreases were partially offset by a \$1.6 million increase in bad debt expense and a \$1.8 million benefit related to a revaluation of acquisition-related contingent consideration liability that was recorded in 2015. We expect sales and marketing expenses to decrease in the near term as we realize the full benefits of the cost savings initiatives we have implemented.

**2015 Compared to 2014.** Sales and marketing expenses increased by \$4.9 million in 2015 as compared to 2014. This increase was primarily due to an increase in sales and marketing headcount during the first nine months of 2015, which resulted in increased expense of \$4.0 million from salaries and stock-based compensation partially offset by lower incentive compensation costs. Other increases include a \$1.3 million increase in bad debt expense, \$0.7 million in marketing and consulting expenses and a \$0.7 million increase in facilities related costs. These increases were partially offset by a \$1.8 million benefit related to a revaluation of acquisition-related contingent consideration liability.

**General and Administrative**

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
General and administrative	\$ 27,418	\$ 30,830	\$ (3,412)	(11)%	\$ 30,830	\$ 31,083	\$ (253)	(1)%
Percentage of net revenues	8%	9%			9%	9%		

**2016 Compared to 2015.** General and administrative expenses decreased by \$3.4 million in 2016 as compared to 2015. The decrease was primarily the result of a \$1.7 million reduction in compensation costs due to lower headcount, a \$0.2 million decrease in travel and entertainment expenses and a \$1.8 million reduction in professional services, which was primarily attributable to lower legal and other professional fees. This decrease was partially offset by a \$0.4 million increase in corporate expenses including rent, utilities and depreciation. We expect general and administrative expenses to decline in the near term as we realize the benefits of the cost savings initiatives we have implemented.

**2015 Compared to 2014.** General and administrative expenses slightly decreased in 2015 as compared to 2014. Personnel-related costs decreased \$2.5 million primarily due to lower incentive compensation expense in 2015, as compared to 2014. This decrease was offset by a \$1.4 million increase related to corporate-level expenses, including rent, utilities and depreciation related to corporate fixed assets, a \$0.5 million increase in recruiting costs and a \$0.3 million increase in professional services costs.

**Restructuring and Other Charges**

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Restructuring and other charges	\$ 3,777	\$ —	\$ 3,777		\$ —	\$ —	\$ —	
Percentage of net revenues	1%							

**2016 Compared to 2015.** In 2016 restructuring and other charges included \$1.3 million of severance and other costs related to reduction in workforce, \$2.6 million in asset impairments, \$0.6 million lease loss reserves and contract termination costs and a gain of \$0.6 million related to the disposition of our services business. We expect to incur additional restructuring charges in 2017 as we continue to take actions to reduce operating expenses.

**Other Income (Expense), Net**

	Years Ended December 31,		Change in		Years Ended December 31,		Change in	
	2016	2015	\$	%	2015	2014	\$	%
	(In thousands, except percentages)				(In thousands, except percentages)			
Other income (expense), net	\$ (3,287)	\$ (1,394)	\$ (1,893)	(136)%	\$ (1,394)	\$ (2,857)	\$ 1,463	51%

**2016 Compared to 2015.** Other expense increased by \$1.9 million in 2016, as compared to 2015, primarily as a result of higher interest paid due to higher average outstanding borrowings on our revolving credit facility in 2016 and interest paid on an additional \$25 million of term debt that funded in July 2016.

**2015 Compared to 2014.** Other expense decreased \$2.9 million in 2015 as compared to 2014, primarily as a result of lower interest paid due to the full repayment of our term loan with Hercules Technology Growth Capital, Inc. in December 2014.

## Liquidity and Capital Resources

As of December 31, 2016, we had \$17.8 million in cash and cash equivalents and working capital of \$35.1 million. Cash and cash equivalents held in the United States was \$9.6 million and consisted primarily of non-interest bearing checking deposits, with the remainder held in various foreign subsidiaries. We consider amounts held outside the U.S. to be accessible and have provided for the estimated U.S. income tax liability associated with the potential repatriation our foreign earnings.

Although we have taken actions to improve our liquidity and help us achieve profitability, the solar market is volatile, and we are subject to market dynamics that are beyond our control. Based on our cash position at December 31, 2016 and our recent operating losses, we have concluded that substantial doubt exists as to our ability to continue as a going concern within the next year. The accompanying consolidated financial statements for the fiscal year ended December 31, 2016 are presented on a going concern basis and do not include any adjustments that might result from the outcome of this uncertainty. Information about the actions we have taken and are taking to mitigate our liquidity constraints is presented below.

Actions we have taken to reduce our operating expenses include a reduction in our global workforce in third quarter of 2016 and a second reduction in January of 2017. We also eliminated certain projects that did not have a near-term return on investment, consolidated office space at our headquarters and divested our services business. We expect the cumulative impact of these actions to decrease our operating expenses by approximately 35%, and we expect to realize the full benefit beginning in the second quarter of 2017.

### Sources of Liquidity

We have taken and are taking actions to improve our liquidity, including raising funds in the capital markets. In 2016, we completed a public offering of 13,000,000 shares of our common stock. Including the subsequent over-allotment, we sold approximately 15 million shares and realized net proceeds of approximately \$16.2 million.

In December of 2016, we entered into an At The Market Issuance Sales Agreement (ATM) under which we may sell shares of our common stock up to a gross aggregate offering price of \$17.0 million. We are not obligated to make any sales of the Shares under the Sales Agreement. As of December 31, 2016, we had not sold any shares under the ATM. We will have realized the full \$17.0 million of gross proceeds available under the ATM at the time of this filing.

In January 2017, we completed a private placement of common stock that resulted in gross proceeds of \$10.0 million.

In July 2016, we entered into a loan and security agreement (the "Term Loan Agreement" or "Original Term Loan Agreement") with lenders that are affiliates of Tennenbaum Capital Partners, LLC ("TCP"), which has subsequently been amended and modified as discussed below and in Notes 10, "Debt" and 18, "Subsequent Event." Under the agreement, the lenders committed to advance a term loan in an aggregate principal amount of up to \$25.0 million with a maturity date of July 1, 2020. We drew down the \$25.0 million term loan commitment at closing.

Payments under the original agreement are interest only through June 30, 2017, followed by consecutive equal monthly payments of principal plus accrued interest beginning on July 1, 2017 and continuing through the maturity date. The Original Term Loan Agreement provides for an interest rate per annum equal to the higher of (i) 10.25% or (ii) LIBOR plus 9.5625%, subject to a 1.0% reduction if we achieve minimum levels of Revenue and EBITDA (each as defined in the Term Loan Agreement) for the twelve-consecutive month period ending June 30, 2017 as set forth in the Term Loan Agreement. In addition, we paid a commitment fee of 3.3% of the loan amount upon closing and a closing fee of 10.0% of the loan amount is payable in four equal installments at each anniversary of the closing date. We may elect to prepay the loan by incurring a prepayment fee between 1% and 3% of the principal amount of the term loan depending on the timing and circumstances of prepayment.

The term loan is secured by a second-priority security interest on substantially all our assets except intellectual property. The Term Loan Agreement does not contain any financial covenants, but is subject to customary affirmative and negative covenants including restrictions on creation of liens, dispositions of assets, dividends, mergers, or changing the nature of its business, in each case, subject to certain customary exceptions. In addition, the Term Loan Agreement contains certain customary events of default including, but not limited to, failure to pay interest, principal and fees or other amounts when due, material breach of any representation or warranty, covenant defaults, cross defaults to other material indebtedness, events of bankruptcy and the occurrence of a material adverse change (as defined in the agreement) to our business. The Term Loan Agreement offers TCP typical rights and remedies in any event of default, including the ability to declare all amounts outstanding immediately due and payable. We do not expect the lender to declare default under any event, including the material adverse change clause.

In 2016 we had a \$50.0 million revolving credit facility with Wells Fargo Bank, N.A. ("Wells Fargo") that was entered into on November 7, 2012, as first amended on February 14, 2014. On December 18, 2015, we entered into an amended and restated revolving credit agreement with Wells Fargo (the "Revolver") which extended the maturity date from November 7, 2016 to November 7, 2019 and added an uncommitted accordion feature that could increase the size of the facility by \$25.0 million, subject to certain approvals and meeting certain criteria.

Availability under the Revolver was subject to a borrowing base calculation that limits availability to a percentage of eligible domestic accounts receivable plus a percentage of the value of eligible domestic inventory, less certain reserves. Borrowings under the Revolver bear interest in cash at an annual rate equal to, at our option, either LIBOR or a "base rate" that was comprised of, among other things, the prime rate, plus a margin that was between 1.0% and 3.75% depending on the currency borrowed and the specific term of repayment. The Revolver required us to pay a commitment fee between 0.25% and 0.375% based on the average daily unused portion of the revolving credit commitment.

The Revolver was secured by a pledge of substantially all our assets other than intellectual property and contains customary affirmative and negative covenants (including restricting our ability to make dividend payments) and events of default. In addition, the Revolver required us to maintain at least \$15.0 million of liquidity at all times, of which at least \$12.5 million had to be undrawn availability. As of December 31, 2016, the Company was in compliance with such covenants under the Revolver.

As of December 31, 2016, the amount outstanding under the Revolver was \$10.1 million leaving an unused borrowing capacity of \$12.9 million. The weighted-average interest rate related to these borrowings was 5.3%.

In February 2017, we amended our loan and security agreement with TCP to provide an additional \$25 million in principal. We simultaneously terminated our revolving credit facility with Wells Fargo Bank, N.A., and the combined principal and interest balance of \$10.3 million was fully repaid. The new loan has the same July 1, 2020 maturity date as the original TCP loan, both of which are now interest only until February 2018. See Notes 10, "Debt" and 18, "Subsequent Event" for further information.

The following table summarizes our cash flows for the periods presented (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Net cash provided by (used in) operating activities	\$ (32,953)	\$ (21,160)	\$ 24,222
Net cash used in investing activities	(11,795)	(12,462)	(16,534)
Net cash (used in) provided by financing activities	34,375	20,564	(3,342)

**Cash Flows from Operating Activities**

For 2016, net cash used in operating activities was \$33.0 million, primarily resulting from a net loss of \$67.5 million. The net loss was partially offset by non-cash charges including stock-based compensation of \$10.3 million, depreciation and amortization of \$10.6 million, asset impairment and restructuring charges of \$3.2 million, and an increase in the provision for doubtful accounts of \$3.1 million. In addition, the effect of changes in net operating assets and liabilities provided cash of \$7.2 million.

The primary sources of cash from changes in net operating assets and liabilities were an \$11.3 million increase in deferred revenue related to our Enlighten service and deferred product revenue, \$8.8 million decrease in inventory, and a \$8.9 million increase in accounts payable and accrued liabilities. Offsetting these sources of cash was an increase in accounts receivable of \$18.0 million and an increase in other assets of \$4.8 million. The increase in accounts receivable was due to higher sales in the fourth quarter of 2016 as compared to the same period in 2015, and the increase in other assets was primarily attributable to an increase in customer financing receivables.

For 2015, net cash used in operating activities was \$21.2 million, primarily resulting from a net loss of \$22.1 million. The net loss was partially offset by non-cash charges including stock-based compensation of \$12.7 million, depreciation and amortization of \$10.5 million, and net adjustments of \$1.0 million for other non-cash items. In addition, the effect of changes in net operating assets and liabilities resulted in the use of cash totaling \$23.3 million.

The primary use of cash from changes in net operating assets and liabilities was attributable to a \$19.2 million increase in inventory. The increase in inventory was attributed to lower sales in the fourth quarter of 2015, as compared to the same period in 2014. Other uses of cash from changes in net operating assets and liabilities included a \$5.3 million increase in other assets primarily attributable to an increase in customer financing receivables and the corresponding deferred costs of revenues, \$3.4 million decrease in warranty obligations, \$2.6 million decrease in accounts payable and accrued other liabilities due to timing of payments and a decrease in incentive compensation accrual and \$2.5 million increase in accounts receivable. Offsetting these uses of cash was an increase in deferred revenue of \$9.7 million related to our Enlighten service as well as deferred product revenue corresponding with the increase in customer financing receivables.

For 2014, net cash provided by operating activities was \$24.2 million. Our net loss of \$8.1 million was more than offset by non-cash charges and net changes in operating assets and liabilities. Non-cash charges included \$9.7 million of stock-based compensation, \$8.3 million of depreciation and amortization and \$1.4 million of other non-cash charges. In addition, cash provided by net changes in operating assets and liabilities was \$12.8 million.

#### ***Cash Flows from Investing Activities***

For 2016, net cash used in investing activities of \$11.8 million primarily resulted from purchases of test and assembly equipment, capitalized costs related to internal-use software and license fees for certain technology related to ASIC development, and was partially offset by \$1.1 million in proceeds from the sale of our services business.

For 2015, net cash used in investing activities of \$12.5 million included \$10.2 million for purchases of test and assembly equipment and \$2.3 million of capitalized internal-use software costs.

For 2014, net cash used in investing activities of \$16.5 million included purchases of test and assembly equipment and capitalized internal-use software costs. In addition, we acquired substantially all of the assets of Next Phase Solar, Inc. ("NPS") for an initial cash consideration of \$2.5 million, which included \$0.3 million being held back to cover indemnification obligations of the selling party and recorded as restricted cash. We subsequently sold NPS in 2016. We also purchased certain patents related to system interconnection and photovoltaic AC module construction for \$0.8 million in 2014.

#### ***Cash Flows from Financing Activities***

For 2016, net cash provided by financing activities of \$34.4 million primarily consisted of \$24.2 million net proceeds from our term loan and \$17.8 million in proceeds from the issuance of common stock offset by \$6.9 million net reduction in borrowings under our Revolver and \$0.7 million in debt issuance and equity offering costs.

For 2015, net cash provided by financing activities primarily consisted of \$17.0 million from net borrowings made under our Revolver to fund our working capital needs, \$4.0 million received from common stock issuance pursuant to our equity incentive plans, \$0.2 million in financing costs associated with the amended and restated revolving credit facility.

For 2014, net cash used in financing activities consisted of \$8.7 million related to repayment of all outstanding principal under our term loan and equipment financing facility, offset by \$5.4 million received from common stock issuance pursuant to our equity incentive plans.

## Contractual Obligations

The following table summarizes our outstanding contractual obligations as of December 31, 2016:

	Payments Due by Period				
	Total	Less Than 1 Year	1-3 Years	4-5 Years	More Than 5 Years
	(in thousands)				
Operating leases	\$ 15,981	\$ 2,778	\$ 5,582	\$ 5,330	\$ 2,291
Revolving credit facility (1)	10,100	10,100	—	—	—
Term loan	25,000	3,032	16,489	5,479	—
Interest and fees related to term loan	8,141	3,136	4,191	814	—
Purchase obligations (2)	16,895	16,895	—	—	—
Total	<u>\$ 76,117</u>	<u>\$ 35,941</u>	<u>\$ 26,262</u>	<u>\$ 11,623</u>	<u>\$ 2,291</u>

(1) Because borrowings outstanding under our revolving credit facility can fluctuate, interest payments have been excluded from the calculation of future contractual obligations related to the revolving credit facility.

(2) Purchase obligations include amounts related to component inventory that our primary contract manufacturer procures on our behalf in accordance with our production forecast and a take-or-pay supply agreement for the purchase of silicone encapsulates that expires on December 31, 2018. The timing of purchases in future periods could differ materially from estimates presented above due to fluctuations in demand requirements related to varying sales levels as well as changes in economic conditions.

As of December 31, 2016, the liability recorded for uncertain tax positions, including associated interest and penalties, was approximately \$1.1 million. Since the ultimate amount and timing of cash settlements cannot be predicted due to the high degree of uncertainty, liabilities for uncertain tax positions are excluded from the contractual obligations table. See Note 10, "Debt" and Note 14, "Income Taxes" to the consolidated financial statements.

## Off-Balance Sheet Arrangements

As of December 31, 2016, we did not have any off-balance-sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

## Critical Accounting Policies

The preparation of our consolidated financial statements and related notes requires us to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. We have based our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

For a description of our significant accounting policies, see Note 2, "Summary of Significant Accounting Policies" to our consolidated financial statements. An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact the consolidated financial statements. We believe the following critical accounting policies reflect the more significant estimates and assumptions used in the preparation of our consolidated financial statements.

## Revenue Recognition

We generate revenue from sales of our microinverter systems, which include microinverter units and related accessories, an Envoy communications gateway, our cloud-based Enlighten monitoring service, and AC Battery

storage solutions to distributors, large installers, OEMs and strategic partners. Enlighten service revenue represented less than 2% of the total revenues for all periods presented.

Revenue from sales of our products is recognized when: (i) persuasive evidence of an arrangement exists; (ii) delivery of the products has occurred in accordance with the terms of the sales agreement and title and risk of loss have passed to the customer; (iii) the sale price is fixed or determinable; and (iv) collection is reasonably assured. Provisions for rebates, sales incentives, and discounts to customers are accounted for as reductions in revenue in the same period the related sales are recorded.

Sales of an Envoy communications gateway include the Enlighten cloud-based monitoring service. The allocation of revenue between the two deliverables is based on our best estimate of selling price determined by considering multiple factors including, internal costs, gross margin and historical pricing practices. After allocating the overall consideration from such sale to each deliverable using a best estimate of the selling price, (i) revenue from the sale of Envoy devices is recognized upon shipment, assuming all other revenue recognition criteria have been met and (ii) revenue from the cloud-based monitoring service is recognized ratably over the estimated economic life of the related Envoy devices of 10 years.

#### **Inventory**

Inventory is valued at the lower of cost or market. Market is current replacement cost (by purchase or by reproduction, dependent on the type of inventory). In cases where market exceeds net realizable value (i.e., estimated selling price less reasonably predictable costs of completion and disposal), inventories are stated at net realizable value. Market is not considered to be less than net realizable value reduced by an allowance for an approximately normal profit margin. We determine cost on a first-in first-out basis. Certain factors could affect the realizable value of its inventory, including customer demand and market conditions. Management assesses the valuation on a quarterly basis and writes down the value for any excess and obsolete inventory based upon expected demand, anticipated sales price, effect of new product introductions, product obsolescence, customer concentrations, product merchantability and other factors. Inventory write-downs are equal to the difference between the cost of inventories and market. The impact of changes in the inventory valuation allowance for 2016, 2015, and 2014 were insignificant.

#### **Warranty Obligations**

##### **Microinverters Sold Through December 31, 2013**

Our warranty accrual provides for the replacement of microinverter units that fail during the product's warranty term (15 years for first and second generation microinverters and up to 25 years for third and fourth generation microinverters). On a quarterly basis, we employ a consistent, systematic and rational methodology to assess the adequacy of its warranty liability. This assessment includes updating all key estimates and assumptions for each generation of product, based on historical results, trends and the most current data available as of the filing date. The key estimates and assumptions used in the warranty liability are thoroughly reviewed by management on a quarterly basis. The key estimates used by us to estimate its warranty liability are: (1) the number of units expected to fail over time (i.e. failure rate); (2) the number of failed units expected to result in warranty claims over time (i.e. claim rate); and (3) the per unit cost of replacement units, including outbound shipping and limited labor costs, expected to be incurred to replace failed units over time (i.e. replacement cost).

**Estimated Failure Rates**—Our Quality and Reliability department has primary responsibility to determine the estimated failure rates for each generation of microinverter. To establish initial failure rate estimates for each generation of microinverter, our quality engineers use a combination of industry standard MTBF (Mean Time Between Failure) estimates for individual components contained in that generation of microinverters, third party data collected on similar equipment deployed in outdoor environments similar to those in which our microinverters are installed, and rigorous long term reliability and accelerated life cycle testing which simulates the service life of the microinverter in a short period of time. As units are deployed into operating environments, we continue to monitor product performance via our Enlighten monitoring platform. It typically takes three to nine months between the date of sale and date of end-user installation. Consequently, our ability to monitor actual failures of units sold similarly lags by three to nine months. When a microinverter fails and is returned, we perform diagnostic root cause failure analysis to understand and isolate the underlying mechanism(s) causing the failure. We then use the results of this analysis (combined with the actual, cumulative performance data collected on those units

prior to failure via Enlighten) to draw conclusions with respect to how or if the identified failure mechanism(s) will impact the remaining units deployed in the installed base.

**Estimated Claim Rates**—Warranty claim rate estimates are based upon assumptions with respect to expected customer behavior over the warranty period. As the vast majority of our microinverters have been sold to end users for residential applications, we believe that warranty claim rates will be affected by changes over time in residential home ownership because we expect that subsequent homeowners are less likely to file claims than the homeowners who originally purchase the microinverters.

**Estimated Replacement Costs**—Three factors are considered in our analysis of estimated replacement cost: (1) the estimated cost of replacement microinverters; (2) the estimated cost to ship replacement microinverters to end users; and (3) the estimated labor reimbursement expected to be paid to third party installers performing replacement services for the end user. Because our warranty provides for the replacement of defective microinverters over long periods of time (between 15 and 25 years, depending on the generation of product purchased), the estimated per unit cost of current and future product generations is considered in the estimated replacement cost. Estimated costs to ship replacement units are based on observable, market-based shipping costs paid by us to third party freight carriers. We have a separate program that allows third-party installers to claim fixed-dollar reimbursements for labor costs they incur to replace failed microinverter units for a limited time from the date of original installation. Included in our estimated replacement cost is an analysis of the number of fixed-dollar labor reimbursements expected to be claimed by third party installers over the limited offering period.

If actual failure rates, claim rates, or replacement costs differ from our estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in our warranty obligations. Such increases or decreases could be material.

#### **Fair Value Option for Microinverters Sold Since January 1, 2014**

Our warranty obligations related to microinverters sold since January 1, 2014 provide us the right, but not the requirement, to assign our warranty obligations to a third-party. Under Accounting Standards Codification ("ASC") 825—Financial Instruments, ("fair value option"), an entity may choose to elect the fair value option for such warranties at the time it first recognizes the eligible item. We made an irrevocable election to account for all eligible warranty obligations associated with microinverters sold since January 1, 2014 at fair value. This election was made to reflect the underlying economics of the time value of money for an obligation that will be settled over an extended period of up to 25 years.

We estimate the fair value of warranty obligations by calculating the warranty obligations in the same manner as for sales prior to January 1, 2014 and applying an expected present value technique to that result. The expected present value technique, an income approach, converts future amounts into a single current discounted amount. In addition to the key estimates of failure rates, claim rates and replacement costs, we used certain inputs that are unobservable and significant to the overall fair value measurement. Such additional assumptions included compensation comprised of a profit element and risk premium required of a market participant to assume the obligation and a discount rate based on our credit-adjusted risk-free rate. See Note 8, ("Fair Value Measurements") to the consolidated financial statements for additional information.

#### **Recently Adopted Accounting Pronouncements**

In November 2015, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2015-17, "Balance Sheet Classification of Deferred Taxes," to simplify the presentation of deferred income taxes. The amendments in this update require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The amendments in this update apply to all entities that present a classified statement of financial position. The current requirement that deferred tax liabilities and assets of a tax-paying component of an entity be offset and presented as a single amount is not affected by the amendments in this update. We adopted ASU 2015-17 during the fourth quarter of 2015 and applied it retrospectively to all periods presented. The adoption of this guidance did not have a material impact on our consolidated balance sheets for all periods presented and had no impact on our results of operations.

In August 2014, the FASB issued ASU 2014-15, "Presentation of Financial Statements—Going Concern." The update provides U.S. GAAP guidance on management's responsibility in evaluating whether there is substantial doubt about a company's ability to continue as a going concern and about related footnote disclosures. For each reporting period, management will be required to evaluate whether there are conditions or events that raise substantial doubt about a company's ability to continue as a going concern within one year from the date the financial statements are issued. We adopted ASU 2014-15 during the fourth quarter of 2016. See Note 2, "Summary of Significant Accounting Policies."

#### **Recent Accounting Pronouncements Not Yet Effective**

In May 2014, the FASB issued ASU 2014-09 (Topic 606), "Revenue from Contracts with Customers," which will replace most existing revenue recognition guidance under U.S. GAAP. The updated standard's core principle is that revenue is recognized when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled in exchange for those goods or services. The standard generally requires an entity to identify performance obligations in its contracts, estimate the amount of variable consideration to be received in the transaction price, allocate the transaction price to each separate performance obligation, and recognize revenue as obligations are satisfied. In addition, the updated standard requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. In 2015, the FASB issued guidance to defer the effective date to fiscal years beginning after December 15, 2017 with early adoption for fiscal years beginning December 15, 2016. The guidance permits the use of either a retrospective or cumulative effect transition method. We have not yet selected a transition method and are currently evaluating the impact of adoption on our consolidated financial statements.

In July 2015, the FASB issued ASU 2015-11, "Simplifying the Measurement of Inventory," which requires most entities to measure most inventories at the lower of cost or net realizable value ("NRV"). This simplifies the evaluation from the current method of lower of cost or market, where market is based on one of three measures (i.e. replacement cost, net realizable value, or net realizable value less a normal profit margin). ASU 2015-11 does not apply to inventories measured under the last-in, first-out method or the retail inventory method, and defines NRV as the "estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation." ASU 2015-11 is effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. Early adoption is permitted for any interim and annual financial statements that have not yet been issued. We are currently evaluating the impact of adoption on our consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, "Recognition and Measurement of Financial Assets and Financial Liabilities," which amends certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. Changes to the current guidance include the accounting for equity investments, the presentation and disclosure requirements for financial instruments, and the assessment of valuation allowance on deferred tax assets related to available-for-sale securities. In addition, ASU 2016-01 establishes an incremental recognition and disclosure requirement related to the presentation of fair value changes of financial liabilities for which the fair value option has been elected. Under this guidance, an entity would be required to separately present in other comprehensive income the portion of the total fair value change attributable to instrument-specific credit risk as opposed to reflecting the entire amount in earnings. ASU 2016-01 is effective for fiscal years and interim periods beginning after December 15, 2017, and upon adoption, an entity should apply the amendments by means of a cumulative-effect adjustment to the balance sheet at the beginning of the first reporting period in which the guidance is effective. Early adoption is not permitted except for the provision to record fair value changes for financial liabilities under the fair value option resulting from instrument-specific credit risk in other comprehensive income. We are currently evaluating the impact of adoption on our consolidated financial statements.

In February 2016, the FASB issued Accounting Standards Codification ("ASC") 842 ("ASC 842"), "Leases" which replaces the existing guidance in ASC 840, Leases. ASC 842 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. ASC 842 requires a dual approach for lessee accounting under which a lessee would account for leases as finance leases or operating leases. Both finance leases and operating leases will result in the lessee recognizing a right-of-use (ROU) asset and a corresponding lease liability. For finance leases the lessee would recognize interest expense and amortization of the ROU asset and for operating leases the lessee would recognize a straight-line total lease expense. We are currently evaluating the impact of adoption on our consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, "Improvements to Employee Share-Based Payment Accounting," which will simplify the income tax consequences, accounting for forfeitures and classification on the Statements of Consolidated Cash Flows. ASU 2016-09 is effective for fiscal years and interim periods beginning after December 15, 2016, with early adoption permitted. We are currently evaluating the impact of adoption on the consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04, "Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment." The provisions of this update simplify the subsequent measurement of goodwill by eliminating Step 2 from the quantitative analysis. For public entities, this guidance is effective for years beginning after December 15, 2019, including interim periods within those years. Early adoption is permitted after January 1, 2017. The adoption of this ASU is not expected to have an impact on our consolidated financial statements, and we are planning on early adoption beginning with the 2017 goodwill impairment testing.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk****Foreign Currency Exchange Risk**

We operate and conduct business in foreign countries where our foreign entities use the local currency as their respective functional currency and, as a result, are exposed to movements in foreign currency exchange rates. More specifically, we face foreign currency exposure from the effect of fluctuating exchange rates on payables and receivables relating to transactions that are denominated in Euros, British Pounds and Australian and New Zealand Dollars. These payables and receivables primarily arise from sales to customers and intercompany transactions. We also face currency exposure that arises from translating the results of our European, Australian and New Zealand operations, including sales and marketing and research and development expenses, to the U.S. dollar at exchange rates that have fluctuated from the beginning of a reporting period.

We have utilized foreign currency forward contracts to reduce the impact of foreign currency fluctuations related to anticipated cash receipts from expected future revenues denominated in Euros and intercompany transaction gains or losses. The contracts we enter into typically have maturities of less than one year. We do not enter into derivative financial instruments for trading or speculative purposes. The foreign currency forward contracts are accounted for as derivatives whereby the fair value of the contracts is reported as other current assets or current liabilities in the accompanying consolidated balance sheets, and gains and losses resulting from changes in the fair value are reported in other income (expense), net, in the accompanying consolidated statements of operations.

The following table presents the fair values of our outstanding foreign currency forward contracts at December 31, 2016 and 2015 (in thousands):

	December 31,	
	2016	2015
<b>Assets:</b>		
Foreign currency forward contracts	\$ —	\$ 86
<b>Liabilities:</b>		
Foreign currency forward contracts	\$ —	\$ 9

As of December 31, 2016 and 2015, the aggregate gross notional amounts of outstanding foreign currency forward contracts, all with maturities of less than one year, were \$0.0 million and \$2.4 million, respectively. We recorded \$0.1 million and \$0.3 million of net gains in 2016 and 2015, respectively, and \$0.3 million of net losses in 2014 related to foreign currency forward contracts.

The foreign currency exchange rate risk associated with our forward currency exchange contracts is limited as the exposure is substantially offset by exchange rate changes of the underlying hedged amounts.

Item 8. Financial Statements and Supplementary Data

ENPHASE ENERGY, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AS OF  
DECEMBER 31, 2016 AND 2015, AND FOR THE YEARS ENDED  
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Stockholders of Enphase Energy, Inc.:

We have audited the accompanying consolidated balance sheets of Enphase Energy, Inc. and subsidiaries (the "Company") as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Enphase Energy, Inc. and subsidiaries as of December 31, 2016 and 2015, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2016, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company's recurring losses from operations and net cash used in operating activities raise substantial doubt about its ability to continue as a going concern. Management's plans concerning these matters are also discussed in Note 2 to the consolidated financial statements. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Deloitte & Touche LLP

San Francisco, California  
March 16, 2017

**ENPHASE ENERGY, INC.**  
**Consolidated Balance Sheets**  
(In thousands, except par value)

	December 31,	
	2016	2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 17,764	\$ 28,452
Accounts receivable, net of allowances of \$2,921 and \$1,808 at December 31, 2016 and 2015, respectively	61,019	46,099
Inventory	31,960	40,800
Prepaid expenses and other	7,121	6,417
Total current assets	117,864	121,768
Property and equipment, net	31,440	32,118
Goodwill	3,664	3,745
Intangibles, net	945	2,220
Other assets	9,663	5,677
Total assets	\$ 163,576	\$ 165,528
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 31,696	\$ 25,569
Accrued liabilities	22,937	19,292
Deferred revenues	6,411	3,915
Warranty obligations, current portion (includes \$3,296 and \$2,601 measured at fair value at December 31, 2016 and 2015, respectively)	8,596	7,072
Revolving credit facility	10,100	17,000
Current portion of term loan	3,032	—
Total current liabilities	82,772	72,848
Deferred revenues, non-current	33,893	25,115
Warranty obligations, non-current (includes \$7,036 and \$3,581 measured at fair value at December 31, 2016 and 2015, respectively)	22,818	23,475
Other non-current liabilities	2,025	2,641
Term loan, less current portion	20,768	—
Total liabilities	162,276	124,079
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.00001 par value, 10,000 shares authorized; none issued and outstanding	—	—
Common stock, \$0.00001 par value, 100,000 shares authorized; 62,269 and 45,821 shares issued and outstanding at December 31, 2016 and 2015, respectively	1	—
Additional paid-in capital	252,126	224,732
Accumulated deficit	(250,535)	(183,073)
Accumulated other comprehensive loss	(292)	(210)
Total stockholders' equity	1,300	41,449
Total liabilities and stockholders' equity	\$ 163,576	\$ 165,528

See Notes to Consolidated Financial Statements.

**ENPHASE ENERGY, INC.**
**Consolidated Statements of Operations**  
**(In thousands, except per share data)**

	Years Ended December 31,		
	2016	2015	2014
Net revenues	\$ 322,591	\$ 357,249	\$ 343,904
Cost of revenues	264,583	249,032	230,861
Gross profit	58,008	108,217	113,043
Operating expenses:			
Research and development	50,703	50,819	45,386
Sales and marketing	38,810	45,877	41,003
General and administrative	27,418	30,830	31,083
Restructuring and other charges	3,777	—	—
Total operating expenses	120,708	127,526	117,472
Loss from operations	(62,700)	(19,309)	(4,429)
Other income (expense), net:			
Interest expense	(2,773)	(501)	(1,863)
Other expense	(514)	(893)	(994)
Total other expense, net	(3,287)	(1,394)	(2,857)
Loss before income taxes	(65,987)	(20,703)	(7,286)
Provision for income taxes	(1,475)	(1,379)	(766)
Net loss	\$ (67,462)	\$ (22,082)	\$ (8,052)
Net loss per share, basic and diluted	\$ (1.34)	\$ (0.49)	\$ (0.19)
Shares used in computing net loss per share, basic and diluted	50,519	44,632	42,903

See Notes to Consolidated Financial Statements.

## ENPHASE ENERGY, INC.

Consolidated Statements of Comprehensive Loss  
(In thousands)

	Years Ended December 31,		
	2016	2015	2014
Net loss	\$ (67,462)	\$ (22,082)	\$ (8,052)
Other comprehensive loss:			
Foreign currency translation adjustments	(82)	(131)	(308)
Other comprehensive loss:	(82)	(131)	(308)
Comprehensive loss	\$ (67,544)	\$ (22,213)	\$ (8,360)

See Notes to Consolidated Financial Statements.

**ENPHASE ENERGY, INC.**  
**Consolidated Statements of Stockholders' Equity**  
(In thousands, except per share data)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
BALANCE—December 31, 2013	42,123	\$ —	\$ 192,916	\$ (152,939)	\$ 229	\$ 40,206
Issuance of common stock under employee stock plans	1,577	—	5,366			5,366
Stock-based compensation			9,740			9,740
Issuance of common stock upon cashless exercise of warrants	56	—	—			—
Net loss				(8,052)		(8,052)
Foreign currency translation adjustment					(308)	(308)
BALANCE—December 31, 2014	43,756	\$ —	\$ 208,022	\$ (160,991)	\$ (79)	\$ 46,952
Issuance of common stock under employee stock plans	2,065	—	4,014			4,014
Stock-based compensation			12,696			12,696
Net loss				(22,082)		(22,082)
Foreign currency translation adjustment					(131)	(131)
BALANCE—December 31, 2015	45,821	\$ —	\$ 224,732	\$ (183,073)	\$ (210)	\$ 41,449
Issuance of common stock under employee stock plans	1,498	1	1,144			1,145
Issuance of common stock, net of offering costs	14,950	—	15,924			15,924
Stock-based compensation			10,326			10,326
Net loss				(67,462)		(67,462)
Foreign currency translation adjustment					(82)	(82)
BALANCE—December 31, 2016	62,269	\$ 1	\$ 252,126	\$ (250,535)	\$ (292)	\$ 1,300

See Notes to Consolidated Financial Statements.

**ENPHASE ENERGY, INC.**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Years Ended December 31,		
	2016	2015	2014
<b>Operating activities:</b>			
Net loss	\$ (67,462)	\$ (22,082)	\$ (8,052)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation and amortization	10,638	10,539	8,259
Provision for doubtful accounts	3,097	1,502	711
Asset impairment and restructuring	3,190	522	249
Gain on business divestiture	(640)	—	—
Amortization of debt issuance costs	145	163	483
Stock-based compensation	10,326	12,696	9,740
Revaluation of contingent consideration liability	—	(1,827)	—
Deferred income tax (benefit) expense	651	642	(35)
Changes in operating assets and liabilities (net of acquisition/divestiture):			
Accounts receivable	(18,017)	(2,482)	(13,746)
Inventory	8,840	(19,210)	(5,010)
Prepaid expenses and other assets	(4,759)	(5,281)	(2,512)
Accounts payable, accrued and other liabilities	8,897	(2,620)	25,325
Warranty obligations	867	(3,393)	3,508
Deferred revenues	11,274	9,671	5,302
Net cash (used in) provided by operating activities	<u>(32,953)</u>	<u>(21,160)</u>	<u>24,222</u>
<b>Investing activities:</b>			
Purchases of property and equipment	(12,167)	(12,525)	(13,249)
Purchases of intangible assets	(678)	(237)	(750)
Business divestitures (acquisitions)	1,050	—	(2,235)
Change in restricted cash	—	300	(300)
Net cash used in investing activities	<u>(11,795)</u>	<u>(12,462)</u>	<u>(16,534)</u>
<b>Financing activities:</b>			
Proceeds from public offering of common stock, net of offering costs	16,142	—	—
Proceeds from term loan, net of issuance costs	23,989	—	—
Proceeds from borrowings under revolving credit facility	10,000	46,000	—
Payments under revolving credit facility	(16,900)	(29,150)	—
Holdback payment related to prior acquisition	—	(300)	—
Repayments of term loans	—	—	(8,708)
Proceeds from issuance of common stock under employee stock plans	1,144	4,014	5,366
Net cash provided by (used in) financing activities	<u>34,375</u>	<u>20,564</u>	<u>(3,342)</u>
Effect of exchange rate changes on cash	(315)	(522)	(504)
Net increase (decrease) in cash and cash equivalents	(10,688)	(13,580)	3,842
Cash and cash equivalents — Beginning of year	28,452	42,032	38,190
Cash and cash equivalents — End of year	<u>\$ 17,764</u>	<u>\$ 28,452</u>	<u>\$ 42,032</u>
<b>Supplemental cash flow disclosure:</b>			
Cash paid for interest	\$ 2,704	\$ 358	\$ 1,389
Cash paid for income taxes	\$ 1,146	\$ 594	\$ 472
<b>Noncash financing and investing activities:</b>			
Offering and loan costs included in accrued liabilities	518	—	—
Purchases of fixed and intangible assets included in accounts payable	\$ 700	\$ 1,718	\$ 1,840

See Notes to Consolidated Financial Statements.

## ENPHASE ENERGY, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
YEARS ENDED DECEMBER 31, 2016, 2015 and 2014**1. DESCRIPTION OF BUSINESS**

Enphase Energy, Inc. and subsidiaries (the "Company") delivers simple, innovative and reliable energy management solutions that advance the worldwide potential of renewable energy. Our semiconductor-based microinverter system converts direct current (DC) electricity to alternating current (AC) electricity at the individual solar module level, and brings a system-based, high technology approach to solar energy generation leveraging our design expertise across power electronics, semiconductors, networking, and cloud-based software technologies. Since inception, the Company has shipped more than 13 million microinverters, representing over 3 gigawatts of solar photovoltaic (PV) generating capacity, and more than 580,000 Enphase residential and commercial systems have been deployed in over 100 countries.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES*****Basis of Presentation and Consolidation***

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States ("US GAAP"). The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

The Company has identified certain conditions, including recurring losses from operations and net cash used in operating activities due to the recent erosion of ASP and gross margin, its \$17.8 million cash balance and working capital of \$35.6 million at December 31, 2016, and uncertainty in the solar market in general, that have caused management to conclude there is substantial doubt about the Company's ability to continue as a going concern.

The Company has experienced declines in the average selling price (ASP) of its products that has been more rapid in the last eight quarters than what has been typical in the past. The decline in ASP is primarily the result of its decision to reduce product pricing in advance of anticipated product cost savings to grow market share. The decrease in ASP has resulted in lower net revenues, gross profit and gross margins and has negatively impacted the Company's liquidity.

The Company has taken actions and intends to take further actions to improve its liquidity, including raising funds in the capital markets. In 2016, the Company completed a public offering of its common stock. The Company sold approximately 15 million shares and realized net proceeds of approximately \$16.2 million.

In December of 2016, the Company entered into an At The Market Issuance Sales Agreement (ATM) under which it may sell shares of common stock up to a gross aggregate offering price of \$17.0 million. The Company is not obligated to make any sales of the Shares under the Sales Agreement, and, as of December 31, 2016, had not sold any shares under the ATM. The Company will have realized the full gross proceeds of \$17.0 million from common stock sold under the ATM at the time of this filing.

In January 2017, the Company also completed a private placement of securities that resulted in gross proceeds of \$10.0 million.

In July 2016, the Company entered into a loan and security agreement (the "Term Loan Agreement") with lenders that are affiliates of Tennenbaum Capital Partners, LLC (collectively "TCP"). Under the agreement, the lenders committed to advance a term loan in an aggregate principal amount of up to \$25.0 million with a maturity date of July 1, 2020. The Company drew down the \$25.0 million term loan commitment at closing. In February 2017, the Company amended its loan and security agreement with TCP to provide an additional \$25 million in principal. The Company simultaneously terminated its revolving credit facility with Wells Fargo Bank, N.A., and the combined principal and interest balance of \$10.3 million was fully repaid. The amended loan has the same July 1, 2020 maturity date as the original TCP loan, both of which are interest only until February 2018. See Notes 10, "Debt" and 18, "Subsequent Event" for further information.

The Company launched its next generation microinverter, the Enphase Home Energy Solution with IQ, in March 2017. This product is a major milestone in the Company's product cost reduction initiative. The Company also introduced its AC Battery storage system in Australia in the third quarter of 2016 and in the U.S. and Europe in the fourth quarter of 2016, and believes the solar power storage market has significant growth potential.

The Company has also taken and is continuing to take restructuring actions to reduce its operating expenses, including reducing its global workforce, eliminating projects that do not have a near-term return on investment, and consolidating office space at its headquarters facility. The cumulative impact of these actions will be a decrease in annualized ongoing operating expenses of approximately \$40 million as compared to pre-restructuring annualized operating expenses, and the full benefit of which is expected to be realized beginning in the second quarter of 2017. The Company intends to continue to streamline and optimize its operations to increase efficiency and further its efforts to achieve profitability.

#### **Use of Estimates**

The preparation of the Company's consolidated financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of income and expenses during the reporting period. These estimates are based on information available as of the date of the financial statements; therefore, actual results could differ materially from management's estimates using different assumptions or under different conditions.

#### **Revenue Recognition**

The Company generates revenue from sales of its microinverter systems, which include microinverter units and related accessories, an Envoy communications gateway, the cloud-based Enlighten monitoring service, and AC Battery storage solutions to distributors, large installers, OEMs and strategic partners. Enlighten service revenue represented less than 2% of the total revenues for all periods presented.

Revenue from sales of the Company's products is recognized when: (i) persuasive evidence of an arrangement exists; (ii) delivery of the products has occurred in accordance with the terms of the sales agreement and title and risk of loss have passed to the customer; (iii) the sale price is fixed or determinable; and (iv) collection is reasonably assured. Provisions for rebates, sales incentives, and discounts to customers are accounted for as reductions in revenue in the same period the related sales are recorded.

Sales of an Envoy communications gateway include the Enlighten cloud-based monitoring service. The allocation of revenue between the two deliverables is based on the Company's best estimate of selling price determined by considering multiple factors including internal costs, gross margin and historical pricing practices. After allocating the overall consideration from such sale to each deliverable using a best estimate of the selling price (i) revenue from the sale of Envoy devices is recognized upon shipment, assuming all other revenue recognition criteria have been met and (ii) revenue from the cloud-based monitoring service is recognized ratably over the estimated economic life of the related Envoy devices of 10 years.

Deferred revenues consist of payments received from customers in advance of revenue recognition for the Company's products and services as described above. As of December 31, 2016 and 2015, deferred revenues consist primarily of Enlighten service revenue.

#### **Cost of Revenues**

The Company includes the following in cost of revenues: product costs, warranty, manufacturing personnel and logistics costs, freight costs, inventory write-downs, hosting services costs related to the Company's Enlighten service offering, and depreciation and amortization of manufacturing test equipment.

#### **Cash and Cash Equivalents**

The Company considers all highly liquid investments, such as certificates of deposit and money market instruments with maturities of three months or less at the time of acquisition to be cash equivalents. For all periods presented, its cash balances consist of amounts held in non-interest-bearing deposits and money market accounts.

**Fair Value of Financial Instruments**

The carrying amounts of the Company's cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value because of the short maturity of those instruments.

**Foreign Currency Forward Contracts**

The Company operates and conducts business in foreign countries where its foreign entities use the local currency as their respective functional currency. As a result, the Company is exposed to movements in foreign currency exchange rates. The Company utilizes foreign currency forward contracts to reduce the impact of foreign currency fluctuations related to anticipated cash receipts from expected future revenues denominated in Euros and British Pounds as well as from intercompany transaction gains or losses. The foreign currency forward contracts are accounted for as derivatives whereby the fair value of the contracts is reported as other current assets or current liabilities in the accompanying consolidated balance sheets, and gains and losses resulting from changes in the fair value are reported in other income (expense), net, in the accompanying consolidated statements of operations.

**Allowances for Doubtful Accounts**

The Company maintains allowances for doubtful accounts for uncollectible accounts receivable. Management estimates anticipated losses from doubtful accounts based on days past due, collection history and the financial health of customers. The allowance for doubtful accounts was \$2.9 million and \$1.8 million at December 31, 2016 and 2015, respectively. The following table sets forth activities in the allowance for doubtful accounts for the periods indicated:

	December 31,		
	2016	2015	2014
Balance, at beginning of year	\$ 1,808	\$ 569	\$ 2,000
Net charges to expenses	3,097	1,502	711
Write-offs, net of recoveries	(1,984)	(263)	(2,142)
Balance, at end of year	<u>\$ 2,921</u>	<u>\$ 1,808</u>	<u>\$ 569</u>

**Inventory**

Inventory is valued at the lower of cost or market. Market is current replacement cost (by purchase or by reproduction, dependent on the type of inventory). In cases where market exceeds net realizable value (i.e., estimated selling price less reasonably predictable costs of completion and disposal), inventories are stated at net realizable value. Market is not considered to be less than net realizable value reduced by an allowance for an approximately normal profit margin. The Company determines cost on a first-in first-out basis. Management assesses the valuation on a quarterly basis and writes down the value for any excess and obsolete inventory based upon expected demand, anticipated sales price, effect of new product introductions, product obsolescence, customer concentrations, product merchantability and other factors. Inventory write-downs are equal to the difference between the cost of inventories and market.

**Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Cost includes amounts paid to acquire or construct the asset as well as any expenditure that substantially adds to the value of or significantly extends the useful life of an existing asset. Repair and maintenance costs are expensed as incurred. Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets, which range from three to ten years. Leasehold improvements are amortized over the shorter of the lease term or expected useful life of the improvements.

**Capitalized Software Costs**

Internally used software, whether purchased or developed, is capitalized and amortized on a straight-line basis over its estimated useful life. Costs associated with internally developed software are expensed until the point at which the project has reached the development stage. Subsequent additions, modifications or upgrades

to internal-use software are capitalized only to the extent that they provide additional functionality. Software maintenance and training costs are expensed in the period in which they are incurred. The capitalization of software requires judgment in determining when a project has reached the development stage and the period over which the Company expects to benefit from the use of that software.

#### **Long-Lived Assets**

Property, plant and equipment, including capitalized software costs, are recorded at cost. Property, plant and equipment amounts are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset (asset group) may not be recoverable. An impairment loss would be recognized when the carrying amount of an asset exceeds the estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition. The amount of the impairment loss to be recorded is calculated by the excess of the asset's carrying value over its fair value. Fair value is generally determined using a discounted cash flow analysis. The Company recorded asset impairment charges for specific assets that were no longer in use of approximately 2.6 million and 0.5 million for the years ended December 31, 2016 and 2015, respectively. The fair value of the remaining assets is in excess of the carrying value.

#### **Goodwill**

Goodwill results from the purchase consideration paid in excess of the fair value of the net assets recorded in connection with a business acquisition. Goodwill is not amortized, but is assessed for potential impairment at least annually during the fourth quarter of each fiscal year or between annual tests if an event occurs or circumstances change that would indicate the carrying amount may be impaired. Goodwill is tested at the reporting unit level, which the Company has determined to be the same as the entity as a whole (entity level). Once goodwill has been assigned to a reporting unit, it is no longer associated with a particular acquisition; therefore, all of the activities within a reporting unit, whether acquired or organically grown, are available to support the goodwill value. Based on management's goodwill impairment tests, there was no impairment of goodwill in any of the years presented.

#### **Intangible Assets**

Intangible assets include patents, customer relationships and other purchased intangible assets. Intangible assets with finite lives are amortized on a straight-line basis, with estimated useful lives ranging from 3 to 5 years. Indefinite-lived intangible assets are tested for impairment annually and are also tested for impairment between annual tests if an event occurs or circumstances change that would indicate that the carrying amount may be impaired. Intangible assets with finite lives are tested for impairment whenever events or circumstances indicate that the carrying amount of an asset (asset group) may not be recoverable. An impairment loss is recognized when the carrying amount of an asset exceeds the estimated undiscounted cash flows used in determining the fair value of the asset. The amount of the impairment loss to be recorded is calculated by the excess of the asset's carrying value over its fair value. Fair value is generally determined using a discounted cash flow analysis. There was no impairment of intangible assets in any of the years presented.

#### **Warranty Obligations**

##### **Microinverters Sold Through December 31, 2013**

The Company's warranty accrual provides for the replacement of microinverter units that fail during the product's warranty term (15 years for first and second generation microinverters and up to 25 years for third and fourth generation microinverters). On a quarterly basis, the Company employs a consistent, systematic and rational methodology to assess the adequacy of its warranty liability. This assessment includes updating all key estimates and assumptions for each generation of product, based on historical results, trends and the most current data available as of the filing date. The key estimates and assumptions used in the warranty liability are thoroughly reviewed by management on a quarterly basis. The key estimates used by the Company to estimate its warranty liability are: (1) the number of units expected to fail over time (i.e. failure rate); (2) the number of failed units expected to result in warranty claims over time (i.e. claim rate); and (3) the per unit cost of replacement units, including outbound shipping and limited labor costs, expected to be incurred to replace failed units over time (i.e. replacement cost).

**Estimated Failure Rates**—The Company's Quality and Reliability department has primary responsibility to determine the estimated failure rates for each generation of microinverter. To establish initial failure rate estimates for each generation of microinverter, the Company's quality engineers use a combination of industry standard MTBF (Mean Time Between Failure) estimates for individual components contained in its microinverters, third party data collected on similar equipment deployed in outdoor environments similar to those in which the Company's microinverters are installed, and rigorous long term reliability and accelerated life cycle testing which simulates the service life of the microinverter in a short period of time. As units are deployed into operating environments, the Company continues to monitor product performance via its Enlighten monitoring platform. It typically takes three to nine months between the date of sale and date of end-user installation. Consequently, the Company's ability to monitor actual failures of units sold similarly lags by three to nine months. When a microinverter fails and is returned, the Company performs diagnostic root cause failure analysis to understand and isolate the underlying mechanism(s) causing the failure. The Company then uses the results of this analysis (combined with the actual, cumulative performance data collected on those units prior to failure via Enlighten) to draw conclusions with respect to how or if the identified failure mechanism(s) will impact the remaining units deployed in the installed base.

**Estimated Claim Rates**—Warranty claim rate estimates are based upon assumptions with respect to expected customer behavior over the warranty period. As the vast majority of the Company's microinverters have been sold to end users for residential applications, the Company believes that warranty claim rates will be affected by changes over time in residential home ownership because the Company expects that subsequent homeowners are less likely to file claims than the homeowners who originally purchase the microinverters.

**Estimated Replacement Costs**—three factors are considered in the Company's analysis of estimated replacement cost: (1) the estimated cost of replacement microinverters; (2) the estimated cost to ship replacement microinverters to end users; and (3) the estimated labor reimbursement expected to be paid to third party installers performing replacement services for the end user. Because the Company's warranty provides for the replacement of defective microinverters over long periods of time (between 15 and 25 years, depending on the generation of product purchased), the estimated per unit cost of current and future product generations is considered in the estimated replacement cost. Estimated costs to ship replacement units are based on observable, market-based shipping costs paid by the Company to third party freight carriers. The Company has a separate program that allows third-party installers to claim fixed-dollar reimbursements for labor costs they incur to replace failed microinverter units for a limited time from the date of original installation. Included in the Company's estimated replacement cost is an analysis of the number of fixed-dollar labor reimbursements expected to be claimed by third party installers over the limited offering period.

If actual failure rates, claim rates, or replacement costs differ from the Company's estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in the Company's warranty obligations. Such increases or decreases could be material.

#### **Fair Value Option for Microinverters Sold Since January 1, 2014**

The Company's warranty obligations related to microinverters sold since January 1, 2014 provide the Company the right, but not the requirement, to assign its warranty obligations to a third-party. Under Accounting Standards Codification ("ASC") 825—Financial Instruments, ("fair value option"), an entity may choose to elect the fair value option for such warranties at the time it first recognizes the eligible item. The Company made an irrevocable election to account for all eligible warranty obligations associated with microinverters sold since January 1, 2014 at fair value. This election was made to reflect the underlying economics of the time value of money for an obligation that will be settled over an extended period of up to 25 years.

The Company estimates the fair value of warranty obligations by calculating the warranty obligations in the same manner as for sales prior to January 1, 2014 and applying an expected present value technique to that result. The expected present value technique, an income approach, converts future amounts into a single current discounted amount. In addition to the key estimates of failure rates, claim rates and replacement costs, the Company used certain inputs that are unobservable and significant to the overall fair value measurement. Such additional assumptions included compensation comprised of a profit element and risk premium required of a market participant to assume the obligation and a discount rate based on the Company's credit-adjusted risk-free rate. See Note 8, ("Fair Value Measurements") for additional information.

Warranty obligations initially recorded at fair value at the time of sale will be subsequently re-measured to fair value at each reporting date. In addition, the fair value of the liability will be accreted over the corresponding term of the warranty of up to 25 years using the interest method.

#### **Warranty for Other Products**

The Company offers a 5 year warranty for its Envoy communications gateway and a 10 year warranty on its AC Battery storage solution. The warranties provide the Company with the right, but not the obligation, to assign its warranty obligations to a third-party. As such, warranties for Envoy and AC Battery storage solution products are accounted for under the fair value method of accounting.

#### **Research and Development Costs**

The Company expenses research and development costs as incurred. Research and development costs totaled \$50.7 million, \$50.8 million and \$45.4 million in 2016, 2015 and 2014, respectively.

#### **Stock-Based Compensation**

Share-based payments are required to be recognized in the Company's consolidated statements of operations based on their fair values and the estimated number of shares expected to vest. The Company measures stock-based compensation expense for all share-based payment awards, including stock options made to employees and directors, based on the estimated fair values on the date of the grant. The fair value of stock options granted is estimated using the Black-Scholes option valuation model. The fair value of restricted stock units granted is determined based on the price of the Company's common stock on the date of grant. Stock-based compensation, net of estimated forfeitures, is recognized on a straight-line basis over the requisite service period, which is typically four years.

#### **Comprehensive Loss**

Comprehensive loss consists of two components, net loss and other comprehensive income (loss). Other comprehensive income (loss) refers to gains and losses that are recorded as an element of stockholders' equity but are excluded from net income. The Company's other comprehensive income (loss) consists of foreign currency translation adjustments for all periods presented.

#### **Income Taxes**

The Company records income taxes using the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected tax consequences of temporary differences between the tax bases of assets and liabilities for financial reporting purposes and amounts recognized for income tax purposes. In estimating future tax consequences, generally all expected future events other than enactments or changes in the tax law or rates are considered. Valuation allowances are provided when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company operates in various tax jurisdictions and is subject to audit by various tax authorities. The Company follows accounting for uncertainty in income taxes which requires that the tax effects of a position be recognized only if it is "more likely than not" to be sustained based solely on its technical merits as of the reporting date. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

#### **Recently Adopted Accounting Pronouncements**

In November 2015, the FASB issued ASU 2015-17, "Balance Sheet Classification of Deferred Taxes," to simplify the presentation of deferred income taxes. The amendments in this update require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The amendments in this update apply to all entities that present a classified statement of financial position. The current requirement that deferred tax liabilities and assets of a tax-paying component of an entity be offset and presented as a single amount is not affected by the amendments in this update. The Company adopted ASU 2015-17 during the fourth quarter of 2015 and applied it retrospectively to all periods presented. The adoption of this update did not have a

material impact on the consolidated balance sheets for all periods presented and had no impact on the results of operations.

In August 2014, the FASB issued ASU 2014-15, "Presentation of Financial Statements—Going Concern." The update provides U.S. GAAP guidance on management's responsibility in evaluating whether there is substantial doubt about a company's ability to continue as a going concern and about related footnote disclosures. For each reporting period, management will be required to evaluate whether there are conditions or events that raise substantial doubt about a company's ability to continue as a going concern within one year from the date the financial statements are issued. The Company adopted ASU 2014-15 during the fourth quarter of 2016.

**Recent Accounting Pronouncements Not Yet Effective**

In May 2014, the FASB issued ASU 2014-09 (Topic 606), "Revenue from Contracts with Customers," which will replace most existing revenue recognition guidance under U.S. GAAP. The updated standard's core principle is that revenue is recognized when promised goods or services are transferred to customers in an amount that reflects the consideration to which an entity expects to be entitled in exchange for those goods or services. The standard generally requires an entity to identify performance obligations in its contracts, estimate the amount of variable consideration to be received in the transaction price, allocate the transaction price to each separate performance obligation, and recognize revenue as obligations are satisfied. In addition, the updated standard requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. In 2015, the FASB issued guidance to defer the effective date to fiscal years beginning after December 15, 2017 with early adoption for fiscal years beginning December 15, 2016. The guidance permits the use of either a retrospective or cumulative effect transition method. The Company has not yet selected a transition method and is currently evaluating the impact of adoption on the consolidated financial statements.

In July 2015, the FASB issued ASU 2015-11, "Simplifying the Measurement of Inventory," which requires most entities to measure most inventories at the lower of cost or net realizable value ("NRV"). This simplifies the evaluation from the current method of lower of cost or market, where market is based on one of three measures (i.e. replacement cost, net realizable value, or net realizable value less a normal profit margin). ASU 2015-11 does not apply to inventories measured under the last-in, first-out method or the retail inventory method, and defines NRV as the "estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation." ASU 2015-11 is effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years. Early adoption is permitted for any interim and annual financial statements that have not yet been issued. The Company is currently evaluating the impact of adoption on the consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, "Recognition and Measurement of Financial Assets and Financial Liabilities," which amends certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. Changes to the current guidance include the accounting for equity investments, the presentation and disclosure requirements for financial instruments, and the assessment of valuation allowance on deferred tax assets related to available-for-sale securities. In addition, ASU 2016-01 establishes an incremental recognition and disclosure requirement related to the presentation of fair value changes of financial liabilities for which the fair value option has been elected. Under this guidance, an entity would be required to separately present in other comprehensive income the portion of the total fair value change attributable to instrument-specific credit risk as opposed to reflecting the entire amount in earnings. ASU 2016-01 is effective for fiscal years and interim periods beginning after December 15, 2017, and upon adoption, an entity should apply the amendments by means of a cumulative-effect adjustment to the balance sheet at the beginning of the first reporting period in which the guidance is effective. Early adoption is not permitted except for the provision to record fair value changes for financial liabilities under the fair value option resulting from instrument-specific credit risk in other comprehensive income. The Company is currently evaluating the impact of adoption on its consolidated financial statements.

In February 2016, the FASB issued Accounting Standards Codification ("ASC") 842 ("ASC 842"), "Leases" which replaces the existing guidance in ASC 840, Leases. ASC 842 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2018. ASC 842 requires a dual approach for lessee accounting under which a lessee would account for leases as finance leases or operating leases. Both finance leases and operating leases will result in the lessee recognizing a right-of-use (ROU) asset and a corresponding

lease liability. For finance leases the lessee would recognize interest expense and amortization of the ROU asset and for operating leases the lessee would recognize a straight-line total lease expense. The Company is currently evaluating the impact of adoption on the consolidated financial statements.

In March 2016, the FASB issued ASU 2016-09, "Improvements to Employee Share-Based Payment Accounting," which will simplify the income tax consequences, accounting for forfeitures and classification on the Statements of Consolidated Cash Flows. ASU 2016-09 is effective for fiscal years and interim periods beginning after December 15, 2016, with early adoption permitted. The Company is currently evaluating the impact of adoption on the consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04, "Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment." The provisions of this update simplify the subsequent measurement of goodwill by eliminating Step 2 from the quantitative analysis. For public entities, this guidance is effective for years beginning after December 15, 2019, including interim periods within those years. Early adoption is permitted after January 1, 2017. The adoption of this ASU is not expected to have an impact on the Company's consolidated financial statements, and it plans early adoption of the standard beginning with the 2017 goodwill impairment testing.

### 3. INVENTORY

Inventory as of December 31, 2016 and 2015, consists of the following (in thousands):

	December 31,	
	2016	2015
Raw materials	\$ 5,095	\$ 2,202
Finished goods	26,865	38,598
Total inventory	<u>\$ 31,960</u>	<u>\$ 40,800</u>

### 4. PROPERTY AND EQUIPMENT, NET

As of December 31, 2016 and 2015, property and equipment consists of the following (in thousands):

	Estimated Useful Life (Years)	December 31,	
		2016	2015
Equipment and machinery	7-10	\$ 38,486	\$ 34,694
Furniture and fixtures	5-7	2,635	3,556
Computer equipment	3-5	2,913	2,699
Capitalized software costs	3-5	11,324	11,041
Leasehold improvements	4-10	9,477	8,643
Construction in process		6,275	2,994
Total		<u>71,110</u>	<u>63,627</u>
Less accumulated depreciation and amortization		<u>(39,670)</u>	<u>(31,509)</u>
Property and equipment, net		<u>\$ 31,440</u>	<u>\$ 32,118</u>

Depreciation expense for property and equipment was \$9.9 million, \$10.0 million and \$8.1 million, in 2016, 2015 and 2014, respectively.

As of December 31, 2016 and 2015, unamortized capitalized software costs were \$1.9 million and \$3.3 million, respectively.

### 5. ACQUISITION AND DIVESTITURE, GOODWILL AND INTANGIBLE ASSETS

In 2014, the Company acquired certain assets of a business that provided solar panel maintenance services to operating PV systems for an aggregate consideration of \$4.8 million consisting of \$2.5 million in cash and additional contingent consideration with a fair value of \$2.3 million. As a result of this transaction, the Company recorded \$3.7 million of goodwill, \$0.9 million of customer relationships and \$0.2 million in tangible assets. The goodwill was assigned to the Company's single reporting unit, which the Company has determined to be the same as the entity as a whole. This acquisition was not material to the Company's financial position or results of operations.

The fair value of the contingent consideration liability was adjusted at each reporting period during the two-year earn-out period, and the change in fair value was included in total operating expenses on the consolidated statements of operations. As a result of expected earn-out targets not being met, the Company recorded an adjustment in 2015 that reduced the value of the contingent consideration liability by \$1.8 million. The remaining amount was settled in 2016. Payments made under this contingent consideration arrangement were negligible.

As part of its efforts to align resources with the Company's long-term competitive growth strategies and market opportunities, the Company divested this business during the fourth quarter of 2016. The Company recorded a \$0.6 million net gain from this divestiture in restructuring and other charges on the consolidated statements of operations.

**Goodwill and Intangible Assets**

	December 31, 2016			December 31, 2015		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Goodwill	\$ 3,664	\$ —	\$ 3,664	\$ 3,745	\$ —	\$ 3,745
Other indefinite-lived intangibles	\$ 286	\$ —	\$ 286	\$ 286	\$ —	\$ 286
Intangibles assets with finite lives:						
Customer relationships	—	—	—	900	(180)	720
Patents and licensed technology	1,665	(1,006)	659	1,665	(451)	1,214
Total purchased intangibles	\$ 1,951	\$ (1,006)	\$ 945	\$ 2,851	\$ (631)	\$ 2,220

In July 2014, the Company purchased certain patents related to system interconnection and photovoltaic AC module construction. The patents are being amortized over their legal life of 3 years. The customer relationships resulted from the acquisition described above, which has been subsequently divested in the fourth quarter of 2016. In October 2015, the Company licensed certain technology related to ASIC development for a 3-year term.

The aggregate amortization expense for intangibles assets was \$0.7 million, \$0.5 million and \$0.1 million for the years ended December 31, 2016, 2015 and 2014, respectively. As of December 31, 2016, estimated future amortization expense related to finite-lived intangible assets was as follows:

Year	(In thousands)
2017	\$ 430
2018	229
Total	\$ 659

## 6. ACCRUED LIABILITIES

As of December 31, 2016 and 2015 accrued liabilities consists of the following (in thousands):

	December 31,	
	2016	2015
Salaries, commissions, incentive compensation and benefits	\$ 4,227	\$ 5,402
Customer rebates and sales incentives	11,786	8,274
Freight	2,321	3,063
Other	4,603	2,553
<b>Total</b>	<b>\$ 22,937</b>	<b>\$ 19,292</b>

## 7. WARRANTY OBLIGATIONS

The Company's warranty activities during 2016, 2015 and 2014 were as follows (in thousands):

	December 31,		
	2016	2015	2014
Balance, at beginning of year	\$ 30,547	33,940	\$ 30,432
Accruals for warranties issued during the year	4,130	4,383	4,309
Changes in estimates	2,562	31	8,391
Settlements	(8,523)	(7,269)	(8,793)
Increase due to accretion expense	1,772	1,001	195
Fair value adjustments	926	(1,539)	(594)
Balance, at end of year	31,414	30,547	33,940
Less current portion	(8,596)	(7,072)	(7,607)
Long-term portion	\$ 22,818	\$ 23,475	\$ 26,333

The Company sold approximately 1.0 million first and second generation microinverters from 2008 through mid-2012. The Company has sold approximately 3.9 million third generation microinverters since mid-2012 through mid-2015. In 2016 the Company primarily sold its fourth generation microinverters, which were introduced in mid-2013 and are still being sold. Cumulative sales of the fourth generation microinverter total 8.1 million through 2016.

### Changes in Estimates

On a quarterly basis, the Company uses the best and most complete underlying information available, following a consistent, systematic and rational methodology to determine its warranty obligations. The Company considers all available evidence to assess the reasonableness of all key assumptions underlying its estimated warranty obligations for each generation of microinverter. The changes in estimates discussed below resulted from consideration of new or additional information becoming available and subsequent developments. Changes in estimates included in the table above were comprised of the following:

#### 2016

In 2016, primarily in the fourth quarter, the Company recorded the impact of product-cost reduction initiatives for its sixth generation microinverters, which are backwards compatible with previous microinverter generations and will be used to fulfill future warranty obligations for all microinverter generations in the field. This resulted in a \$2.1 million decrease to warranty expense related to estimated future replacement costs. This decrease was offset by an increase to warranty expense of \$1.5 million for an increase in labor reimbursement costs expected to be paid to third party installers performing replacement services for its second generation product. In addition, the Company recorded additional warranty expense of \$3.0 million based on continuing analysis of field performance data and diagnostic root-cause failure analysis primarily relating to its second generation product.

**2015**

In 2015, primarily in the fourth quarter, the Company implemented product-cost reduction initiatives for its fourth generation microinverters, which are backwards compatible with prior microinverter generations and are used to fulfill warranty obligations for all microinverter generations in the field. This resulted in a \$1.5 million decrease to warranty expense related to estimated future replacement costs. This decrease was offset by an increase to warranty expense of \$0.7 million for an increase in labor reimbursement costs expected to be paid to third party installers performing replacement services for its second generation product. In addition, the Company recorded additional warranty expense of \$0.8 million based on continuing analysis of field performance data and diagnostic root-cause failure analysis performed on returned units of its second generation product.

**2014**

In 2014, primarily in the second and fourth quarters, the Company experienced actual failures of its second generation microinverters that exceeded its then current failure rate estimate. Based on continuing analysis of field performance data and diagnostic root-cause failure analysis performed on returned units, the Company concluded that it was necessary to increase the estimated failure rates for its second generation product and recorded additional warranty expense \$8.6 million in 2014. In addition, net changes in estimates related to replacement costs reduced warranty expense for all product generations by \$0.2 million and were comprised of increased estimates of certain labor reimbursement costs expected to be paid to third party installers performing replacement services for its second generation product of \$1.3 million, offset by a \$1.5 million decrease to estimated costs of replacement microinverter units for all product generations.

**8. FAIR VALUE MEASUREMENTS**

The accounting guidance defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required to be recorded at fair value, the Company considers the principal or most advantageous market in which it would transact and considers assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of nonperformance.

The fair value hierarchy requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. An asset's or liability's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Three levels of inputs may be used to measure fair value:

- Level 1—Valuations based on quoted prices in active markets for identical assets or liabilities that the Company is able to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of such assets or liabilities do not entail a significant degree of judgment.
- Level 2—Valuations based on one or more quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly.
- Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

The following table presents the Company's assets and liabilities that were measured at fair value on a recurring basis and its categorization within the fair value hierarchy at December 31, 2016 and 2015 (in thousands):

	Fair Value Hierarchy	December 31,	
		2016	2015
<b>Assets:</b>			
Foreign currency forward contracts	Level 2	\$ —	\$ 86
<b>Liabilities:</b>			
Foreign currency forward contracts	Level 2	\$ —	\$ 9
Warranty obligations	Level 3	10,332	6,182
Contingent consideration	Level 3	—	473

**Foreign Currency Forward Contracts**

The Company utilizes foreign currency forward contracts from time to time to reduce the impact of foreign currency fluctuations arising from both sales and purchases denominated in Euros and the British Pound Sterling.

As of December 31, 2016 and 2015, the aggregate gross notional amounts of outstanding foreign currency forward contracts, all with maturities of less than one year, were \$0.0 million and \$2.4 million.

The Company recorded \$0.1 million, \$0.3 million and \$0.3 million of net gains in 2016, 2015, and 2014, respectively, related to foreign currency forward contracts.

**Fair Value Option for Warranty Obligations Related to Microinverters Sold Since January 1, 2014**

The Company estimates the fair value of warranty obligations by calculating the warranty obligations in the same manner as for sales prior to January 1, 2014 and applying an expected present value technique to that result. The expected present value technique, an income approach, converts future amounts into a single current discounted amount. In addition to the key estimates of failure rates, claim rates and replacement costs, the Company used certain Level 3 inputs which are unobservable and significant to the overall fair value measurement. Such additional assumptions included a discount rate based on the Company's credit-adjusted risk-free rate and compensation comprised of a profit element and risk premium required of a market participant to assume the obligation.

The following table provides a reconciliation of the beginning and ending balances of warranty obligations measured at fair value for the periods indicated (in thousands):

Balance—December 31, 2013	\$	—
Accruals for warranties issued during period		3,989
Changes in estimates		26
Settlements		(54)
Increase due to accretion expense		195
Fair value adjustments		(594)
Balance—December 31, 2014	\$	3,562
Accruals for warranties issued during period		4,140
Changes in estimates		(755)
Settlements		(227)
Increase due to accretion expense		1,001
Fair value adjustments		(1,539)
Balance—December 31, 2015	\$	6,182
Accruals for warranties issued during period		4,091
Changes in estimates		(1,616)
Settlements		(1,023)
Increase due to accretion expense		1,772
Fair value adjustments		926
Balance—December 31, 2016	\$	10,332

**Quantitative and Qualitative Information about Level 3 Fair Value Measurements**

As of December 31, 2016, the significant unobservable inputs used in the fair value measurement of the Company's liabilities designated as Level 3 are as follows:

Item Measured at Fair Value	Valuation Technique	Description of Significant Unobservable Input	Percent Used (Weighted-Average)
Warranty obligations for microinverters sold since January 1, 2014	Discounted cash flows	Profit element and risk premium	17%
		Credit-adjusted risk-free rate	19%

As of December 31, 2015, the significant unobservable inputs used in the fair value measurement of the Company's liabilities designated as Level 3 are as follows:

Item Measured at Fair Value	Valuation Technique	Description of Significant Unobservable Input	Percent Used (Weighted-Average)
Warranty obligations for microinverters sold since January 1, 2014	Discounted cash flows	Profit element and risk premium	17%
		Credit-adjusted risk-free rate	25%
Contingent consideration	Probability-weighted discounted cash flows	Risk-adjusted discount rate	17%

**Sensitivity of Level 3 Inputs**

**Warranty Obligations**

Each of the significant unobservable inputs is independent of the other. The profit element and risk premium are estimated based on requirements of a third-party participant willing to assume the Company's warranty

obligations. The credit-adjusted risk-free rate is determined by reference to the Company's own credit standing at the fair value measurement date. Increasing (decreasing) the profit element and risk premium input by 100 basis points would not have a material impact on the fair value measurement of the liability. Increasing (decreasing) the discount rate by 100 basis points would result in a (\$370,000) \$402,000 (decrease) increase, respectively, to the fair value measurement of the liability.

**9. RESTRUCTURING AND OTHER**

The Company took actions in 2016 to reduce its operating loss including the reduction of its global workforce by approximately 11%, elimination of certain non-core projects, divestiture of its service business and consolidation of office space in its corporate headquarters.

The following table presents the details of the Company's restructuring charges for the periods indicated (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Employee severance and benefit arrangements	\$ 1,263	\$ —	\$ —
Asset impairments	2,575	—	—
Lease loss and other	579	—	—
Gain on business divestiture	(640)	—	—
Total restructuring and other	\$ 3,777	\$ —	\$ —

The following table provides information regarding changes in the Company's accrued restructuring balance for the periods indicated (in thousands):

	Employee Severance and Benefits	Asset Impairments	Lease Loss and Other	Total
Balance at beginning of period as of December 31, 2015	\$ —	\$ —	\$ —	\$ —
Charges	1,263	2,575	579	4,417
Cash payments	(1,065)	—	(95)	(1,160)
Non-cash settlement	—	(2,575)	—	(2,575)
Balance at end of period as of December 31, 2016	\$ 198	\$ —	\$ 484	\$ 682

The following table provides information regarding the computation of the Company's gain on business divestiture included in restructuring and other (in thousands):

	Business Divestiture
Consideration	\$ 1,375
Identifiable assets	(979)
Contingent Consideration	244
Gain on business divestiture	\$ 640

## 10. DEBT

### **Revolving Credit Facility**

The Company maintained a \$50.0 million revolving credit facility with Wells Fargo Bank, N.A. ("Wells Fargo") that was entered into on November 7, 2012, as first amended on February 14, 2014. On December 18, 2015, the Company entered into an amended and restated revolving credit agreement (the "Revolver") which extended the maturity date from November 7, 2016 to November 7, 2019 and added an uncommitted accordion feature that could increase the size of the facility by \$25.0 million, subject to certain approvals and meeting certain criteria.

Availability under the Revolver was subject to a borrowing base calculation that limits availability to a percentage of eligible domestic accounts receivable plus a percentage of the value of eligible domestic inventory, less certain reserves. Borrowings under the Revolver were charged interest in cash at an annual rate equal to, at the Company's option, either LIBOR or a "base rate" that is comprised of, among other things, the prime rate, plus a margin that is between 1.0% and 3.75% depending on the currency borrowed and the specific term of repayment. The Revolver required the Company to pay a commitment fee between 0.25% and 0.375% based on the average daily unused portion of the revolving credit commitment.

The Revolver was secured by a pledge of substantially all assets of the Company other than intellectual property and contains customary affirmative and negative covenants (including restrictions on the Company's ability to make dividend payments) and events of default. In addition, the Revolver required the Company to maintain at least \$15.0 million of liquidity at all times, of which at least \$12.5 million had to be undrawn availability. As of December 31, 2016, the Company was in compliance with such covenants under the Revolver.

As of December 31, 2016, the amount outstanding under the Revolver was \$10.1 million leaving an unused borrowing capacity of \$12.9 million. The weighted-average interest rate related to these borrowings was 5.3%. \$17.0 million was outstanding under the Revolver at December 31, 2015.

### **Term Loan**

In July 2016, the Company entered into a Term Loan Agreement with lenders that are affiliates of Tennenbaum Capital Partners, LLC. Under the agreement, the lenders committed to advance a term loan in an aggregate principal amount of up to \$25.0 million with a maturity date of July 1, 2020. The Company borrowed the entire \$25.0 million of term loan commitments on the loan closing date. Monthly payments due through June 30, 2017 are interest only, followed by consecutive equal monthly payments of principal plus accrued interest beginning on July 1, 2017 and continuing through the maturity date. The term loan provides for an interest rate per annum equal to the higher of (i) 10.25% or (ii) LIBOR plus 9.5625%, subject to a 1.0% reduction if we achieve minimum levels of Revenue and EBITDA (each as defined in the Term Loan Agreement) for the twelve-consecutive month period ending June 30, 2017 as set forth in the Term Loan Agreement. In addition, the Company paid a commitment fee of 3.3% of the loan amount upon closing and a closing fee of 10.0% of the loan amount is payable in four equal installments at each anniversary of the closing date. The Company may elect to prepay the loan by incurring a prepayment fee between 1% and 3% of the principal amount of the term loan depending on the timing and circumstances of prepayment.

The term loan is secured by a second-priority security interest on substantially all the Company's assets except intellectual property. The Term Loan Agreement does not contain any financial covenants, but is subject to customary affirmative and negative covenants including restrictions on creation of liens, dispositions of assets, dividends, mergers, or changing the nature of the Company's business; in each case, subject to certain customary exceptions. In addition, the Term Loan Agreement contains certain customary events of default including, but not limited to, failure to pay interest, principal and fees or other amounts when due, material breach of any representation or warranty, covenant defaults, cross defaults to other material indebtedness, events of bankruptcy and the occurrence of a material adverse change (as defined in the agreement) to the Company's business. The Term Loan Agreement offers TCP typical rights and remedies in any event of default, including the ability to declare all amounts outstanding immediately due and payable. The Company does not expect the lender to declare default under any event, including the material adverse change clause.

Long-term debt was comprised of the following at December 31, 2016 and 2015 (in thousands):

	December 31, 2016	December 31, 2015
Term loan	\$ 25,000	\$ —
Less unamortized discount and issuance costs	(1,200)	—
Carrying amount of debt	23,800	—
Less current portion	(3,032)	—
Long-term debt	\$ 20,768	\$ —

As of December 31, 2016, the amount of scheduled principal payments due on the term loan is as follows (in thousands):

Year	Amounts
2017	\$ 3,032
2018	7,824
2019	8,665
2020	5,479
Total	\$ 25,000

#### 11. COMMITMENTS AND CONTINGENCIES

**Operating Leases**—The Company leases office facilities under noncancelable operating leases that expire on various dates through 2022. The terms of the lease agreements generally provide for rental payments on a graduated basis, and certain leases require the Company to pay its portion of executory costs such as taxes, insurance, and operating expenses. The Company recognizes rent expense on a straight-line basis over the lease term.

Rent expense for 2016, 2015 and 2014 was \$3.8 million, \$3.2 million and \$2.6 million, respectively.

The Company's minimum lease payments under noncancelable operating leases, exclusive of executory costs, as of December 31, 2016 are as follows (in thousands):

2017	\$ 2,778
2018	2,770
2019	2,812
2020	2,653
2021	2,677
Thereafter	2,291
Total minimum lease payments	\$ 15,981

**Purchase Obligations**—The Company has contractual obligations related to component inventory that its primary contract manufacturer procures on our behalf in accordance with its production forecast and a take-or-pay supply agreement for the purchase of silicone encapsulates that expires on December 31, 2018. As of December 31, 2016, these purchase obligations totaled approximately \$16.9 million.

**Contingencies**—From time to time, the Company may be involved in litigation relating to claims arising out of its operations. The Company is not currently involved in any material legal proceedings. The Company may, however, be involved in material legal proceedings in the future. Such matters are subject to uncertainty and there can be no assurance that such legal proceedings will not have a material adverse effect on its business, results of operations, financial position or cash flows.

## 12. SALE OF COMMON STOCK

On September 28, 2016, the Company completed a public offering of 13,000,000 shares of its common stock at a price to the public of \$1.20 per share. Net proceeds realized were approximately \$14.0 million after deducting underwriting fees and estimated offering costs. The Company intends to use the net proceeds for working capital and general corporate purposes. On October 11, 2016, the underwriter for the offering exercised in full an over-allotment option to purchase an additional 1,950,000 shares of the Company's common stock, which generated additional net proceeds of approximately \$2.2 million.

In December of 2016, the Company entered into an At Market Issuance Sales Agreement (ATM) under which it may sell shares of its common stock up to a gross aggregate offering price of up to \$17.0 million. The Company is not obligated to make any sales of the shares under the Sales Agreement. As of December 31, 2016, the Company had not sold any shares under the ATM. The Company will have realized the full gross proceeds of \$17.0 million from common stock sold under the ATM at the time of this filing.

## 13. STOCK-BASED COMPENSATION

### *Description of Equity Incentive Plans*

#### *2006 Plan*

Under the Company's 2006 Equity Incentive Plan (the "2006 Plan"), equity awards granted generally vest over a four-year period from the date of grant with a contractual term of up to 10 years. As of December 31, 2016, there were 3.0 million shares of options outstanding under the 2006 Plan. No further stock options or other stock awards may be granted under the 2006 Plan.

#### *2011 Plan*

Under the 2011 Equity Incentive Plan (the "2011 Plan"), the Company could initially issue up to 2,643,171 shares of its common stock pursuant to stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards, and other forms of equity compensation, or collectively, stock awards, all of which may be granted to employees, including officers, and to non-employee directors and consultants. Options granted under the 2011 Plan before August 1, 2012 generally expire 10 years after the grant date and options granted thereafter generally expire 7 years after the grant date. Equity awards granted under the 2011 Plan generally vest over a four-year period from the date of grant based on continued employment. The number of shares of the Company's common stock authorized for issuance under the 2011 Plan will automatically increase, on each January 1 by 4.5% of the total number of shares of the Company's common stock outstanding on December 31 of the preceding calendar year, or such lesser number of shares of common stock as determined by the board of directors. As of December 31, 2016, 2,239,444 shares remained available for issuance pursuant to future grants under the 2011 Plan. On January 1, 2017, the shares available for issuance under the 2011 Plan automatically increased by 2,802,124 shares.

#### *2011 Employee Stock Purchase Plan*

The 2011 Employee Stock Purchase Plan ("ESPP") became effective immediately upon the execution and delivery of the underwriting agreement for the Company's IPO on March 29, 2012. The ESPP authorized the issuance of 669,603 shares of the Company's common stock pursuant to purchase rights granted to employees. The number of shares of common stock reserved for issuance will automatically increase, on each January 1, by a lesser of (i) 330,396 shares of the Company's common stock or or (ii) 1.0% of the total number of shares of the Company's common stock outstanding on December 31 of the preceding calendar year, as determined by the Company's board of directors.

The ESPP is implemented by concurrent offering periods and each offering period may contain up to four interim purchase periods. In general, offering periods consists of the 24 months periods commencing on each May 15 and November 15 of a calendar year.

Generally, all full time employees, including executive officers, are eligible to participate in the ESPP. The ESPP permits eligible employees to purchase the Company's common stock through payroll deductions, which may not exceed 15% of the employee's total compensation subject to certain limits. Stock may be purchased under the plan at a price equal to 85% of the fair market value of the Company's stock on either the date of purchase or the first day of an offering period, whichever is lower. A two year look-back feature in the Company's ESPP causes an offering period to reset if the fair value of the Company's common stock on a purchase date is less than that on the initial offering date for that offering period. The reset feature, when triggered, will be accounted for as a modification to the original offering, resulting in additional expense to be recognized over the 24-month period of the new offering. During any calendar year, participants may not purchase shares of common stock having a value greater than \$25,000, based on the fair market value per share of the common stock at the beginning of an offering period.

As of December 31, 2016, there were 37,821 shares remained available for future issuance under the 2011 ESPP. On January 1, 2017, the shares available for issuance under the 2011 ESPP automatically increased by 330,996 shares.

#### **Valuation of Equity Awards**

##### *Stock Options*

The fair value of each option granted was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

- *Expected term*—The expected term of the option awards represents the period of time between the grant date of the option awards and the date the option awards are either exercised, converted or canceled, including an estimate for those option awards still outstanding. The Company used the simplified method, as permitted by the SEC for companies with a limited history of stock option exercise activity, to determine the expected term for its option grants.
- *Expected volatility*—The expected volatility was calculated based on the Company's historical stock prices, supplemented as necessary with historical volatility of the common stock of several peer companies with characteristics similar to those of the Company.
- *Risk-free interest rate*—The risk-free interest rate was based on the U.S. Treasury yield curve in effect at the time of grant and with a maturity that approximated the Company's expected term.
- *Dividend yield*—The dividend yield was based on the Company's dividend history and the anticipated dividend payout over its expected term.

A summary of the weighted-average assumptions used to estimate the fair values of the stock options granted during the periods presented is as follows:

	Years Ended December 31,		
	2016	2015	2014
Expected term (in years)	4.5	4.5	4.5
Expected volatility	80.0%	72.5%	67.7%
Annual risk-free rate of return	1.1%	1.4%	1.4%
Dividend yield	—%	—%	—%
Weighted-average fair value on grant date	\$ 1.29	\$ 4.68	\$ 5.64

#### Restricted Stock Units

The fair value of restricted stock units granted is determined based on the price of the Company's common stock on the date of grant.

#### Stock-Based Compensation Expense

The Compensation cost for all stock-based awards expected to vest is measured at fair value on the date of grant and recognized ratably over the requisite service period. The following table summarizes the components of total stock-based compensation expense included in the consolidated statements of operations for the periods presented (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Cost of revenues	\$ 1,188	\$ 1,217	\$ 816
Research and development	3,879	4,559	3,127
Sales and marketing	2,144	3,162	2,487
General and administrative	3,115	3,758	3,310
Total stock-based compensation expense	\$ 10,326	\$ 12,696	\$ 9,740

A summary of stock-based compensation expense associated with each type of award for the periods presented is as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Stock options and restricted stock units	\$ 8,384	\$ 10,685	\$ 8,845
ESPP	1,942	2,011	895
Total stock-based compensation expense	\$ 10,326	\$ 12,696	\$ 9,740

As of December 31, 2016, there was approximately \$16.2 million of total unrecognized compensation cost related to unvested equity awards, net of expected forfeitures, which is expected to be recognized over a weighted-average period of 2.6 years.

No income tax benefit has been recognized relating to stock-based compensation expense and no tax benefits have been realized from exercised stock options.

**Equity Awards Activity**

*Stock Options*

A summary of the Company's stock option activity for the periods presented is as follows (in thousands, except per share data):

	Shares	Weighted-Average Exercise Price per Share
Options outstanding — December 31, 2013	8,509	\$ 3.94
Granted	1,311	10.36
Exercised	(886)	4.33
Canceled	(302)	7.58
Options outstanding — December 31, 2014	8,632	4.75
Granted	1,289	8.20
Exercised	(1,079)	1.40
Canceled	(672)	9.31
Options outstanding — December 31, 2015	8,170	5.36
Granted	2,440	2.12
Exercised	(375)	0.39
Canceled	(1,505)	6.01
Options outstanding — December 31, 2016	8,730	4.55

The following table summarizes information about stock options outstanding at December 31, 2016:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Number of Shares (in thousands)	Weighted-Average Remaining Life (in years)	Weighted-Average Exercise Price	Number of Shares (in thousands)	Weighted-Average Exercise Price
\$0.27 — \$1.63	2,594	3.2	\$ 1.00	2,521	\$ 1.00
\$1.67 — \$2.14	1,839	5.8	2.08	358	2.09
\$2.19 — \$7.16	1,765	3.8	5.23	1,412	5.41
\$7.30 — \$9.69	1,797	4.0	8.34	1,517	8.28
\$10.27 — \$16.01	735	4.5	12.40	481	12.27
<b>Total</b>	<b>8,730</b>			<b>6,289</b>	

The intrinsic value of options exercised in 2016, 2015 and 2014 was \$0.7 million, \$4.9 million and \$5.2 million, respectively. As of December 31, 2016, there were 8.6 million options outstanding that were vested and expected to vest. Such options have a weighted-average exercise price of \$4.57 and a weighted-average remaining contractual term of 4.1 years. As of December 31, 2016, the aggregate intrinsic value was \$0.9 million for the 6.3 million exercisable shares. The intrinsic value is based on the Company's common stock fair value of \$1.01 per share as of December 31, 2016.

*Restricted Stock Units*

A summary of restricted stock unit activity for the periods presented is as follows: (in thousands, except per share data):

	Restricted Stock Units	Weighted Average Fair Value per Share at Grant Date
Outstanding at December 31, 2013	418	\$ 6.31
Granted	1,250	8.68
Vested	(281)	7.38
Canceled	(42)	7.56
Outstanding at December 31, 2014	1,345	8.25
Granted	683	11.22
Vested	(488)	8.58
Canceled	(227)	10.32
Outstanding at December 31, 2015	1,313	9.31
Granted	54	1.99
Vested	(464)	9.06
Canceled	(297)	8.32
Outstanding at December 31, 2016	606	9.33

The intrinsic value of restricted stock units vested during 2016, 2015 and 2014 was \$0.9 million, \$4.2 million and \$3.2 million, respectively. As of December 31, 2016, the restricted stock units outstanding had a weighted average remaining contractual term of 1.7 years with an intrinsic value of \$0.6 million.

*ESPP*

A summary of ESPP activity for the years presented is as follows: (in thousands, except per share data):

	Years Ended December 31,		
	2016	2015	2014
Proceeds from common stock issued under ESPP	\$ 999	\$ 2,497	\$ 1,531
Shares of common stock issued	659	499	410
Weighted-average price per share	\$ 1.52	\$ 5.00	\$ 3.73

**14. INCOME TAXES**

The domestic and foreign components of loss before provision for income taxes consisted of the following (in thousands):

	Years Ended December 31,		
	2016	2015	2014
United States	\$ (67,631)	\$ (22,120)	\$ (8,732)
Foreign	1,644	1,417	1,446
Total	\$ (65,987)	\$ (20,703)	\$ (7,286)

The provision for income taxes for the years presented is as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
<b>Current:</b>			
Federal	\$ —	\$ —	\$ —
State	36	44	85
Foreign	785	693	716
	<u>821</u>	<u>737</u>	<u>801</u>
<b>Deferred:</b>			
Federal	594	652	—
State	59	41	—
Foreign	1	(51)	(35)
	<u>654</u>	<u>642</u>	<u>(35)</u>
<b>Provision for income taxes</b>	<b>\$ 1,475</b>	<b>\$ 1,379</b>	<b>\$ 766</b>

A reconciliation of the provision for income taxes and the amount computed by applying the statutory federal income tax rate of 34% to loss before income taxes for the years presented is as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Income tax benefit at statutory federal rate	\$ (22,435)	\$ (7,039)	\$ (2,477)
State taxes, net of federal benefit	63	56	(4,576)
Change in valuation allowance	21,370	7,812	16,646
Foreign tax rate and tax law differential	27	(29)	(43)
Tax credits	(1,179)	(1,553)	(5,619)
Stock-based compensation	1,775	1,932	957
Other permanent items	776	61	231
Other nondeductible/nontaxable items	920	(72)	(4,586)
Uncertain tax positions	158	211	233
<b>Provision for income taxes</b>	<b>\$ 1,475</b>	<b>\$ 1,379</b>	<b>\$ 766</b>

A summary of significant components of the Company's deferred tax assets and liabilities as of December 31, 2016 and 2015 is as follows (in thousands):

	December 31,	
	2016	2015
<b>Deferred tax assets:</b>		
Allowances and reserves	\$ 16,032	\$ 14,639
Net operating loss and tax credit carryforwards	67,875	46,812
Stock-based compensation	3,033	3,055
Deferred revenue	8,289	5,966
Fixed assets and intangibles	7,661	6,830
Other	2,857	3,327
Subtotal	105,747	80,629
Less valuation allowance	(104,554)	(80,529)
Total deferred tax assets, net of valuation allowance	1,193	100
<b>Deferred tax liabilities:</b>		
Goodwill	(1,346)	(693)
Unremitted foreign earnings	(748)	—
Total deferred tax liabilities	(2,094)	(693)
Net deferred tax asset/(liability)	\$ (901)	\$ (593)

Accounting for income taxes requires that companies assess whether valuation allowances should be established against their deferred tax assets based on consideration of all available evidence, both positive and negative, using a "more likely than not" standard. This assessment considers, among other matters, the nature, frequency and amount of recent losses, the duration of statutory carryforward periods, and tax planning strategies. In making such judgments, significant weight is given to evidence that can be objectively verified. Due to the history of losses the Company has generated in the United States since inception, the Company believes that it is more-likely-than-not that all of its U.S. and state deferred tax assets will not be realized as of December 31, 2016. Therefore, the Company has recorded a full valuation allowance on its U.S. and state deferred tax assets at December 31, 2016. Should the Company determine that it would be able to realize its deferred tax assets in the foreseeable future, an adjustment to the deferred tax assets may cause a material increase to income in the period such determination is made. Significant management judgment is required in determining the period in which the reversal of a valuation allowance should occur.

During 2016, the Company re-evaluated its overall business strategy and determined that it no longer intends to permanently reinvest the earnings of the foreign subsidiaries abroad. The Company recorded a deferred tax liability related to the U.S. federal and state income taxes and foreign withholding taxes of \$0.7 million related to remaining unremitted foreign earnings.

The Company has net operating loss carryforwards for federal and California income tax purposes of approximately \$130.9 million and \$70.9 million, respectively, as of December 31, 2016. The federal and state net operating loss carryforwards, if not utilized, will expire beginning in 2028. Utilization of the net operating loss carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended (the "Code"), and similar state provisions. The annual limitation may result in the expiration of net operating losses before utilization. The Company has completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company became a loss corporation under the Code. However, the Company does not anticipate these limitations will significantly impact its ability to utilize the net operating losses and tax credit carryforwards.

The Company has approximately \$10.9 million of federal research credit and \$11.3 million of state research credit carryforwards. The federal credits begin to expire in 2026 and the state credits can be carried forward indefinitely.

As a result of certain realization requirements under income tax accounting for stock-based compensation, the table of deferred tax assets and liabilities shown above does not include certain deferred tax assets as of December 31, 2016 and 2015 that arose directly from tax deductions related to equity compensation greater than compensation recognized for financial reporting. Equity will be increased by \$2.3 million if and when such deferred tax assets are ultimately realized.

The accounting for uncertain tax positions prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company is required to recognize in the financial statements the impact of a tax position, if that position is more-likely-than-not of being sustained on audit, based on the technical merits of the position. The Company recorded a net charge for unrecognized tax benefits in 2016 of \$0.5 million.

The Company does not have any tax positions for which it is reasonably possible the total amount of gross unrecognized tax benefits will increase or decrease over the next year. The unrecognized tax benefits may increase or change during the next year for items that arise in the ordinary course of business. The Company recognizes interest and penalties related to uncertain tax positions in income tax expense.

A tabular reconciliation of the total amounts of unrecognized tax benefits for the years presented is as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Unrecognized tax benefits—at beginning of year	\$ 5,482	\$ 4,426	\$ 376
Increases in balances related to tax positions taken in prior years	—	14	1,895
Increases in balances related to tax positions taken in current year	571	1,053	2,155
Lapses in statutes of limitations	(37)	(11)	—
Unrecognized tax benefits—at end of year	\$ 6,016	\$ 5,482	\$ 4,426

The Company's tax returns continue to remain subject to examination by U.S. federal authorities for the years 2006 through 2016 and by California state authorities for the years 2006 through 2016 due to the use of net operating losses generated in tax years prior to the statutory three-year limit.

#### 15. CONCENTRATION OF CREDIT RISK AND MAJOR CUSTOMERS

The Company is potentially subject to financial instrument concentration of credit risk through its cash and cash equivalents and accounts receivable. The Company places its cash and cash equivalents with high quality institutions and performs periodic evaluations of their relative credit standing. Accounts receivable can be potentially exposed to a concentration of credit risk with its major customers. As of December 31, 2016, amounts due from one customer represented 25% of the total accounts receivable balance. As of December 31, 2015, amounts due from one customer represented 15% of the total accounts receivable balance. In 2016, one customer accounted for approximately 18% of total net revenues. In 2015, two customers accounted for approximately 17% and 12% of total net revenues. In 2014, two customers accounted for approximately 24% and 16% of total net revenues.

#### 16. NET LOSS PER SHARE

Basic net loss per share is calculated by dividing net loss by the weighted average number of shares outstanding for the period. Diluted net loss per share is calculated by dividing net loss by the weighted average number of common shares and potential dilutive common share equivalents outstanding during the period if the effect is dilutive. The Company's potentially dilutive common shares include outstanding stock options and warrants and non-vested restricted stock units.

The following table presents the potential common shares outstanding that were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been anti-dilutive (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Stock options to purchase common stock	8,981	8,646	8,502
Unvested restricted stock units	906	1,506	1,258
Warrants to purchase common stock	—	111	195
Total	9,887	10,263	9,955

#### 17 SEGMENT AND GEOGRAPHIC INFORMATION

The Company's chief operating decision maker is the Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a consolidated basis. The Company has one business activity, which entails the design, development, manufacture and sale of microinverter systems for the solar photovoltaic industry. There are no segment managers who are held accountable for operations, operating results or plans for levels or components below the consolidated unit level. Accordingly, management has determined that the Company has a single operating and reportable segment.

The following tables present net revenues (based on the destination of shipments) and long-lived assets by geographic region as of and for the periods presented (in thousands):

##### Net Revenues

	Years Ended December 31,		
	2016	2015	2014
United States	\$ 259,080	\$ 303,195	\$ 294,549
International	63,511	54,054	49,355
Total	\$ 322,591	\$ 357,249	\$ 343,904

##### Long-Lived Assets

	As of December 31,		
	2016	2015	2014
United States	\$ 22,634	\$ 21,913	\$ 20,037
China	5,727	7,950	9,585
Other	3,079	2,255	1,202
Total	\$ 31,440	\$ 32,118	\$ 30,824

**18. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)**

The following tables show a summary of the Company's quarterly financial information for each of the four quarters of 2016 and 2015 (in thousands, except per share data):

	Year Ended December 31, 2016			
	March 31	June 30	September 30	December 31
Net revenues	\$ 64,121	\$ 79,185	\$ 88,684	\$ 90,601
Cost of revenues	52,361	65,049	72,805	74,367
Gross profit	11,760	14,136	15,879	16,234
Operating expenses:				
Research and development	13,066	13,091	13,169	11,378
Sales and marketing	10,215	9,987	11,016	7,592
General and administrative	7,567	6,846	6,708	6,296
Restructuring charges	—	—	2,717	1,060
Total operating expenses	30,848	29,924	33,610	26,326
Loss from operations	(19,088)	(15,788)	(17,731)	(10,092)
Other income (expense), net	529	(591)	(881)	(2,345)
Loss before income taxes	(18,559)	(16,379)	(18,612)	(12,437)
Provision for income taxes	(236)	(344)	(144)	(751)
Net loss	\$ (18,795)	\$ (16,723)	\$ (18,756)	\$ (13,188)
Net loss per share, basic and diluted	\$ (0.41)	\$ (0.36)	\$ (0.40)	\$ (0.21)

	Year Ended December 31, 2015			
	March 31	June 30	September 30	December 31
Net revenues	\$ 86,653	\$ 102,093	\$ 102,874	\$ 65,629
Cost of revenues	58,629	69,066	71,408	49,929
Gross profit	28,024	33,027	31,466	15,700
Operating expenses:				
Research and development	13,430	12,786	12,059	12,544
Sales and marketing	11,937	12,508	10,510	10,922
General and administrative	8,205	8,102	7,118	7,405
Total operating expenses	33,572	33,396	29,687	30,871
Loss from operations	(5,548)	(369)	1,779	(15,171)
Other income (expense), net	(605)	(8)	(844)	63
Loss before income taxes	(6,153)	(377)	935	(15,108)
Provision for income taxes	(167)	(226)	(311)	(675)
Net income (loss)	\$ (6,320)	\$ (603)	\$ 624	\$ (15,783)
Net income (loss) per share, basic	\$ (0.14)	\$ (0.01)	\$ 0.01	\$ (0.35)
Net income (loss) per share, diluted	\$ (0.14)	\$ (0.01)	\$ 0.01	\$ (0.35)

## 19. SUBSEQUENT EVENT

In July 2016, the Company entered into a Term Loan Agreement (the "Original Term Loan") with lenders that are affiliates of Tennenbaum Capital Partners, LLC. (the "Lenders"). Under the agreement, the Lenders committed to advance a term loan in an aggregate principal amount of up to \$25.0 million with a maturity date of July 1, 2020. The Company borrowed the entire \$25.0 million of term loan commitments on the loan closing date. Monthly payments due through June 30, 2017 are interest only, followed by consecutive equal monthly payments of principal plus accrued interest beginning on July 1, 2017 and continuing through the maturity date. The term loan provides for an interest rate per annum equal to the higher of (i) 10.25% or (ii) LIBOR plus 9.5625%, subject to a 1.0% reduction if the Company achieves minimum levels of Revenue and EBITDA (each as defined in the Term Loan Agreement) for the twelve-consecutive month period ending June 30, 2017 as set forth in the Term Loan Agreement. In addition, the Company paid a commitment fee of 3.3% of the loan amount upon closing and a closing fee of 10.0% of the loan amount is payable in four equal installments at each anniversary of the closing date. The Company may elect to prepay the loan by incurring a prepayment fee between 1% and 3% of the principal amount of the term loan depending on the timing and circumstances of prepayment.

In February 2017, the Company entered into an Amended and Restated Loan and Security Agreement that amended and restated the Original Term Loan. The Loan Agreement provides for a \$25.0 million secured term loan to the Company (the "New Term Loan"), which is in addition to the \$25.0 million secured term loan borrowed by the Company under the Original Term Loan (together with the "New Term Loan" the "Term Loans"). The New Term Loan has the same July 1, 2020 maturity date that was applicable to the Original Term Loan. The New Term Loan was fully drawn at closing, with approximately \$10.3 million of the proceeds used to repay existing amounts due under the Company's Revolver with Wells Fargo. Upon the repayment of loans under the Wells Fargo Revolver, the Wells Fargo Revolving Credit Agreement was terminated. The Company expects to use the remainder of the proceeds from the New Term Loan for general corporate purposes.

Monthly payments under the Term Loans through February 28, 2018 are interest only, followed by consecutive equal monthly payments of principal plus accrued interest beginning on March 1, 2018 and continuing through the maturity date; provided, however, that the Company may extend the interest only period on a month to month basis up to February 28, 2019 if no Event of Default (as defined in the Loan Agreement) has occurred and is continuing and the Company has Consolidated Operating Income (as defined in the Loan Agreement) for the calendar year 2017 and each month thereafter on a trailing twelve consecutive month basis of at least \$15.0 million (collectively, the "Accommodation Conditions"). The Term Loans provide for an interest rate per annum equal to the greater of (i) 10.3125% and (ii) LIBOR plus 9.25%, subject to a 1.0% reduction if and for so long as the Accommodation Conditions have been met. In addition, the Company paid a commitment fee of 3.0% of the New Term Loan amount upon closing and a closing fee of 4.0% of the New Term Loan amount, which is payable with the closing fee under the Original Term Loan in four equal installments at each anniversary of the closing date of the Original Loan Agreement. The Company may elect to prepay the Term Loans by incurring a prepayment fee between 1% and 3% of the principal amount of the Term Loans depending on the timing and circumstances of prepayment.

The Term Loans are secured by a first-priority security interest on substantially all assets of the Company; provided, however that the security interest in the Company's intellectual property may be released if the Company satisfies certain requirements. The Company's obligations under the Term Loans are not guaranteed by any of the Company's existing subsidiaries, nor have any existing subsidiaries of the Company pledged any of their assets to secure the Term Loans.

The Loan Agreement requires that (i) at all times from the closing date to and including March 31, 2018, the Company, and any future guarantors, have Unrestricted Cash (as defined in the Loan Agreement) of at least \$10.0 million; (ii) at all times from the closing date to and including March 31, 2018, that the aggregate amount of Consolidated Unrestricted Cash, plus the value of Consolidated Receivables, plus the value of Consolidated Inventory (each as defined in the Loan Agreement) divided by the outstanding principal amount of Term Loans, shall equal or exceed 1.5; and (iii) at all times from April 1, 2018 and thereafter, that the aggregate amount of Consolidated Unrestricted Cash, plus the value of Consolidated Receivables, plus the value of Consolidated Inventory divided by the outstanding principal amount of Term Loans, shall equal or exceed 1.75. In addition, the Loan Agreement is subject to customary affirmative and negative covenants including restrictions on creation of liens, dispositions of assets, mergers, changing the nature of its business and dividends and other distributions, in

each case subject to certain exceptions. The Loan Agreement also contains certain customary events of default including, but are not limited to, failure to pay interest, principal and fees or other amounts when due, material breach of any representation or warranty, covenant defaults, cross defaults to other material indebtedness, the occurrence of a "material adverse change" and certain events of bankruptcy or insolvency.

In connection with the New Term Loan, the Company issued to the Lenders warrants to purchase an aggregate 1,220,000 shares of the Company's Common Stock at an exercise price of \$1.05 per share. The warrants have a term of seven years and contain a "cashless exercise" feature that allows the holder to exercise the warrant without a cash payment upon the terms set forth therein.

#### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

#### **Item 9A. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures**

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

##### **Management's Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, as defined in Rule 13a-15(f) of the Exchange Act. Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2016 based on criteria set forth in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013). As a result of this assessment, management concluded that, as of December 31, 2016, our internal control over financial reporting was effective.

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act, or JOBS Act. As a result, we are exempt from the auditor attestation requirements related to internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act. In addition, for as long as we remain an "emerging growth company," we will continue to be exempt from the auditor attestation requirement in the assessment of the effectiveness of our internal control over financial reporting through the end of 2017.

##### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during the most recent quarter ended December 31, 2016 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

##### **Limitations on Controls**

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

**Item 9B. Other Information**

None.

**PART III**

**Item 10. Directors and Executive Officers and Corporate Governance**

The information required regarding our directors is incorporated herein by reference from the information contained in the section entitled "Proposal 1-Election of Directors" in our definitive Proxy Statement for the 2017 Annual Meeting of Stockholders (our "Proxy Statement"), a copy of which will be filed with the Securities and Exchange Commission on or before April 30, 2017.

The information required regarding our executive officers is incorporated herein by reference from the information contained in the section entitled "Management" in our Proxy Statement.

The information required regarding Section 16(a) beneficial ownership reporting compliance is incorporated by reference from the information contained in the section entitled "Section 16(a) Beneficial Ownership Reporting Compliance" in our Proxy Statement.

The information required with respect to procedures by which security holders may recommend nominees to our board of directors, and the composition of our Audit Committee, and whether we have an "audit committee financial expert," is incorporated by reference from the information contained in the section entitled "Information Regarding the Board of Directors and Corporate Governance" in our Proxy Statement.

**Code of Conduct**

We have a written code of conduct that applies to all our executive officers, directors and employees. Our Code of Conduct is available on our website at <http://investor.enphase.com/corporate-governance.cfm>. A copy of our Code of Conduct may also be obtained free of charge by writing to our Assistant Secretary, Enphase Energy, Inc., 1420 N. McDowell Blvd., Petaluma, CA 94954. If we make any substantive amendments to our Code of Conduct or grant any waiver from a provision of the Code of Conduct to any executive officer or director, we intend to promptly disclose the nature of the amendment or waiver on our website.

**Item 11. Executive Compensation**

The information required regarding the compensation of our directors and executive officers is incorporated herein by reference from the information contained in the sections entitled "Executive Compensation," "Director Compensation," "Compensation Committee Report" and "Compensation Committee Interlocks and Insider Participation" in our Proxy Statement.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required regarding security ownership of our 5% or greater stockholders and of our directors and management is incorporated herein by reference from the information contained in the section entitled "Security Ownership of Certain Beneficial Owners and Management" in our Proxy Statement.

**Equity Compensation Plan Information**

The information required regarding securities authorized for issuance under our equity compensation plans is incorporated herein by reference from the information contained in the section entitled "Employee Benefit Plans" in our Proxy Statement.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required regarding related transactions is incorporated herein by reference from the information contained in the section entitled "Transactions With Related Persons" and, with respect to director independence, the section entitled "Proposal 1-Election of Directors" in our Proxy Statement.

**Item 14. Principal Accounting Fees and Services**

The information required is incorporated herein by reference from the information contained in the sections entitled "Principal Accountant Fees and Services" and "Pre-Approval Policies and Procedures" in the section entitled "Proposal 4-Ratification of Selection of Independent Registered Public Accounting Firm" in our Proxy Statement.

**Item 15. Exhibits, Financial Statement Schedules**

**Consolidated Financial Statements**

The information concerning our consolidated financial statements, and Report of Independent Registered Public Accounting Firm required by this Item is incorporated by reference herein to the section of this Annual Report on Form 10-K in Item 8, *Consolidated Financial Statements and Supplementary Data*.

No schedules are provided because they are not applicable, not required under the instructions, or the requested information is shown in the financial statements or related notes thereto.

**Exhibits**

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Annual Report on Form 10-K.

**Item 16. Form 10-K Summary**

Not Applicable

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on March 16, 2017.

**Enphase Energy, Inc.**

By: /s/ PAUL B. NAHI  
 Paul B. Nahi  
 President and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Paul B. Nahi and Humberto Garcia, jointly and severally, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities on the dates indicated.

Signature	Title	Date
<u>/s/ PAUL B. NAHI</u> Paul B. Nahi	President and Chief Executive Officer (Principal Executive Officer)	March 16, 2017
<u>/s/ HUMBERTO GARCIA</u> Humberto Garcia	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 16, 2017
<u>/s/ STEVEN J. GOMO</u> Steven J. Gomo	Director	March 16, 2017
<u>/s/ BENJAMIN KORTLANG</u> Benjamin Kortlang	Director	March 16, 2017
<u>/s/ RICHARD MORA</u> Richard Mora	Director	March 16, 2017
<u>/s/ THURMAN JOHN RODGERS</u> Thurman John Rodgers	Director	March 16, 2017
<u>/s/ JOHN H. WEBER</u> John H. Weber	Director	March 16, 2017

## EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporation by Reference				
		Form	SEC File No.	Exhibit	Filing Date	Filed Herewith
3.1	Amended and Restated Certificate of Incorporation of Enphase Energy, Inc.	8-K	001-35480	3.1	4/6/2012	
3.2	Amended and Restated Bylaws of Enphase Energy, Inc.	S-1/A	333-174925	3.5	3/12/2012	
4.1	Specimen Common Stock Certificate of Enphase Energy, Inc.	S-1/A	333-174925	4.1	3/12/2012	
4.2	2010 Amended and Restated Investors' Rights Agreement by and between Enphase Energy, Inc. and the investors listed on Exhibit A thereto, dated March 15, 2010, as amended.	S-1/A	333-174925	4.2	3/12/2012	
10.1*	Form of Indemnification Agreement by and between Enphase Energy, Inc. and each of its directors and officers.	S-1/A	333-174925	10.1	3/12/2012	
10.2*	2006 Equity Incentive Plan, as amended, and related documents.	S-8	333-181382	99.1	5/14/2012	
10.3*	2011 Equity Incentive Plan, as amended, and forms of agreement thereunder.	10-Q	333-35480	10.1	8/3/2016	
10.4*	2011 Employee Stock Purchase Plan.	S-8	333-181382	99.3	5/14/2012	
10.5*	Offer Letter by and between Enphase Energy, Inc. and Paul B. Nahi, dated January 1, 2007, as amended.	S-1/A	333-174925	10.5	3/12/2012	
10.6	Redwood Business Park NNN Lease by and between Enphase Energy, Inc. and Sequoia Center LLC, dated June 3, 2011 (1400 North McDowell Boulevard), as amended.	S-1/A	333-174925	10.14	3/12/2012	
10.7	First Amendment to Redwood Business Park NNN Lease (1400 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated January 12, 2012.	10-K	001-35480	10.8	3/4/2015	
10.8	Second Amendment to Redwood Business Park NNN Lease (1400 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated January 13, 2014.	10-K	001-35480	10.9	3/4/2015	
10.9	Third Amendment to Redwood Business Park NNN Lease (1400 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated September 25, 2014.	10-K	001-35480	10.10	3/4/2015	
10.10	Fourth Amendment to Redwood Business Park NNN Lease (1400 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated December 30, 2014.	10-K	001-35480	10.11	3/4/2015	
10.11	Redwood Business Park NNN Lease by and between Enphase Energy, Inc. and Sequoia Center LLC, dated June 3, 2011 (1420 North McDowell Boulevard), as amended.	S-1/A	333-174925	10.15	3/12/2012	
10.12	First Amendment to Redwood Business Park NNN Lease (1420 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated January 12, 2012.	10-K	001-35480	10.13	3/4/2015	
10.13	Second Amendment to Redwood Business Park NNN Lease (1420 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC, dated July 3, 2012.	10-Q	001-35480	10.4	11/13/2012	
10.14	Third Amendment to Redwood Business Park NNN Lease (1420 North McDowell Blvd), between Enphase Energy, Inc. & Sequoia Center LLC dated May 14, 2014.	10-K	001-35480	10.15	3/4/2015	
10.15 <sup>†</sup>	Cooperation Agreement "AC cabling system for solar micro-inverter" by and among Enphase Energy, Inc., and Phoenix Contact GmbH & Co. KG and Phoenix Contact USA, Inc., dated December 7, 2010.	S-1	333-174925	10.16	6/15/2011	
10.16	Amendment No. 2 to the Cooperation Agreement and Amendment No. 1 by and among Enphase Energy, Inc., Phoenix Contact GmbH & Co. KG and Phoenix Contact USA, Inc., dated September 1, 2016.	10-Q	001-35480	10.4	11/2/2016	
10.17 <sup>††</sup>	Flextronics Logistics Services Agreement by and between Enphase Energy, Inc. and Flextronics America, LLC, dated May 1, 2009.	S-1	333-174925	10.17	6/15/2011	
10.18	Amendment #1 to the Flextronics Logistics Services Agreement, by and between Enphase Energy, Inc. and Flextronics America, LLC, dated July 28, 2016.	10-Q	001-35480	10.4	11/2/2016	
10.19 <sup>††</sup>	Flextronics Manufacturing Services Agreement by and between Enphase Energy, Inc. and Flextronics Industrial, Ltd., dated March 1, 2009, as amended.	S-1	333-174925	10.18	6/15/2011	
10.20	Master Development and Production Agreement by and between Enphase Energy, Inc. and Fujitsu Microelectronics America, Inc., dated August 19, 2009.	10-Q	001-35480	10.1	5/6/2015	
10.21 <sup>††</sup>	License and Technology Transfer Agreement by and between Enphase Energy, Inc. and Ariane Controls, Inc., dated December 21, 2007.	S-1	333-174925	10.20	6/15/2011	
10.22 <sup>††</sup>	Software License Agreement by and between PVI Solutions, Inc. (subsequently known as Enphase Energy, Inc.) and DCD, Digital Core Design, dated May 8, 2007, as amended.	S-1	333-174925	10.21	6/15/2011	
10.23*	Non-employee Director Compensation Policy.	10-Q	001-35480	10.28	5/8/2013	
10.24*	Offer Letter by and between Enphase Energy, Inc. and Kris Sennesael, dated September 17, 2012.	10-Q	001-35480	10.43	11/13/2012	
10.25	Amended and Restated Credit Agreement by and among the lenders identified on the signature pages thereof, Wells Fargo Bank, National Association, as agent for the lenders, and Enphase Energy, Inc., dated December 18, 2015.	10-K	001-35480	10.24	3/1/2016	
10.26	Amendment No. 1 to Amended and Restated Credit Agreement and Amended and Restated Guaranty and Security Agreement, by and among Enphase Energy, Inc., the lenders identified on the signature pages thereto and Wells Fargo Bank, National Association, as agent, dated July 8, 2016.	10-Q	001-35480	10.1	11/2/2016	
10.27	Waiver and Second Amendment to Amended and Restated Credit Agreement, by and among Enphase Energy, Inc. and Wells Fargo Bank, National Association, as agent, dated December 21, 2016.					X
10.28	Consent and Third Amendment to Amended and Restated Credit Agreement, by and among Enphase Energy, Inc., the lenders identified on the signature pages thereto and Wells Fargo Bank, National Association, as agent, dated December 30, 2016.					X
10.29*	2016 Performance Bonus Program Summary.	8-K	001-35480	10.1	4/1/2016	
10.30*	Severance and Change in Control Benefit Plan.	10-Q	001-35480	10.49	5/8/2013	
10.31 <sup>†</sup>	Development and Supply Agreement, by and between Enphase Energy, Inc. and Eliiy Power Co., Ltd., dated September 29, 2015.	10-Q	001-35480	10.1	11/4/2015	
10.32 <sup>†</sup>	Supply Agreement, by and between Enphase Energy, Inc. and Dow Corning Corporation, dated April 22, 2014.	10-Q	001-35480	10.2	8/5/2015	
10.33 <sup>†</sup>	First Amendment to the Supply Agreement, by and between Enphase Energy, Inc. and Dow Corning Corporation, dated August 1, 2014.	10-Q	001-35480	10.3	8/5/2015	
10.34 <sup>†</sup>	Second Amendment to the Supply Agreement, by and between Enphase Energy, Inc. and Dow Corning Corporation, dated August 1, 2014.	10-Q	001-35480	10.4	8/5/2015	
10.35	At Market Issuance Sales Agreement, by and between Enphase Energy, Inc. and FBR Capital Markets & Co., dated December 23, 2016.	8-K	001-35480	10.1	12/23/2016	
10.36	Loan and Security Agreement by and among Enphase Energy, Inc., Tennenbaum Special Situations Fund IX, LLC, the lenders identified on the signature pages thereto and Obsidian	10-Q	001-35480	10.2	11/2/2016	

Agency Services, Inc., as administrative agent and collateral agent for the lenders, dated July 8, 2016.

10.37	First Amendment to Loan and Security Agreement, by and among Enphase Energy, Inc., Tennenbaum Special Situations Fund IX, LLC, the lenders identified on the signature pages thereto and Obsidian Agency Services, Inc., as administrative agent and collateral agent for the lenders, dated December 30, 2016.					X
10.38	Amended and Restated Loan and Security Agreement, by and among Enphase Energy, Inc., the lenders party thereto, Cortland Capital Market Services LLC, as administrative agent, and Obsidian Agency Services, Inc., as collateral agent, dated February 10, 2017.					X
10.39	Form of Warrant under Amended and Restated Loan and Security Agreement, by and among Enphase Energy, Inc., the lenders party thereto, Cortland Capital Market Services LLC, as administrative agent, and Obsidian Agency Services, Inc., as collateral agent, dated February 10, 2017.					X
10.40	Securities Purchase Agreement, by and among Enphase Energy, Inc. and the purchasers identified on Exhibit A thereto, dated January 9, 2017.	8-K	001-35480	10.1	1/10/2017	
10.41	Security Agreement by and among Enphase Energy, Inc. and Flextronics Industrial, LTD and Flextronics Americas, LLC, dated December 30, 2016.					X
12.1	Statement of Computation of Ratio Earnings to Fixed Charges					X
21.1	List of subsidiaries of the Registrant					X
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm					X
24.1	Power of Attorney (incorporated by reference to the signature page of this Annual Report on Form 10-K).					X
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a).					X
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a).					X
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	XBRL Instance Document.					X
101.SCH	XBRL Taxonomy Extension Schema Document.					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	XBRL Taxonomy Extension Presentation Document.					X

+ Management compensatory plan or arrangement.

† Confidential treatment has been granted for certain portions of this exhibit. Omitted information has been filed separately with the Securities and Exchange Commission.

†† Confidential treatment has been requested for certain portions of this exhibit. Omitted information has been filed separately with the Securities and Exchange Commission.

\* The certifications attached as Exhibit 32.1 accompany this quarterly report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by Enphase Energy, Inc. for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

**WAIVER AND SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT**

This WAIVER AND SECOND AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of December 21, 2016, by and between Enphase Energy, Inc., a Delaware corporation ("Borrower"), the lenders party hereto, and Wells Fargo Bank, National Association, as administrative agent for the Lenders ("Agent").

**RECITALS:**

WHEREAS, Agent, Lenders and Borrower have entered into certain financing arrangements pursuant to that certain Amended and Restated Credit Agreement, dated as of December 18, 2015 (as amended hereby, and as the same may have heretofore been or may hereafter be further amended, supplemented, extended, renewed, restated, replaced or otherwise modified, the "Loan Agreement"), by and among the Lenders from time to time party thereto (the "Lenders"), Agent, and Borrower;

WHEREAS, as of the date hereof, certain Events of Default under the Loan Agreement and the other Loan Documents have occurred and are continuing;

WHEREAS, Borrower has requested that, subject to the terms and conditions of this Agreement, Agent and Lenders waive such Events of Default which are continuing;

WHEREAS, Agent and Lenders are willing to agree to waive such Events of Default, solely on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements, warranties and covenants contained herein, the parties hereto agree as follows:

**Section 1. DEFINITIONS**

1.1. **Interpretation.** All capitalized terms used herein (including the recitals hereto) will have the respective meanings ascribed thereto in the Loan Agreement unless otherwise defined herein. The foregoing recitals, together with all exhibits attached hereto, are incorporated by this reference and made a part of this Agreement. Unless otherwise provided herein, all section and exhibit references herein are to the corresponding sections and exhibits of this Agreement.

1.2. **Additional Definitions.** As used herein, the following terms will have the respective meanings given to them below:

- (a) "Existing Defaults" means, collectively, the Events of Default identified on Exhibit A hereto.

**Section 2. ACKNOWLEDGMENTS**

2.1. **Acknowledgment of Obligations.** Borrower hereby acknowledges, confirms and agrees that as of the close of business on December 21, 2016, (a) Borrower is indebted to Lenders in respect of the Revolving Loans in the principal amount of \$11,600,000, (b) Borrower is indebted to Lenders in respect of Letters of Credit in the principal amount of \$73,896.22, and (c) Borrower is indebted to Lenders in respect of Bank Products in the principal amount of \$0. Borrower hereby acknowledges, confirms and agrees that all such Obligations, together with interest accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by Borrower to Lenders, are unconditionally owing by Borrower to Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

2.2. **Acknowledgment of Security Interests.** Borrower hereby acknowledges, confirms and agrees that Agent has, and will continue to have, valid, enforceable and perfected first-priority continuing liens upon and security interests in the Collateral heretofore granted to Agent, for the benefit of Agent and Lenders, pursuant to the Loan Agreement and the other Loan Documents or otherwise granted to or held by Agent, for the benefit of Agent and Lenders.

2.3. **Binding Effect of Documents.** Borrower hereby acknowledges, confirms and agrees that: (a) this Agreement constitutes a Loan Document, (b) each of the Loan Agreement and the other Loan Documents to which it is a party has been duly executed and delivered to Agent by Borrower, and each is and will remain in full force and effect as of the date hereof except as modified pursuant hereto, (c) the agreements and obligations of Borrower contained in such documents and in this Agreement constitute the legal, valid and binding Obligations of Borrower, enforceable against it in accordance with their respective terms, and Borrower has no valid defense to the enforcement of such Obligations, (d) Agent and Lenders are and will be entitled to the rights, remedies and benefits provided for under the Loan Agreement and the other Loan Documents and applicable law and (e) Borrower shall comply with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Loan Agreement or any of the other Loan Documents during the continuance of any Event of Default, and, except to the extent expressly provided otherwise in this Agreement, any right or action of Borrower set forth in the Loan Agreement or the other Loan Documents that is conditioned on the absence of any Event of Default may not be exercised or taken as a result of the Existing Defaults.

### Section 3. **WAIVER OF SPECIFIED DEFAULTS**

3.1. **Acknowledgment of Default.** Borrower hereby acknowledges and agrees that the Existing Defaults have occurred and are continuing, each of which constitutes an Event of Default and entitles Agent and Lenders to exercise their rights and remedies under the Loan Agreement and the other Loan Documents, applicable law or otherwise. Borrower represents and warrants that as of the date hereof, no Events of Default exist other than the Existing Defaults. Borrower hereby acknowledges and agrees that Agent and Lenders have the exercisable right to declare the Obligations to be immediately due and payable under the terms of the Loan Agreement and the other Loan Documents.

3.2. **Waiver.** In reliance upon the representations, warranties and covenants of Borrower contained in this Agreement, and subject to the terms and conditions of this Agreement and any

documents or instruments executed in connection herewith, Agent and Lenders agree to waive the Existing Defaults.

**3.3. Reservation of Rights.**

(a) Agent and Lenders have not waived, are not by this Agreement waiving, and have no intention of waiving, any Events of Default which are not listed on Exhibit A attached hereto or which may occur after the date hereof (whether the same or similar to the Existing Defaults or otherwise), and Agent and Lenders have not agreed to forbear or waive with respect to any of their rights or remedies concerning any Events of Default (other than the Existing Defaults to the extent expressly set forth herein) occurring at any time.

(b) Subject to Section 3.2 above with respect to the Existing Defaults, Agent and Lenders reserve the right, in their discretion, to exercise any or all of their rights and remedies under the Loan Agreement and the other Loan Documents as a result of any other Events of Default occurring at any time. Agent and Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, may or will be construed as a waiver of any such rights or remedies.

**3.4. Additional Events of Default.** The parties hereto acknowledge, confirm and agree that any misrepresentation by Borrower, or any failure of Borrower to comply with the covenants, conditions and agreements contained in this Agreement, the Loan Agreement or any other Loan Document or in any other agreement, document, or instrument at any time executed or delivered by Borrower with, to or in favor of Agent or any Lenders will constitute an immediate Event of Default under this Agreement, the Loan Agreement, and the other Loan Documents. In the event that any Person, other than Agent or Lenders, at any time exercises for any reason (including, without limitation, by reason of any Existing Defaults, any other present or future Event of Default, or otherwise) any of its rights or remedies against Borrower or any obligor providing credit support for Borrower's obligations to such other Person, or against Borrower's or such obligor's properties or assets, such event will constitute an immediate Event of Default hereunder and an Event of Default under the Loan Agreement and the other Loan Documents (without any notice or grace or cure period).

**Section 4. AMENDMENTS.**

4.1. Section 5.16 of the Credit Agreement is amended by deleting the following sentence:

Such sole dominion and control and such right of Agent to elect to apply amounts received into the Collection Account against the Obligations shall continue until such time as (x) Borrower has maintained Availability of more than the greater of (i) \$12,500,000 and (ii) 16.67% of the Maximum Revolver Amount, for 30 consecutive days, (y) no Default or Event of Default has occurred and is continuing, and (z) no additional Dominion Triggering Event is reasonably expected to occur on or immediately after such time.

4.2. Section 7 of the Credit Agreement is amended by deleting the following sentences:

Borrower may, at its option upon 10 Business Days prior written notice to Agent, elect to convert its financial covenant test to maintaining a minimum Fixed Charge Coverage Ratio equal to or greater than 1.1:1.0 tested on the last calendar day of each month (commencing with the last day of the most recent monthly period for which financial statements have been delivered hereunder prior to such notice (for purposes of this Section 7, the "Measurement Date")) so long as: (a) Borrower has demonstrated to Agent in a Compliance Certificate (which shall be a supplemental Compliance Certificate if Borrower was not previously required to report its Fixed Charge Coverage Ratio in the Compliance Certificate for the Measurement Date) that it has maintained a Fixed Charge Coverage Ratio, measured as of the Measurement Date for the trailing 12 months, greater than or equal to 1.1:1.0, and (b) no Event of Default has occurred and is continuing. After Borrower so elects, Borrower will be subject to the minimum Fixed Charge Coverage Ratio for the remainder of the term of this Agreement and cannot elect to switch back to the minimum Liquidity covenant in lieu thereof.

4.3. Schedule 5.2 of the Credit Agreement is hereby amended by adding the following row at the beginning of the schedule:

Semi-monthly (no later than the 10th day of each month and 15 days thereafter)	A Cash Flow Forecast consisting of a rolling, 13-week consolidated and consolidating cash flow forecast of the Borrower and its Subsidiaries (including, without limitation, projected and accrued expenses, collections, sales, and loan balances of the Borrower and its Subsidiaries), prepared and approved by the Borrower's management, showing any changes from the previous Cash Flow Forecast and providing an explanation for any material changes in any forecast.
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#### Section 5. AGREEMENT REGARDING COLLECTION ACCOUNT

5.1. Borrower hereby acknowledges and agrees that (i) a Dominion Triggering Event has occurred; (ii) Agent currently is entitled to sole dominion and control of the Collection Account and to apply all amounts received into the Collection Account against the Obligations pursuant to Section 5.16 of the Credit Agreement; (iii) at this time, Agent has elected to exercise such dominion and control pursuant to Section 5.16 with respect to all amounts received in the Collection Account in the future; and (iv) such exercise of dominion and control, in addition to the other rights of Agent under Section 5.16 (as amended herein), which are hereby expressly acknowledged and reserved, will continue until Payment in Full of the Obligations. Further, Borrower and Agent agree that, notwithstanding the foregoing or anything to the contrary in the Credit Agreement, so long as there has been no Default or Event of Default other than the Existing Defaults, Agent (i) will not apply any amounts received from the Collection Account against any Libor Rate Loan and (ii) will remit any such funds received from the Collection Account that are not applied to the Obligations to Borrower by depositing such funds into the Designated Account, *provided that* Agent will not remit such funds if such remittance would cause a Default or Event of Default (including, without

limitation, Borrower not maintaining sufficient Liquidity or Availability immediately prior to and following such remittance).

#### Section 6. REPRESENTATIONS AND WARRANTIES

Borrower hereby represents, warrants and covenants as follows:

6.1. **Representations in the Loan Agreement and the Other Loan Documents.** Each of the representations and warranties made by or on behalf of Borrower to Agent or any Lender in the Loan Agreement or any of the other Loan Documents was true and correct when made, and is, except for the Existing Defaults, true and correct on and as of the date of this Agreement with the same full force and effect as if each of such representations and warranties had been made by Borrower on the date hereof and in this Agreement. All of the information contained in the schedules attached to the Loan Agreement and Guaranty and Security Agreement remains true and correct, except to the extent that (a) Borrower has previously disclosed updates to such schedules in accordance with the Credit Agreement or (b) such schedules are amended and restated and attached hereto as Exhibit B.

6.2. **Binding Effect of Documents.** This Agreement has been duly authorized, executed and delivered to Agent and Lenders by Borrower, is enforceable in accordance with its terms and is in full force and effect.

6.3. **No Conflict.** The execution, delivery and performance of this Agreement by Borrower will not violate any requirement of law or contractual obligation of Borrower and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues, except for as specifically contemplated herein.

#### Section 7. CONDITIONS TO EFFECTIVENESS OF CERTAIN PROVISIONS OF THIS AGREEMENT

The effectiveness of the terms and provisions of this Agreement will be effective immediately upon the satisfaction of the following conditions precedent:

- (a) Agent's receipt of this Agreement, duly authorized, executed and delivered by Borrower;
- (b) Agent's receipt of all fees and other amounts payable on or prior to the closing date of this Agreement, including all attorneys', consultants' and other professionals' fees and expenses incurred by Lender;
- (c) Agent's receipt from Borrower of evidence of the corporate authority of Borrower to execute, deliver and perform its obligations under this Agreement and, if applicable, all other agreements and documents executed in connection therewith; and
- (d) no Default or Event of Default (other than the Existing Defaults) has occurred.

Section 8. **MISCELLANEOUS**

8.1. **Continuing Effect of Loan Agreement.** Except as modified pursuant hereto, no other changes or modifications to the Loan Agreement or any other Loan Document are intended or implied by this Agreement and in all other respects the Loan Agreement and the other Loan Documents hereby are ratified and reaffirmed by all parties hereto as of the date hereof. To the extent of any conflict between the terms of this Agreement, the Loan Agreement and the other Loan Documents, the terms of this Agreement will govern and control. The Loan Agreement and this Agreement will be read and construed as one agreement.

8.2. **Costs and Expenses.** In addition to, and without in any way limiting, the obligations of Borrower set forth in Section 2.5 of the Loan Agreement, Borrower absolutely and unconditionally agrees to pay to Agent on demand by Agent at any time, whether or not all or any of the transactions contemplated by this Agreement are consummated: all fees, costs and expenses incurred by Agent and any of its directors, officers, employees or agents (including, without limitation, fees, costs and expenses incurred by any counsel to Agent, regardless of whether Agent or any such other Person is a prevailing party, in connection with (a) the preparation, negotiation, execution, delivery or enforcement of this Agreement, the Loan Agreement, the Guaranty and Security Agreement and any amendment thereto, any intercreditor agreement with the Term Lenders, Term Agent, and Flextronics, the other Loan Documents and any agreements, documents or instruments contemplated hereby and thereby, and (b) any investigation, litigation or proceeding related to this Agreement, the Loan Agreement, the Guaranty and Security Agreement and any amendment thereto, any intercreditor agreement with the Term Lenders, Term Agent, and Flextronics, or any other Loan Document or any act, omission, event or circumstance in any manner related to any of the foregoing.

8.3. **Further Assurances.** At Borrower's expense, the parties hereto will execute and deliver such additional documents and take such further action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement.

8.4. **Successors and Assigns; No Third-Party Beneficiaries.** This Agreement will be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. No Person other than the parties hereto, and in the case of Sections 8.6 and 8.7 hereof, the Releasees, shall have any rights hereunder or be entitled to rely on this Agreement and all third-party beneficiary rights (other than the rights of the Releasees under Sections 8.6 and 8.7 are hereby expressly disclaimed.

8.5. **Survival of Representations, Warranties and Covenants.** All representations, warranties, covenants and releases of Borrower made in this Agreement or any other document furnished in connection with this Agreement will survive the execution and delivery of this Agreement and the Forbearance Period, and no investigation by Agent or any Lender, or any closing, will affect the representations and warranties or the right of Agent and Lenders to rely upon them.

8.6. **Release.**

(a) In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, Borrower, on behalf of itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Borrower and all such other Persons being hereinafter referred to collectively as the "Releasing Parties" and individually as a "Releasing Party"), hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent, each Lender, and each of their respective successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Agent, Lenders and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any Releasing Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with this Agreement, the Loan Agreement, any of the other Loan Documents or any of the transactions hereunder or thereunder. Releasing Parties hereby represent to the Releasees that they have not assigned or transferred any interest in any Claims against any Releasee prior to the date hereof.

(b) Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

(d) As to each and every claim released hereunder, Borrower hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and having been so advised, specifically waives the benefit of the provisions of Section 1542 of the Civil Code of California which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

As to each and every claim released hereunder, Borrower also waives the benefit of each other similar provision of applicable federal or state law (including without limitation the laws of the state of California), if any, pertaining to general releases after having been advised by its legal counsel with respect thereto.

8.7. **Covenant Not to Sue.** Each Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Releasing Party pursuant to Section 8.6 above. If any Releasing Party violates the foregoing covenant, Borrower, for itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

8.8. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable will not impair or invalidate the remainder of this Agreement.

8.9. **Reviewed by Attorneys.** Borrower represents and warrants to Agent and Lenders that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to discuss this Agreement with, and have this Agreement reviewed by, such attorneys and other persons as Borrower may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto will be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

8.10. **Disgorgement.** If Agent or any Lender is, for any reason, compelled by a court or other tribunal of competent jurisdiction to surrender or disgorge any payment, interest or other consideration described hereunder to any person because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had not been received by Agent or such Lender, and Borrower will be liable to, and will indemnify, defend and hold Agent or such Lender harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section will survive repayment of the Obligations or any termination of the Loan Agreement or any other Loan Document.

8.11. **Reserved.**

8.12. **Relationship.** Borrower agrees that the relationship between Agent and Borrower and between each Lender and Borrower is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement, or any other association between Agent and Borrower or between any Lender and Borrower. Borrower acknowledges that Agent and each Lender has acted at all times only as a creditor to Borrower within the normal and

usual scope of the activities normally undertaken by a creditor and in no event has Agent or any Lender attempted to exercise any control over Borrower or its business or affairs. Borrower further acknowledges that Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Loan Agreement or any of the other Loan Documents that in any way, or to any extent, has interfered with or adversely affected Borrower's ownership of Collateral.

**8.13. No Effect on Rights Under Subordination Agreements.** Agent's agreement pursuant to Section 3.2 of this Agreement shall not extend to any of Agent's rights or remedies under any subordination agreement (including the Intercreditor Agreement) in favor of Agent governing the Term Loan Facility which may arise as a result of the Existing Defaults, it being understood that the Existing Defaults shall at all times constitute Events of Default (or waived Events of Default) for purposes of any applicable subordination agreement (including the Intercreditor Agreement) in favor of Agent, and Agent shall at all times be permitted to enforce all rights and remedies in respect thereof (including, without limitation, blocking payments to any holders of Subordinated Indebtedness in accordance with any applicable subordination agreement).

**8.14. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

**(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.**

**(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 8.14(b).**

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN

CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY

SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE,

EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

8.15. **Counterparts.** This Agreement may be executed and delivered via facsimile or email (in .pdf format) transmission with the same force and effect as if an original were executed, and may be executed in any number of counterparts, but all of such counterparts will together

constitute but one and the same agreement. The Borrower hereby agrees that, notwithstanding the previous sentence, it will provide Agent with original signatures pages within five (5) Business Days of the date hereof.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written.

ENPHASE ENERGY, INC., a Delaware corporation

By /s/ PAUL B. NAHI  
Name Paul B. Nahi  
Title President and CEO

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent and a Lender

By /s/ SCOTT E. BOWERMAN  
Name Scott E. Bowerman  
Title VP

**EXHIBIT A**  
**to**  
**WAIVER AND SECOND AMENDMENT**

**Existing Defaults**

- Event of Default caused by allowing Availability to be less than \$12,500,000, in violation of Section 7, from November 18, 2016 to November 21, 2016.

**EXHIBIT B**  
**to**  
**WAIVER AND SECOND AMENDMENT**

**Updated Schedules**

**None.**

## CONSENT AND THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

This CONSENT AND THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of December 30, 2016, by and between Enphase Energy, Inc., a Delaware corporation ("Borrower"), the lenders party hereto, and Wells Fargo Bank, National Association, as administrative agent for the Lenders ("Agent").

### RECITALS:

WHEREAS, Agent, Lenders and Borrower have entered into certain financing arrangements pursuant to that certain Amended and Restated Credit Agreement, dated as of December 18, 2015 (as amended hereby, and as the same may have heretofore been or may hereafter be further amended, supplemented, extended, renewed, restated, replaced or otherwise modified, the "Loan Agreement"), by and among the Lenders from time to time party thereto (the "Lenders"), Agent, and Borrower;

WHEREAS, as of the date hereof, Borrower seeks to grant Flextronics and Obsidian Agency Services, Inc. ("Term Loan Agent") security interests in certain of its assets;

WHEREAS, such security grants would, but for this Agreement, violate Section 6.2 of the Loan Agreement and lead to an Event of Default under the Loan Agreement;

WHEREAS, Borrower has requested that, subject to the terms and conditions of this Agreement, Agent and Lenders consent to the granting of such security interests; and

WHEREAS, Agent and Lenders are willing to agree to provide such consent solely on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements, warranties and covenants contained herein, the parties hereto agree as follows:

#### **Section 1. DEFINITIONS**

1.1. **Interpretation.** All capitalized terms used herein (including the recitals hereto) will have the respective meanings ascribed thereto in the Loan Agreement unless otherwise defined herein. The foregoing recitals, together with all exhibits attached hereto, are incorporated by this reference and made a part of this Agreement. Unless otherwise provided herein, all section and exhibit references herein are to the corresponding sections and exhibits of this Agreement.

#### **Section 2. ACKNOWLEDGMENTS**

2.1. **Acknowledgment of Obligations.** Borrower hereby acknowledges, confirms and agrees that as of the close of business on December 23, 2016, (a) Borrower is indebted to Lenders in respect of the Revolving Loans in the principal amount of \$11,600,000, (b) Borrower is indebted to Lenders in respect of Letters of Credit in the principal amount of \$73,896.22, and (c) Borrower

is indebted to Lenders in respect of Bank Products in the principal amount of \$0. Borrower hereby acknowledges, confirms and agrees that all such Obligations, together with interest accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by Borrower to Lenders, are unconditionally owing by Borrower to Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

2.2. **Acknowledgment of Security Interests.** Borrower hereby acknowledges, confirms and agrees that Agent has, and will continue to have, valid, enforceable and perfected first-priority continuing liens upon and security interests in the Collateral heretofore granted to Agent, for the benefit of Agent and Lenders, pursuant to the Loan Agreement and the other Loan Documents or otherwise granted to or held by Agent, for the benefit of Agent and Lenders.

2.3. **Binding Effect of Documents.** Borrower hereby acknowledges, confirms and agrees that: (a) this Agreement constitutes a Loan Document, (b) each of the Loan Agreement and the other Loan Documents to which it is a party has been duly executed and delivered to Agent by Borrower, and each is and will remain in full force and effect as of the date hereof except as modified pursuant hereto, (c) the agreements and obligations of Borrower contained in such documents and in this Agreement constitute the legal, valid and binding Obligations of Borrower, enforceable against it in accordance with their respective terms, and Borrower has no valid defense to the enforcement of such Obligations, (d) Agent and Lenders are and will be entitled to the rights, remedies and benefits provided for under the Loan Agreement and the other Loan Documents and applicable law and (e) Borrower shall comply with all limitations, restrictions or prohibitions that would otherwise be effective or applicable under the Loan Agreement or any of the other Loan Documents during the continuance of any Event of Default.

### Section 3. CONSENT TO CERTAIN LIENS

3.1. **Acknowledgment of Potential Default.** Borrower hereby acknowledges and agrees that the Liens it will provide to Flextronics (or its Affiliates) and Term Loan Agent would result in an Event of Default absent the amendments to the Loan Agreement contained in this Agreement. Borrower represents and warrants that as of the date hereof, no other Events of Default exist.

#### 3.2. Consent.

(a) In reliance upon the representations, warranties and covenants of Borrower contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, Agent and Lenders consent to the Liens granted to (i) Flextronics and its Affiliates pursuant to the Security Agreement in the form attached hereto as Exhibit A (the "Flextronics Security Agreement") and (ii) Term Loan Agent pursuant to the First Amendment to Loan and Security Agreement in the form attached hereto as Exhibit B (the "Term Loan IP Amendment").

(b) In reliance upon the representations, warranties and covenants of Borrower contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection herewith, Agent and Lenders (i) consent to

Borrower entering into the Flextronics Security Agreement and (ii) consent to Borrower entering into the Term Loan IP Amendment.

**3.3. Reservation of Rights.**

(a) Agent and Lenders have not waived, are not by this Agreement waiving, and have no intention of waiving, any Events of Default, including any Event of Default which may occur after the date hereof, and Agent and Lenders have not agreed to forbear or waive with respect to any of their rights or remedies concerning any Events of Default occurring at any time.

(b) Agent and Lenders reserve the right, in their discretion, to exercise any or all of their rights and remedies under the Loan Agreement and the other Loan Documents as a result of any Events of Default occurring at any time. No delay on the part of Agent or Lenders in exercising any such rights or remedies, may or will be construed as a waiver of any such rights or remedies.

**3.4. Additional Events of Default.** The parties hereto acknowledge, confirm and agree that any misrepresentation by Borrower, or any failure of Borrower to comply with the covenants, conditions and agreements contained in this Agreement, the Loan Agreement or any other Loan Document or in any other agreement, document, or instrument at any time executed or delivered by Borrower with, to or in favor of Agent or any Lenders will constitute an immediate Event of Default under this Agreement, the Loan Agreement, and the other Loan Documents. In the event that any Person, other than Agent or Lenders, at any time exercises for any reason (including, without limitation, by reason of any present or future Event of Default, or otherwise) any of its rights or remedies against Borrower or any obligor providing credit support for Borrower's obligations to such other Person, or against Borrower's or such obligor's properties or assets, such event will constitute an immediate Event of Default hereunder and an Event of Default under the Loan Agreement and the other Loan Documents (without any notice or grace or cure period).

**Section 4. AMENDMENTS.**

4.1. Schedule 1.1 of the Loan Agreement is amended by adding the following definitions in the proper alphabetical order:

"Flextronics Security Agreement" means that certain Security Agreement, dated as of December 23, 2016, by and among Flextronics America, LLC as agent, and Borrower.

"Term Loan IP Amendment" means that certain First Amendment to Loan and Security Agreement, dated as of December 23, 2016, by and among Obsidian Agency Services, Inc., as agent, the lenders from time to time party thereto, and Borrower.

4.2. Schedule 1.1 of the Loan Agreement is hereby amended by amending the definition of "Permitted Lien" by deleting the word "and" at the end of subsection (s), inserting the word "and" at the end of subsection (t) and adding a new subsection (u) as follows:

(u) Liens created by the Flextronics Security Agreement and the Term Loan IP Amendment, as both are in effect on December 23, 2016.

4.3. Section 3 of the Guaranty and Security Agreement is hereby amended and restated in its entirety as follows:

3. Grant of Security. Each Grantor hereby unconditionally grants, assigns, and pledges to Agent, for the benefit of each member of the Lender Group and each of the Bank Product Providers, to secure the Secured Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of such Grantor's right, title, and interest in all present and after acquired personal property including the following, whether now owned or hereafter acquired or arising and wherever located (the "Collateral"):

- (a) all of such Grantor's Accounts;
- (b) all of such Grantor's Books;
- (c) all of such Grantor's Chattel Paper;
- (d) all of such Grantor's Commercial Tort Claims;
- (e) all of such Grantor's Deposit Accounts;
- (f) all of such Grantor's Equipment;
- (g) all of such Grantor's Farm Products;
- (h) all of such Grantor's Fixtures;
- (i) all of such Grantor's General Intangibles;
- (j) all of such Grantor's Inventory;
- (k) all of such Grantor's Investment Property;
- (l) all of such Grantor's Intellectual Property and Intellectual Property Licenses;
- (m) all of such Grantor's Negotiable Collateral;
- (n) all of such Grantor's Pledged Interests (including all of such Grantor's Pledged Operating Agreements and Pledged Partnership Agreements);
- (o) all of such Grantor's Securities Accounts;
- (p) all of such Grantor's Supporting Obligations;
- (q) all of such Grantor's money, Cash Equivalents, or other assets of such Grantor that now or hereafter come into the possession, custody, or

control of Agent (or its agent or designee) or any other member of the Lender Group;

- (r) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Property, Intellectual Property, Negotiable Collateral, Pledged Interests, Securities Accounts, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the "Proceeds"). Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Grantor or Agent from time to time with respect to any of the Investment Property.

Notwithstanding anything contained in this Agreement to the contrary, the term "Collateral" shall not include: (i) voting Equity Interests of any Foreign Subsidiary or Excluded Domestic Subsidiary, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary or Excluded Domestic Subsidiary; (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of any Grantor if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Agent's security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of Agent's, any other member of the Lender Group's or any Bank Product Provider's continuing security interests in and liens upon any rights or interests of any Grantor in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license, license

agreement, or Equity Interests (including any Accounts or Equity Interests), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Equity Interests; (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law, provided that upon submission and acceptance by the PTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral; (iv) motor vehicles owned or leased by any Grantor; (v) any Deposit Accounts maintained with a financial institution, other than the Agent, exclusively established to cash collateralize letters of credit not issued under the Credit Agreement and Hedge Obligations, in each case, permitted by the Credit Agreement; (vi) any lease, license or agreement or property subject to a purchase money security interest or similar arrangement permitted by the Credit Agreement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money obligation or create a right of termination in favor of any other party thereto (after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other applicable law notwithstanding such prohibition; or (vii) any Equity Interest or asset with respect to which Agent determines in its reasonable discretion by written notice to Grantor that the cost of obtaining a security interest is excessive in relation to the value of the security to be afforded thereby.

4.4. Section 6(k) of the Guaranty and Security Agreement is hereby amended by adding the following sentence to the end of that section:

No Intellectual Property License of any Grantor that is necessary in or material to the conduct of such Grantor's business requires any consent of any other Person that has not been obtained in order for such Grantor to grant the security interest granted hereunder in such Grantor's right, title or interest in or to such Intellectual Property License.

4.5. Section 7(g) of the Guaranty and Security Agreement is hereby amended by deleting the word "and" and the end of subsection (iii) adding the following subsections following subsection (iv):

(v) Upon the request of Agent, in order to facilitate filings with the United States Patent and Trademark Office and the United States Copyright Office, each Grantor shall execute and deliver to Agent one or more Copyright Security Agreements, Trademark Security Agreements, or Patent Security Agreements to further evidence Agent's Lien on such Grantor's Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby;

(vi) Grantors acknowledge and agree that the Agent and Lenders shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of any Grantor. Without limiting the generality of this Section 7(g)(vi), Grantors

acknowledge and agree that no Lender nor Agent shall be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but that Agent or Lenders may do so at their option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Borrower and shall be chargeable as a Revolving Loan;

(vii) Anything to the contrary in this Agreement notwithstanding, in no event shall any Grantor, either itself or through any agent, employee, licensee, or designee, file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency in another country without giving Agent written notice thereof at least five (5) Business Days prior to such filing and complying with Section 7(g)(v). Upon receipt from the United States Copyright Office of notice of registration of any Copyright, each Grantor shall promptly (but in no event later than five (5) Business Days following such receipt) notify (but without duplication of any notice required by Section 7(g)(iii)) Agent of such registration by delivering, or causing to be delivered, to Agent, documentation sufficient for Agent to perfect Agent's Liens on such Copyright. If any Grantor acquires from any Person any Copyright registered with the United States Copyright Office or an application to register any Copyright with the United States Copyright Office, such Grantor shall promptly (but in no event later than five (5) Business Days following such acquisition) notify Agent of such acquisition and deliver, or cause to be delivered, to Agent, documentation sufficient for Agent to perfect Agent's Liens on such Copyright. In the case of such Copyright registrations or applications therefor which were acquired by any Grantor, each such Grantor shall promptly (but in no event later than five (5) Business Days following such acquisition) file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Copyrights; and

(viii) No Grantor shall enter into any Intellectual Property License material to the conduct of the business to receive any license or rights in any Intellectual Property of any other Person unless such Grantor has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of Grantor thereunder) to Agent (and any transferees of Agent).

4.6. Section 11 of the Guaranty and Security Agreement is hereby amended by deleting the word "and" and the end of subsection (e) and adding the following subsections after subsection (f):

(a) to use any Intellectual Property or Intellectual Property Licenses of such Grantor, including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and

to collect any amounts due under Accounts, contracts or Negotiable Collateral of such Grantor; and

(b) Agent, on behalf of the Lenders or the Bank Product Providers, shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Intellectual Property and Intellectual Property Licenses and, if Agent shall commence any such suit, the appropriate Grantor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents reasonably required by Agent in aid of such enforcement.

#### Section 5. REPRESENTATIONS AND WARRANTIES

Borrower hereby represents, warrants and covenants as follows:

5.1. **Representations in the Loan Agreement and the Other Loan Documents.** Each of the representations and warranties made by or on behalf of Borrower to Agent or any Lender in the Loan Agreement or any of the other Loan Documents was true and correct when made, and is, except for the Existing Defaults, true and correct on and as of the date of this Agreement with the same full force and effect as if each of such representations and warranties had been made by Borrower on the date hereof and in this Agreement. All of the information contained in the schedules attached to the Loan Agreement and Guaranty and Security Agreement remains true and correct, except to the extent that (a) Borrower has previously disclosed updates to such schedules in accordance with the Credit Agreement or (b) such schedules are amended and restated and attached hereto as Exhibit C.

5.2. **Binding Effect of Documents.** This Agreement has been duly authorized, executed and delivered to Agent and Lenders by Borrower, is enforceable in accordance with its terms and is in full force and effect.

5.3. **No Conflict.** The execution, delivery and performance of this Agreement by Borrower will not violate any requirement of law or contractual obligation of Borrower and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues, except for as specifically contemplated herein.

#### Section 6. CONDITIONS TO EFFECTIVENESS OF CERTAIN PROVISIONS OF THIS AGREEMENT

The effectiveness of the terms and provisions of this Agreement will be effective immediately upon the satisfaction of the following conditions precedent:

(a) Agent's receipt of this Agreement, duly authorized, executed and delivered by Borrower;

(b) Agent's receipt of all fees and other amounts payable on or prior to the closing date of this Agreement, including all attorneys', consultants' and other professionals' fees and expenses incurred by Lender;

- (c) Agent's receipt from Borrower of evidence of the corporate authority of Borrower to execute, deliver and perform its obligations under this Agreement and, if applicable, all other agreements and documents executed in connection therewith;
- (d) Agent's receipt of duly authorized, executed and delivered intellectual security agreements in the forms attached hereto as Exhibit D;
- (e) Agent's receipt of the Flextronics Security Agreement, in form and substance acceptable to Agent, duly authorized, executed and delivered by Borrower;
- (f) Agent's receipt of the Term Loan IP Amendment, in form and substance acceptable to Agent, duly authorized, executed and delivered by Borrower;
- (g) Agent's receipt of an intercreditor agreement, in the form attached hereto as Exhibit E, between Flextronics, Term Loan Agent, and Agent and acknowledged by Borrower and the Guarantors, duly authorized, executed and delivered by all parties thereto; and
- (h) no Default or Event of Default has occurred.

Section 7. **MISCELLANEOUS**

7.1. **Continuing Effect of Loan Agreement.** Except as modified pursuant hereto, no other changes or modifications to the Loan Agreement or any other Loan Document are intended or implied by this Agreement and in all other respects the Loan Agreement and the other Loan Documents hereby are ratified and reaffirmed by all parties hereto as of the date hereof. To the extent of any conflict between the terms of this Agreement, the Loan Agreement and the other Loan Documents, the terms of this Agreement will govern and control. The Loan Agreement and this Agreement will be read and construed as one agreement.

7.2. **Costs and Expenses.** In addition to, and without in any way limiting, the obligations of Borrower set forth in Section 2.5 of the Loan Agreement, Borrower absolutely and unconditionally agrees to pay to Agent on demand by Agent at any time, whether or not all or any of the transactions contemplated by this Agreement are consummated: all fees, costs and expenses incurred by Agent and any of its directors, officers, employees or agents (including, without limitation, fees, costs and expenses incurred by any counsel to Agent, regardless of whether Agent or any such other Person is a prevailing party, in connection with (a) the preparation, negotiation, execution, delivery or enforcement of this Agreement, the Loan Agreement, the Guaranty and Security Agreement and any amendment thereto, any intercreditor agreement with the Term Lenders, Term Agent, and Flextronics, the other Loan Documents and any agreements, documents or instruments contemplated hereby and thereby, and (b) any investigation, litigation or proceeding related to this Agreement, the Loan Agreement, the Guaranty and Security Agreement and any amendment thereto, any intercreditor agreement with the Term Lenders, Term Agent, and Flextronics, or any other Loan Document or any act, omission, event or circumstance in any manner related to any of the foregoing.

7.3. **Further Assurances.** At Borrower's expense, the parties hereto will execute and deliver such additional documents and take such further action as may be necessary or desirable to effectuate the provisions and purposes of this Agreement.

7.4. **Successors and Assigns; No Third-Party Beneficiaries.** This Agreement will be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. No Person other than the parties hereto, and in the case of Sections 7.6 and 7.7 hereof, the Releasees, shall have any rights hereunder or be entitled to rely on this Agreement and all third-party beneficiary rights (other than the rights of the Releasees under Sections 7.6 and 7.7 are hereby expressly disclaimed.

7.5. **Survival of Representations, Warranties and Covenants.** All representations, warranties, covenants and releases of Borrower made in this Agreement or any other document furnished in connection with this Agreement will survive the execution and delivery of this Agreement and the Forbearance Period, and no investigation by Agent or any Lender, or any closing, will affect the representations and warranties or the right of Agent and Lenders to rely upon them.

7.6. **Release.**

(a) In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, on behalf of itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Borrower and all such other Persons being hereinafter referred to collectively as the "Releasing Parties" and individually as a "Releasing Party"), hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent, each Lender, and each of their respective successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives (Agent, Lenders and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from any and all demands, actions, causes of action, suits, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every kind and nature, known or unknown, suspected or unsuspected, at law or in equity, which any Releasing Party or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with this Agreement, the Loan Agreement, any of the other Loan Documents or any of the transactions hereunder or thereunder. Releasing Parties hereby represent to the Releasees that they have not assigned or transferred any interest in any Claims against any Releasee prior to the date hereof.

(b) Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense to any Claim and may be used as a basis for

an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered will affect in any manner the final, absolute and unconditional nature of the release set forth above.

(d) As to each and every claim released hereunder, Borrower hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and having been so advised, specifically waives the benefit of the provisions of Section 1542 of the Civil Code of California which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

As to each and every claim released hereunder, Borrower also waives the benefit of each other similar provision of applicable federal or state law (including without limitation the laws of the state of California), if any, pertaining to general releases after having been advised by its legal counsel with respect thereto.

7.7. **Covenant Not to Sue.** Each Releasing Party hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by any Releasing Party pursuant to Section 7.6 above. If any Releasing Party violates the foregoing covenant, Borrower, for itself and its successors and assigns, and its present and former members, managers, shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents, legal representatives and other representatives, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by any Releasee as a result of such violation.

7.8. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable will not impair or invalidate the remainder of this Agreement.

7.9. **Reviewed by Attorneys.** Borrower represents and warrants to Agent and Lenders that it (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement, (b) has been afforded an opportunity to discuss this Agreement with, and have this Agreement reviewed by, such attorneys and other persons as Borrower may wish, and (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person. The parties hereto acknowledge and agree that neither this Agreement nor the other documents executed pursuant hereto will be construed more favorably in favor of one than the other based upon which party drafted the same, it being acknowledged that all parties hereto contributed

substantially to the negotiation and preparation of this Agreement and the other documents executed pursuant hereto or in connection herewith.

7.10. **Disgorgement.** If Agent or any Lender is, for any reason, compelled by a court or other tribunal of competent jurisdiction to surrender or disgorge any payment, interest or other consideration described hereunder to any person because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such indebtedness or part thereof intended to be satisfied by virtue of such payment, interest or other consideration will be revived and continue as if such payment, interest or other consideration had not been received by Agent or such Lender, and Borrower will be liable to, and will indemnify, defend and hold Agent or such Lender harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section will survive repayment of the Obligations or any termination of the Loan Agreement or any other Loan Document.

7.11. **Reserved.**

7.12. **Relationship.** Borrower agrees that the relationship between Agent and Borrower and between each Lender and Borrower is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement, or any other association between Agent and Borrower or between any Lender and Borrower. Borrower acknowledges that Agent and each Lender has acted at all times only as a creditor to Borrower within the normal and usual scope of the activities normally undertaken by a creditor and in no event has Agent or any Lender attempted to exercise any control over Borrower or its business or affairs. Borrower further acknowledges that Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Loan Agreement or any of the other Loan Documents that in any way, or to any extent, has interfered with or adversely affected Borrower's ownership of Collateral.

7.13. **No Effect on Rights Under Subordination Agreements.** Agent's agreement pursuant to Section 3.2 of this Agreement shall not extend to any of Agent's rights or remedies under any subordination agreement (including the Intercreditor Agreement) in favor of Agent governing the Term Loan Facility which may arise as a result of the Existing Defaults, it being understood that the Existing Defaults shall at all times constitute Events of Default (or waived Events of Default) for purposes of any applicable subordination agreement (including the Intercreditor Agreement) in favor of Agent, and Agent shall at all times be permitted to enforce all rights and remedies in respect thereof (including, without limitation, blocking payments to any holders of Subordinated Indebtedness in accordance with any applicable subordination agreement).

7.14. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT**

TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 7.14(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING

RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S

DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE,

EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

7.15. **Counterparts.** This Agreement may be executed and delivered via facsimile or email (in .pdf format) transmission with the same force and effect as if an original were executed, and may be executed in any number of counterparts, but all of such counterparts will together constitute but one and the same agreement. The Borrower hereby agrees that, notwithstanding the previous sentence, it will provide Agent with original signatures pages within five (5) Business Days of the date hereof.

[Signature pages follow]

IN WITNESS WHEREOF, this Agreement is executed and delivered as of the day and year first above written.

ENPHASE ENERGY, INC., a Delaware corporation

By /s/ PAUL B. NAHI  
Name Paul B. Nahi  
Title President and CEO

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Agent and a Lender

By /s/ SCOTT E. BOWERMAN  
Name Scott E. Bowerman  
Title VP

EXHIBIT A  
to  
CONSENT AND THIRD AMENDMENT  
Electronics Security Agreement

EXHIBIT B  
to  
CONSENT AND THIRD AMENDMENT

Term Loan IP Amendment

EXHIBIT C  
to  
CONSENT AND THIRD AMENDMENT

Amendments to Disclosure Schedules

None.

EXHIBIT D  
to  
CONSENT AND THIRD AMENDMENT

IP Security Agreements

EXHIBIT E  
to  
CONSENT AND THIRD AMENDMENT

Intercreditor Agreement

**FIRST AMENDMENT TO  
LOAN AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this "**Amendment**") dated as of December 27, 2016, (the "**Effective Date**") is entered into between Enphase Energy, Inc., a Delaware corporation ("**Borrower**"), each Lender (as defined in Section 14 of the Agreement (as defined below)) and Obsidian Agency Services, Inc., a California corporation, in its capacity as administrative and collateral agent (the "**Agent**") for Lenders.

WHEREAS, Borrower, Agent and Lenders entered into that certain Loan and Security Agreement dated as of July 8, 2016, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time (the "**Agreement**");

WHEREAS, Borrower, Agent and Lender hereby desire to amend the Agreement to allow Borrower to grant a senior security interest in its Intellectual Property to Wells Fargo Bank, N.A. (the "**Senior IP Lien**");

WHEREAS, Borrower, Agent and Lender hereby desire to amend the Agreement to allow Borrower to grant a security interest in its Intellectual Property to Agent, for itself and as agent for Lenders (the "**IP Lien**");

WHEREAS, Borrower, Agent and Lender hereby desire to amend the Agreement to allow Borrower to grant a junior security interest in substantially all of Borrower's assets to Flextronics Industrial, LTD (together with all subsidiaries and affiliates of Flextronics Industrial, LTD that manufacture or supply goods, inventory and/or services under the MSA to or for the benefit of Debtor, collectively, "**Flex**");

NOW, THEREFORE, based on the mutual promises of the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed:

1. Capitalized terms used but not defined herein shall have the meaning provided in the Agreement.

2. The following definitions contained in Section 14.1 of the Agreement are hereby added or amended and restated, as applicable, in the proper alphabetical order:

"**Flex**" means Flextronics Industrial, LTD (together with all Subsidiaries and Affiliates of Flextronics Industrial, LTD that manufacture or supply goods, inventory and/or services under the MSA to or for the benefit of Borrower.

"**Flex Pledge Agreement**" means that certain Pledge Agreement dated as of December 27, 2016, by and between Flex and Borrower.

"**Flex Security Agreement**" means that certain Security Agreement dated as of December 27, 2016, by and between Flex and Borrower.

Subsection (f) of the definition of "**Permitted Liens**" is amended and restated as follows:

(f) Liens granted to (i) First Lien Agent under the Wells Fargo Guaranty and Security Agreement or other First Lien Loan Documents, as amended as of December 27, 2016, to secure the "Secured Obligations" (as defined in the Wells Fargo Guaranty and Security Agreement, as amended as of December 27, 2016), and (ii) Flex under the Flex Security Agreement and Flex Pledge Agreement, which Liens granted to Flex must at all times be junior and subordinate to the Liens granted Agent;

"**MSA**" means the Manufacturing Services Agreement entered into between Borrower and Flex on March 1, 2009, together with all modifications, amendments, extensions and substitutions thereof and therefore.

3. Exhibit A of the Agreement is hereby amended and restated in its entirety as provided in Exhibit A attached hereto.

4. Section 4.2(f) of the Agreement is amended and restated in its entirety as follows:

(f) Except as noted in Section 4.2(f) of the Perfection Certificates, Borrower's ownership interests in the entities listed in Section 4.2(f) of the Perfection Certificates are uncertificated, and shall not be certificated unless Borrower and each of the entities listed in Section 4.2(f) of the Perfection Certificates

comply with Section 6.12, below. Section 4.2(f) of the Perfection Certificates may be updated as provided by Section 4.1(a)(v), above.

5. Borrower shall pay an amendment fee of \$100,000 (the "**Amendment Fee**") to Agent for the benefit of Lenders. The Amendment Fee shall be non-refundable and deemed fully earned on the date hereof. Borrower shall pay the Amendment Fee at the earliest of (i) the date the Term Loan is prepaid, provided however, if the prepayment is for less than the full amount of the Term Loan, the Amendment Fee shall be prorated based on the principal amount of the Term Loan that is prepaid, (ii) the Term Loan Maturity Date, and (iii) the date the Term Loan becomes due and payable, which fee shall be deemed fully earned on the date hereof notwithstanding its receipt at a different time.

6. Except as specifically amended in Paragraphs 2, 3 and 4, above, the Agreement shall remain unchanged, in full force and effect in accordance with its terms.

7. Borrower hereby represents, warrants and covenants to Agent and Lender as follows:

a. Borrower has all requisite power and authority to execute this Amendment and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Amendment and all such other agreements and instruments have been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

b. Other than the Subsidiaries listed in Section 4.1(a) of the Perfection Certificate, Borrower has no direct or indirect Subsidiaries.

c. The execution, delivery and performance by Borrower of this Amendment and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in each case other than as already been obtained, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the certificate of incorporation or by-laws of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or the Agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be currently bound or affected.

d. After giving effect to the amendment to the Agreement as set forth in Sections 2, 3 and 4, hereof, no Event of Default exists under the Agreement or any of the other Loan Documents, and all of Borrower's representations and warranties contained in the Loan Documents are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

8. The execution of this Amendment and all other agreements and instruments related hereto shall not be deemed to be a waiver of any Event of Default under the Loan Documents, whether or not known to Agent or Lender and whether or not existing on the date of this Amendment.

9. Release of Agent/Lender.

a. Borrower, for itself and on behalf of its Subsidiaries, respective heirs, legal representatives and successors and assigns, as applicable, hereby releases Agent, Lender and all of their Affiliates,

shareholders, partners, predecessors, employees, officers, directors, attorneys, parent corporations, subsidiaries, agents, participants, assignees, servicers and receivers (collectively, the **“Released Parties”**), except for claims, disputes, differences, liabilities and obligations arising under this Amendment, the Agreement and the other Loan Documents after the date hereof, from any and all known and unknown claims, disputes, differences, liabilities and obligations of any and every nature whatsoever that Borrower or any of them may have or claim, as of the date hereof or as of any prior date, against any one or more of the Released Parties arising from, based upon or related to the Loan Documents, or any other agreement, understanding, action or inaction whatsoever with regard to the Loan Documents or any transaction or matter related thereto, including, without limitation, the origination and servicing of the Term Loan and the enforcement or attempted enforcement of any rights or remedies for default or asserted default under the Loan Documents (collectively, the **“Released Claims”**).

b. Borrower further acknowledges and agrees that the Released Claims include, among other things, all claims arising out of or with respect to any and all transactions relating to the Loan Documents based on any fact, act, inaction, or other occurrence or nonoccurrence on or prior to the date hereof, including, without limitation, any breach of fiduciary duty or duty of fair dealing, breach of confidence, breach of loan commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violation of the Racketeer Influenced and Corrupt Organizations Act, violation of any other statute, ordinance or regulation, intentional or negligent infliction of mental or emotional distress, tortious interference with contractual relations or prospective business advantage, tortious interference with corporate governance, breach of contract, bad practices, unfair competition, libel, slander, conspiracy or any claim for wrongfully accelerating the Term Note or attempting to foreclose on, or obtain a receiver for, any collateral for the Term Note and all statutory claims and causes of action of every nature.

c. In connection with the release contained in this Section 9 of this Amendment (the **“Release”**), Borrower acknowledges that it is aware that it may hereafter discover facts in addition to or different from those that it now knows or believes to be true with respect to the Released Claims, but that it is Borrower’s intention hereby fully, finally and forever to settle and release all claims, disputes, differences, liabilities and obligations, known or unknown, suspected or unsuspected, that now exist, may exist or heretofore have existed by Borrower against any one or more of the Released Parties. In furtherance of that intention, the Release contained in this Amendment shall be and remain in effect as a full and complete release notwithstanding the discovery of the existence of any such additional or different facts.

d. The Release contained in this Amendment shall be effective and irrevocable upon the execution of this Amendment by Agent, Lender and Borrower without any further documentation.

e. BORROWER AGREES AND ACKNOWLEDGES THAT THE RELEASED CLAIMS ARE NOT LIMITED TO MATTERS THAT ARE KNOWN OR DISCLOSED TO BORROWER AND THAT THE RELEASED CLAIMS INCLUDE ALL CLAIMS, DISPUTES, DIFFERENCES, LIABILITIES AND OBLIGATIONS THAT BORROWER DOES NOT KNOW OR SUSPECT TO EXIST AS OF THE DATE HEREOF. BORROWER UNDERSTANDS THAT IT IS GIVING UP ALL RIGHTS AND CLAIMS AGAINST AGENT AND LENDER AND THE OTHER RELEASED PARTIES, KNOWN OR UNKNOWN, THAT ARE IN ANY WAY RELATED TO THE COLLATERAL OR THE LOAN.

f. THE PARTIES SPECIFICALLY ALLOCATE THE RISK OF ANY MISTAKE IN ENTERING INTO THE RELEASE TO THE PARTY OR PARTIES CLAIMING TO HAVE BEEN MISTAKEN.

g. Borrower acknowledges having read and understood and hereby waives the benefits of Section 1542 of the California Civil Code, which provides as follows (and hereby waives the benefits of any similar law of the state that may be applicable):

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

10. The recitals set forth above are true and correct, and are incorporated by reference to this Amendment. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered (whether by facsimile, electronically or otherwise) shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Sections 11 and 13 of the Agreement are hereby incorporated by reference to this Amendment, *mutatis mutandis*.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

LENDER:

**Tennenbaum Special Situations Fund IX, LLC**

By Tennenbaum Capital Partners, LLC, its Investment Manager

By: /s/ Howard Leukowitz

Name: Howard Leukowitz

Title: Managing Partner

Address:

c/o Tennenbaum Capital Partners, LLC

2951 28<sup>th</sup> Street, Suite 1000

Santa Monica, CA 90405

Attention: Todd Jaquez-Fissori and Asher Finci

**Tennenbaum Special Situations IX-A, LLC**

By Tennenbaum Capital Partners, LLC, its Investment Manager

By: /s/ Howard Leukowitz

Name: Howard Leukowitz

Title: Managing Partner

Address:

c/o Tennenbaum Capital Partners, LLC

2951 28<sup>th</sup> Street, Suite 1000

Santa Monica, CA 90405

Attention: Todd Jaquez-Fissori and Asher Finci

**Tennenbaum Special Situations IX-O, L.P.**

By Tennenbaum Capital Partners, LLC, its Investment Manager

By: /s/ Howard Leukowitz

Name: Howard Leukowitz

Title: Managing Partner

Address:

c/o Tennenbaum Capital Partners, LLC

2951 28<sup>th</sup> Street, Suite 1000

Santa Monica, CA 90405

Attention: Todd Jaquez-Fissori and Asher Finci

**Tennenbaum Special Situations IX-C, L.P.**

By Tennenbaum Capital Partners, LLC, its Investment Manager

By: /s/ Howard Leukowitz

Name: Howard Leukowitz

Title: Managing Partner

Address:

c/o Tennenbaum Capital Partners, LLC

2951 28<sup>th</sup> Street, Suite 1000

Santa Monica, CA 90405

Attention: Todd Jaquez-Fissori and Asher Finci

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

AGENT:

**Obsidian Agency Services, Inc.**

By: /s/ Howard Leukowitz

Name: Howard Leukowitz

Title: President

Date.

BORROWER:

**Enphase Energy, Inc.**

/s/ Paul B. Nahi

Name: Paul B. Nahi

Title: President and CEO

#### Exhibit A Collateral Description

The Collateral consists of all of Borrower's real and personal property of every kind and nature whether now owned or hereafter acquired by, or arising in favor of Borrower, and regardless of where located, including, without limitation, all of Borrower's right, title and interest in and to the following property:

1. All Goods, Accounts (including health-care receivables), Pledged Accounts, Equipment, Inventory, contract rights (including Intellectual Property and Intellectual Property Licenses) or rights to payment of money, leases, license agreements (including Intellectual Property and Intellectual Property Licenses), franchise agreements, General Intangibles (including Intellectual Property and Intellectual Property Licenses), Commercial Tort Claims, Documents, Instruments (including any Promissory Notes), Chattel Paper (whether tangible or electronic), cash and Cash Equivalents, Fixtures, letters of credit, Letter of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities, and all other Investment Property, Supporting Obligations, and Financial Assets, whether now owned or hereafter acquired, wherever located; and

2. All Borrower's Books relating to the foregoing, and all additions, attachments, accessories, accessions and improvements to any of the foregoing, and all substitutions, replacements or exchanges therefor, and all Proceeds, insurance claims, products, profits and other rights to payments not otherwise included in the foregoing;

provided, that, the grant of security interest herein shall not extend to and the term "Collateral" shall not include (a) any rights or interests held under any contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party that are not assignable or prohibit the grant of a security interest or lien therein by applicable law or their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); (b) equipment subject to liens permitted pursuant to Subsection (c) of the definition of Permitted Liens where the agreements governing the capital lease obligations or purchase money Indebtedness related thereto prohibit such security interest, for so long as such prohibition exists; (c) voting Equity Interests of any Foreign Subsidiary or Excluded Domestic Subsidiary, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary or Excluded Domestic Subsidiary; or (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to use trademark applications under applicable federal law; provided, that upon submission and acceptance by the USPTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral.

In addition, in the event that the Wells Fargo Indebtedness is secured or in the future becomes secured by any of Borrower's real property interests of any nature, then all such assets shall be considered as part of the Collateral. Once the Wells Fargo Indebtedness is no longer outstanding, all of Borrower's real property interests shall be considered as part of the Collateral.

## AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

**THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (this "**Agreement**") dated as of February 10, 2017, (the "**Effective Date**") is entered into between Enphase Energy, Inc., a Delaware corporation ("**Borrower**"), each Lender (as defined in Section 14), Cortland Capital Market Services LLC, as administrative agent for the Lenders (in such capacity, the "**Administrative Agent**"), and Obsidian Agency Services, Inc., a California corporation, as collateral agent for the Lenders (in such capacity, the "**Collateral Agent**"), and provides the terms on which Lenders shall lend to Borrower and Borrower shall repay Lenders.

WHEREAS, Borrower, Collateral Agent and Lenders entered into that certain Loan and Security Agreement dated as of July 8, 2016 (the "**Original Agreement**"), which was amended pursuant to that certain First Amendment to Loan and Security Agreement dated as of December 27, 2016, the effectiveness of which was delayed pursuant to that certain Agreement Regarding Effective Date dated as of January 3, 2017 (collectively, the "**First Amendment**" and together with the Original Agreement, the "**Existing Agreement**");

WHEREAS, on July 8, 2016, Lenders advanced Twenty Five Million Dollars (\$25,000,000) under the Existing Agreement, the entire principal balance of which remains outstanding (the "**Initial Credit Extension**");

WHEREAS, Borrower, Agents and Lenders desire to increase the Term Loan Commitment by an additional Twenty Five Million Dollars (\$25,000,000) for a total of Fifty Million Dollars (\$50,000,000), and pursuant to this Agreement, make an additional Credit Extension to Borrower under the Term Loan of Twenty Five Million Dollars (\$25,000,000) (the "**Additional Credit Extension**");

WHEREAS, Borrower, Agents and Lenders desire to amend and restate the Existing Agreement in its entirety as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **SECTION 1. LOAN AND TERMS OF PAYMENT**

**1.1. Promise to Pay.** Borrower hereby unconditionally promises to pay Lenders the outstanding principal amount of all Credit Extensions, all accrued and unpaid interest thereon and all other Obligations as and when due in accordance with this Agreement.

#### **1.2. Term Loan.**

(a) **Availability.** Subject to the terms and conditions of this Agreement, Lenders, severally and not jointly, agree to make in accordance with Schedule 1.2, and Borrower agrees to draw, the Additional Credit Extension in its entirety on the Effective Date, which when added to the Initial Credit Extension, shall bring the aggregate Credit Extensions under this Agreement to Fifty Million Dollars (\$50,000,000). After repayment, Credit Extensions made under the Term Loan may not be reborrowed. Under no circumstances shall a Lender be required to make Credit Extensions in excess of the commitment amount listed next to such Lender's name on Schedule 1.2.

(b) **Repayment.** The Term Loan shall be "interest-only" during the Interest Only Period, with interest payable on the outstanding amount of Credit Extensions made under the Term Loan on the Interest Payment Date. Upon termination of the Interest Only Period, the outstanding Credit Extensions under

the Term Loan shall be repaid in equal monthly installments (subject to the next sentence) so that all Credit Extensions under the Term Loan and interest accrued thereon shall be repaid on the Term Loan Maturity Date, which payments shall be due on the first Business Day of each month. If the Term Loan Interest Rate changes or if prepayments on the Term Loan are made, the amount of the amortized payments will be recalculated so that remaining periodic payments under the Term Loan (including interest) shall be repaid in equal monthly installments from the date of such change or prepayment until the Term Loan Maturity Date. Any remaining outstanding principal amount of the Credit Extensions and any accrued and unpaid interest thereon and all other outstanding Obligations are due and payable in full on the Term Loan Maturity Date.

(c) Prepayment.

(i) Mandatory Prepayment Upon Acceleration. If repayment of the Term Loan is accelerated, Borrower shall immediately pay to Lenders an amount equal to the sum of (a) all outstanding principal with respect to the Term Loan, plus accrued and unpaid interest thereon, (b) the Prepayment Fee, (c) the Closing Fee (less any portion of such Closing Fee already paid), and (d) all other sums, including Lender Expenses, if any, that shall have become due and payable hereunder in connection with the Term Loan, including interest at the Default Rate with respect to any past due amounts.

(ii) Voluntary Prepayment. Borrower shall have the option to prepay all, or any part, of the Term Loan, provided Borrower (i) delivers written notice to Administrative Agent of its election to prepay the Term Loan at least five (5) Business Days prior to such prepayment, and (ii) pays, on the date of such prepayment (a) all or such part of the outstanding principal with respect to the Term Loan set forth in its notice, plus accrued and unpaid interest thereon, (b) the Prepayment Fee, (c) the Closing Fee (or pro rata portion if less than the full amount of the outstanding Term Loan is repaid), and (d) all other sums, including Lender Expenses, if any, that shall have become due and payable hereunder in connection with the Term Loan, including interest at the Default Rate with respect to any past due amounts; provided, that any such notice delivered in connection with any prepayment with the proceeds of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met.

**1.3. Payment of Interest on the Credit Extensions**

(a) Computation of Interest. Interest on the Credit Extensions and all fees payable hereunder shall be computed on the basis of a 360-day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on any Credit Extension, the date of the making of such Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

(b) Credit Extensions. Each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made, continued or converted until paid in full at the Term Loan Interest Rate. Pursuant to the terms hereof, interest on each Credit Extension shall be paid in arrears on each Interest Payment Date.

(c) Default Interest. At Collateral Agent's election (with respect to which written notice will be provided by Collateral Agent to Administrative Agent), upon the occurrence and during the continuation of an Event of Default, which election can be retroactive to the date of the Event of Default, and subject to the limitation in Section 13.3 herein, Obligations shall bear interest at five percent (5.00%) above the rate effective immediately before the Event of Default (the "**Default Rate**"). Without limiting the generality of the foregoing, upon the curing or waiver of any Event of Default, the interest applicable to the Obligations shall revert to the interest applicable immediately prior to the occurrence of such Event of Default. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Lender Expenses) but are not paid when due shall bear interest until paid at the Default

Rate. Payment or acceptance of the increased interest provided in this Section 1.3(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agents or Lender.

(d) Interest Rate Changes. Each change in the Term Loan Interest Rate shall be effective on the effective date of the change in the LIBOR Rate. Administrative Agent shall use its best efforts to give Borrower prompt notice of any such change; provided, however, that any failure by Administrative Agent to provide Borrower with notice hereunder shall not affect its right to make changes in the applicable interest rate.

(e) LIBOR Adjustment. Notwithstanding anything herein to the contrary, in the event Administrative Agent shall have determined that Dollar deposits in the principal amounts of the Term Loan are not generally available in the London interbank market, or that the rates at which such dollar deposits are being offered will not adequately and fairly reflect the cost to Lender of making or maintaining loans at the LIBOR Rate or that reasonable means do not exist for ascertaining the LIBOR Rate, Administrative Agent will provide notice of such determination to Borrower (a "**LIBOR Unavailability Notice**"). In the event of any such determination, until Administrative Agent shall have advised Borrower that the circumstances giving rise to such notice no longer exist, interest on the Term Loan shall accrue by reference to the Term Loan Alternate Base Rate. Each determination by Administrative Agent under this Section 1.3(e) shall be conclusive absent manifest error.

**1.4. Method of Payment**. Unless otherwise approved by Administrative Agent, all payments to be made by Borrower under any of the Loan Documents shall be made by same day wire transfer to Administrative Agent for the benefit of Lenders in accordance with the wire transfer instructions as provided in writing by Administrative Agent, as may be updated in writing from time to time by Administrative Agent.

**1.5. Fees.**

(a) Commitment Fee. Borrower paid \$825,000 of the Commitment Fee at the closing of the Original Agreement, which fee was non-refundable and deemed fully earned on July 8, 2016. Borrower shall pay the remaining \$750,000 of the Commitment Fee on the Effective Date, which fee shall also be non-refundable, and deemed fully earned on the Effective Date. Lenders may deduct the remaining Commitment Fee from the Credit Extension made on the Effective Date.

(b) Prepayment Fee. Borrower shall pay the Prepayment Fee, if and when due hereunder.

(c) Lender Expenses. Borrower shall pay all heretofore unreimbursed Lender Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of the Loan Documents) incurred through the Effective Date, and all Lender Expenses incurred thereafter, on demand. Lender may deduct the Lender Expenses from any Credit Extension.

(d) Origination Fee. Borrower has paid the Origination Fee, which fee is deemed fully earned, and which fee shall be used to offset Lender Expenses relating to diligence and other expenses (including attorneys' fees and expenses) incurred prior to July 8, 2016.

(e) Closing Fee. Borrower shall pay 25% of the Closing Fee on July 8, 2017, and each anniversary thereafter until paid in full; provided however, that if the entire Term Loan is prepaid or if it becomes due and payable prior to the Term Loan Maturity Date, the entire Closing Fee (less any portion of the Closing Fee previously paid) shall be due and payable, and provided further, that if less than the entire Term Loan is prepaid, an amount of the Closing Fee (less any portion of the Closing Fee previously paid) equal to the percentage of the Term Loan being prepaid shall be due and payable. Notwithstanding the foregoing, in no event shall Borrower be required to pay in excess of \$3,500,000 under this Section 1.5(e). Two Million Five Hundred Thousand Dollars (\$2,500,000) of the Closing Fee shall be deemed fully earned on July 8, 2016, notwithstanding its receipt at a different time, and One Million Dollars (\$1,000,000)

of the Closing Fee shall be deemed fully earned on the Effective Date notwithstanding its receipt at a different time.

**1.6. Payments; Application of Payments.** All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. California time on the date when due. Payments of principal and/or interest received after 12:00 p.m. California time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid. The order and method of application of funds with respect to principal, interest and fees owed shall be made in the sole discretion of Collateral Agent, and Collateral Agent shall promptly advise Administrative Agent in writing thereof.

**1.7. Promissory Notes.** Notwithstanding anything to the contrary contained in this Agreement, Notes shall only be delivered to Collateral Agent on request. No failure of Agents or any Lender to request or obtain a Note evidencing the Credit Extensions to Borrower shall affect or in any manner impair the obligations of Borrower to pay the Credit Extensions (and all related Obligations) incurred by Borrower that would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the Loan Documents. At any time when Collateral Agent requests the delivery of a Note to evidence any of the Credit Extensions, Borrower shall promptly execute and deliver to Collateral Agent the requested Note in the appropriate amount or amounts to evidence such Credit Extensions.

**1.8. Reserved.**

**1.9. Pro Rata Treatment.** Except as otherwise provided in this Agreement, Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of Borrower in respect of any Obligations hereunder, Administrative Agent shall distribute such payment to Lenders entitled thereto (other than any Lender that has consented in writing to waive its pro rata share of any such payment) on a pro rata basis among the Lenders in accordance with their respective Pro Rata Percentage.

**1.10. Ratable Sharing.** Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable Bankruptcy Law, or by any other means (but excluding any sale or participation of its Loan to a Person other than Borrower or an Affiliate thereof, which shall be included), obtain payment (voluntary or involuntary) in respect of any principal or interest on any Credit Extension as a result of which the unpaid principal portion of its Credit Extensions shall be proportionately less than the unpaid principal portion of the Credit Extensions of any other Lender, it shall (a) notify Administrative Agent of such fact and (b) be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Credit Extensions of such other Lender, so that the aggregate unpaid principal amount of the Credit Extensions and participations held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Credit Extensions then outstanding as the principal amount of its Credit Extensions prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Credit Extensions outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 1.10 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest. The Loan Parties expressly consent to the foregoing arrangements and agree that any Lender holding a participation in the Term Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim or other event with respect to any and all moneys owing

by the Loan Parties to such Lender by reason thereof as fully as if such Lender had made a Term Loan directly to Borrower in the amount of such participation.

**1.11. Taxes.**

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Agent) requires the deduction or withholding of any Tax from any such payment by a Loan Party or Administrative Agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Borrower shall, or shall cause each of the Loan Parties to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Administrative Agent or a Lender shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Administrative Agent has not already been indemnified by any of the Loan Parties for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.1(f) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to Lender from any other source against any amount due to Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 1.11, Borrower shall, or shall cause the Loan Party to, deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times prescribed by applicable law, or as reasonably requested by Borrower or Administrative Agent such properly completed and executed documentation prescribed by applicable law

or as reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing, any Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrower or Administrative Agent), whichever of the following is applicable:

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall deliver to Borrower and Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement whichever of the following is applicable:

i. in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such Tax treaty;

ii. executed originals of IRS Form W-8ECI;

iii. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate substantially in the form of Exhibit H-1 to the effect that (A) such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC and (B) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Foreign Lender (a "**U.S. Tax Compliance Certificate**") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E; iv. to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), executed originals of IRS Form W-8IMY, accompanied by an IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially

in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner; or

v. executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made.

- iii. If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

g. If Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 1.11 (including by the payment of additional amounts pursuant to this Section 1.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph g (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph g, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph g the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid.

h. Nothing contained in this Section 1.11 shall require any Lender (or any transferee or assignee) or Administrative Agent to make available any of its Tax Returns or any other information that it reasonably deems to be confidential or proprietary.

## **SECTION 2. CONDITIONS OF CREDIT EXTENSIONS**

**2.1. Conditions Precedent to the Second Credit Extension.** Each Lender's obligation to make the Credit Extension on the Effective Date is subject to the condition precedent that Collateral Agent and Administrative Agent shall have received, in form and substance satisfactory to Collateral Agent and Administrative Agent, such documents, and evidence of completion of such other matters, as Collateral Agent may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed signatures to the Loan Documents, the Fee Letter and each Warrant;

(b) duly executed certificate from Borrower and any Joining Party's secretary containing approved Borrowing Resolutions, current Certificate of Incorporation (or equivalent document), Bylaws and a good standing certificate from the jurisdiction of Borrower's and any Joining Party's formation as well as any state where they maintain a business presence;

(c) any other documentation Collateral Agent or Administrative Agent reasonably requests;

(d) a payoff letter for the Wells Fargo Indebtedness;

(e) all documentation and other information which Agents or Lenders reasonably request with respect to the Borrower in order to comply with their ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT ACT, including an IRS Form W-9 or applicable tax forms; and

(f) payment of the remaining Commitment Fee and Lender Expenses.

**2.2. Conditions Precedent to all Credit Extensions.** Each Lender's obligations to make each Credit Extension is also subject to the following conditions precedent: (a) timely receipt of a completed Notice of Borrowing;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Notice of Borrowing and on the Funding Date of each Credit Extension, provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete, provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete as of such date; and

(c) in Collateral Agent's reasonable discretion, there has not been any material impairment in the Collateral, general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations.

**2.3. Covenant to Deliver.** Borrower agrees to deliver to Lenders and the Agents each item required to be delivered to Lender or the respective Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Lender or the Agents of any such item shall not constitute a waiver by Lender or the Agents of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in the Lender's sole discretion, subject to the consent of the Agents.

**2.4. Procedure for the Borrowing of Credit Extensions.** Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, each Credit

Extension shall be made upon Borrower's irrevocable written notice delivered to Administrative Agent in the form of a completed Notice of Borrowing executed by a Responsible Officer of Borrower or without instructions at the direction of Collateral Agent or the Required Lenders if the Credit Extensions are necessary to meet Obligations which have become due. Such Notice of Borrowing must be received by Administrative Agent prior to 12:00 p.m. California time at least three (3) Business Days prior to the requested Funding Date, provided that the Notice of Borrowing for the Credit Extension to be made on the Effective Date may be provided on the Effective Date. Administrative Agent shall promptly notify each Lender of its Pro Rata Share of a Credit Extension and each Lender shall deliver to the Administrative Agent, by wire transfer in immediately available funds, no later than 12:00 pm California time on the Borrowing Date. Upon written confirmation from Lenders that the terms and conditions set forth in Section 2 have been satisfied and receipt of all Loan funds, Administrative Agent shall transfer such funds to the Borrower by wire transfer in immediately available funds to the account or accounts designated in writing to Administrative Agent by the Borrower (either in the Notice of Borrowing or in a separate flow of funds memorandum provided to Administrative Agent on or before the Funding Date or Effective Date, as applicable). No Credit Extensions shall be deemed made to Borrower, and no interest shall accrue on any such Credit Extension, until the related funds have been deposited in the account specified in the applicable Notice of Borrowing.

### **SECTION 3. CREATION OF SECURITY INTEREST**

**3.3. Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the benefit of Collateral Agent and Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the benefit of Collateral Agent and Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If Collateral Agent determines that the perfection of its security interest in any Collateral requires the recordation or filing of documentation other than a Financing Statement, Borrower shall promptly execute such additional documentation upon presentation. If Collateral Agent determines that the perfection of its security interest in any Collateral requires the possession or control of such Collateral, Borrower shall, subject to the Intercreditor Agreement and Section 3.3, promptly deliver such Collateral to Collateral Agent or enter into a control agreement satisfactory to the Collateral Agent to establish such control.

**3.4. Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens described in Subsections (a) through (m) of the definition of Permitted Liens that may have superior priority to Collateral Agent's Lien under this Agreement). If Borrower shall acquire a Commercial Tort Claim in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000), Borrower shall promptly notify Collateral Agent in a writing signed by Borrower of the general details thereof and upon request grant to Collateral Agent in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

**3.5. Termination.** If the Obligations (other than inchoate indemnity obligations) are satisfied in full and this Agreement is terminated, Collateral Agent's Lien on the Collateral shall automatically terminate and all rights therein shall revert to each Loan Party and Collateral Agent shall, at such Loan Party's sole cost and expense, execute such documentation and take such further action as may be reasonably necessary to evidence the termination contemplated by this Section 3.3. If at any time after such termination or Collateral Agent's release of its security interest granted herein any Collateral or other property Lender receives in satisfaction of the Obligations is recovered, disgorged, set aside or otherwise avoided, or is subject to recovery, disgorgement, being set aside or avoided (whether through a formal court proceeding or otherwise) by or to Borrower, a bankruptcy trustee, a receiver or similar representative, then this Agreement and any other Loan Documents as Collateral Agent may elect shall be deemed revived, reinstated and in full force and effect as if the original termination did not occur, and Collateral Agent's security interest and all other rights in the

Collateral shall be deemed in full force and effect until the full and final repayment of all Obligations (other than inchoate indemnity obligations).

Notwithstanding anything herein to the contrary, upon the consummation of any sale or other disposition by any Loan Party of any Collateral to a third party that is not a Loan Party in a transaction permitted under this Agreement or any other Loan Document, or upon the effectiveness in accordance with this Agreement of any written consent to the release of the security interest in any Collateral, the security interests in such Collateral shall be automatically released (but shall attach to the proceeds or products thereof) without further action by any party. In connection with any such release, the Collateral Agent shall execute and deliver to any Loan Party, at such Loan Party's expense and without recourse to or warranty by the Collateral Agent, all documents that such Loan Party shall reasonably request to evidence such release, including a UCC-3 to reflect such release.

**3.6. Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent and Lenders' interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate Collateral Agent's and Lenders' rights under the Code.

**3.7. Release of IP Lien.** Upon the occurrence of the IP Release Trigger, (a) the IP Security Agreement shall automatically terminate, and (b) Collateral Agent shall use commercially reasonable efforts to file applicable releases with the U.S. Patent and Trademark Office regarding Borrower's Intellectual Property, and Borrower agrees to reimburse Collateral Agent for Collateral Agent's reasonable costs and expenses (including attorneys' fees) related to such releases and filings and that such costs and expenses shall be Lender Expenses.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as follows:

##### **4.3. Due Organization, Authorization; Power and Authority; Enforceability.**

(a) Borrower is and each of its Subsidiaries are duly existing and in good standing as a Registered Organization in their jurisdiction of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed and signed certificate entitled "**Perfection Certificate**" and collectively, the "**Perfection Certificates**." Borrower represents and warrants to Lenders and Agents, as of the Effective Date, as of the date that each Compliance Certificate is to be delivered and as of the date each Compliance Certificate is delivered, that (i) Borrower and each Subsidiary's exact legal name and address is as indicated in Section 4.1(a) of the Perfection Certificates; (ii) Borrower and each Subsidiary is an organization of the type and is organized in the jurisdiction set forth in Section 4.1(a) of the Perfection Certificates; (iii) Section 4.1(a) of Perfection Certificates accurately sets forth Borrower and each Subsidiary's organizational identification number or accurately states that there is none; (iv) Section 4.1(a) of the Perfection Certificates accurately sets forth the names (formal and informal), jurisdiction of formation, organizational structure or type, and organizational number assigned by its jurisdiction that Borrower and each Subsidiary used for the past five (5) years; and (v) all other information set forth on the Perfection Certificates is accurate and complete (it being understood that (A) if any information contained in the Perfection Certificates changes after the Effective Date and if that information relates to a Subsection of this Section 4 which specifically allows for information in the Perfection Certificates to be updated after the Effective Date, Borrower shall, or Borrower shall cause its applicable Subsidiary to, update such information in Borrower's next timely delivered Compliance Certificate, and (B) that any such update shall be effective only to update changes and not to correct errors). After the Effective Date, Borrower and its

Subsidiaries may update any information under Section 4.1(a) of the Perfection Certificates by delivery of a written notice to Collateral Agent.

(b) The execution, delivery and performance by Borrower and each other Loan Party of the Loan Documents to which they are a party have been duly authorized, and do not (i) conflict with Borrower's or any Loan Party's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower or any Subsidiary is bound.

(c) This Agreement has been duly executed and delivered by Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

#### **4.4. Collateral.**

(a) Except as disclosed in the Perfection Certificates, Borrower has good title to, has rights in, and the power to Dispose of each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Pledged Accounts other than the Pledged Accounts (i) described in Section 4.2(a) of the Perfection Certificates (which may be amended to add or remove Pledged Accounts as provided by Section 4.1(a)(v)) delivered to Lenders and Collateral Agent in connection herewith, or (ii) of which Borrower has given Lenders and Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein (other than with respect to Excluded Accounts). Borrower's Accounts and those of its Subsidiaries are *bona fide*, existing obligations of the Account Debtors.

(b) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in Section 4.2(b) of the Perfection Certificates, which may be amended to add or remove bailees as provided by Section 4.1(a)(v), above or as permitted pursuant to Section 6.3. None of the components of the Collateral shall be maintained at locations other than as provided in Section 4.2(b) and Schedule H of the Perfection Certificates, which may be amended to add or remove bailees and real property locations as provided by Section 4.1(a)(v), above or as permitted pursuant to Section 6.3.

(c) To the extent that Inventory exists, all Borrower's and its Subsidiaries' Inventory is in all material respects of good and marketable quality, free from defect (other than defects that do not prevent satisfaction of the standard requirements for delivery and acceptance of such Inventory and except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established).

(d) Section 4.2(d) of the Perfection Certificates lists all Intellectual Property of Borrower and its Subsidiaries (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public), and may be updated to add or remove Intellectual Property as provided by Section 4.1(a)(v), above. Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (i) non-exclusive licenses granted to its customers in the ordinary course of business, (ii) over-the-counter software and other non-customized mass market licenses that are commercially available to the public, and (iii) material Intellectual Property licensed to Borrower or its

Subsidiaries and noted on the Perfection Certificates. Except as specifically noted in Section 4.2(d) of the Perfection Certificates, each Loan Party has the full right and authority to Dispose of its Intellectual Property, and each of its Subsidiaries has the full right and authority to Dispose of its Intellectual Property. Except as specifically noted in Section 4.2(d) of the Perfection Certificates, each Patent and Trademark which Borrower or any of its Subsidiaries own or purport to own is valid and enforceable, and no part of such Intellectual Property has been judged invalid or unenforceable, in whole or in part. Neither Borrower nor any of its Subsidiaries is in breach of any agreement related to their Intellectual Property, and no claim has been made in writing that any part of such Intellectual Property violates the rights of any third party.

(e) Except as noted in Section 4.2(e) of the Perfection Certificates, neither Borrower nor any of its Subsidiaries are a party to, or bound by, any Restricted License. Section 4.2(e) of the Perfection Certificates may be updated as provided by Section 4.1(a)(v), above.

(f) Except as noted in Section 4.2(f) of the Perfection Certificates, Borrower's ownership interests in the entities listed in Section 4.2(f) of the Perfection Certificates are uncertificated, and shall not be certificated unless Borrower and each of the entities listed in Section 4.2(f) of the Perfection Certificates comply with Section 6.12, below. Section 4.2(f) of the Perfection Certificates may be updated as provided by Section 4.1(a)(v), above.

**4.5. Accounts.** Upon the occurrence of an Event of Default that is continuing, Collateral Agent may notify any Account Debtor owing Borrower money of Collateral Agent's security interest in such funds and verify the amount of such Account. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor.

**4.6. Litigation; Governmental Action.** Except as set forth in Section 4.4 of the Perfection Certificates (which may be updated as provided by Section 4.1(a)(v), above, to include claims asserted by Borrower), there are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving (i) more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000), or (ii) fines, penalties or other sanctions by any Governmental Authority. Except as set forth in Section 4.4 of the Perfection Certificates (which may be updated as provided by Section 4.1(a)(v), above), there are no actions or proceedings pending by Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000). Except as set forth in Section 4.4 of the Perfection Certificates, there is no action or proceeding pending by or against Borrower or any of its Subsidiaries where Borrower or any Subsidiary has incurred in excess of Five Hundred Thousand Dollars (\$500,000) in legal expenses, including without limitation, attorneys' fees, for which Borrower has not been reimbursed by third party insurance (i.e., not self-insurance) within 60 days of Borrower's written request for reimbursement.

**4.7. Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Lenders and Collateral Agent fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations (other than, in the case of unaudited financial statements, the absence of footnotes and normal year-end adjustments) for the periods presented. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Lenders and Collateral Agent. Except as set forth in Section 4.12 of the Perfection Certificates (as may be updated as provided by Section 4.1(a)(v), above), there are no loans to Borrower's or any of its Subsidiaries' employees or directors, and there are no loans from such employees and directors to Borrower or any of its Subsidiaries other than unreimbursed expenses occurring in the ordinary course of business.

**4.8. Material Adverse Change; Solvency.** No Material Adverse Change has occurred since the date of the most recent financial statements submitted to Lenders and/or Collateral Agent (whether as required by this Agreement or otherwise provided). Borrower is, and Borrower and its Subsidiaries, on a consolidated basis, are, Solvent.

**4.9. Regulatory Compliance.** Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to result in liability in excess of Five Hundred Thousand Dollars (\$500,000). None of Borrower’s or any of its Subsidiaries’ properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted.

**4.10. Investments.** Borrower and its Subsidiaries do not own any Equity Interests except for Permitted Investments.

**4.11. Tax Returns and Payments; Pension Contributions.**

(a) Borrower and its Subsidiaries have timely filed all required Tax Returns and reports, and have timely paid (after giving effect to any duly filed extension) all foreign, federal, state and local Taxes due and payable and all assessments, deposits and contributions owed, in each case where such liability is in excess of \$25,000. Borrower may, and may allow its Subsidiaries to, defer payment of any contested Taxes, provided that Borrower or its Subsidiaries, as applicable, (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested Taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien”. Borrower is unaware of any claims or adjustments proposed for any of Borrower’s or its Subsidiaries’ prior tax years which could result in additional Taxes in excess of \$25,000 becoming due and payable. Borrower and its Subsidiaries have paid all amounts necessary, if any, to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have not withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

(b) Neither Borrower nor any of its Subsidiaries ever has been, is, or, upon the consummation of the transactions contemplated hereby, by any other Loan Document or any related agreements, will be (i) a “passive foreign investment company” within the meaning of Section 1297 of the IRC or (ii) a “controlled foreign corporation” within the meaning of Section 957(a) of the IRC.

**4.12. Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions (i) to refinance existing Indebtedness, (ii) as working capital and other corporate uses, and (iii) to fund its general business requirements and not for personal, family, household or agricultural purposes.

**4.13. Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Lenders and Agents, or any of them, when taken as a whole, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Lenders and Agents, or any of them, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Lenders and Agents that projections and forecasts provided by Borrower or its Subsidiaries in good faith and based upon reasonable

assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results). All projections and forecasts Borrower or any Subsidiary provides to Lenders and Agents, or any of them, shall be provided in good faith and based on the most current information available to Borrower or such Subsidiary at the time of the delivery thereof to Lenders and Agents, or any of them.

**4.14. Capitalization and Organization.** As of the Effective Date, the capitalization of Borrower's Subsidiaries is as set forth in Section 4.12(a) of the Perfection Certificate. Borrower's organization structure is as set forth in Section 4.12(b) of the Perfection Certificate, which may be amended as provided by Section 4.1(a)(v).

**4.15. Sanctioned Persons.** None of Borrower or any of its Subsidiaries, and to Borrower's knowledge, any of their directors, officers, agents, employees or Affiliate is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("**OFAC**"). Borrower will not directly or indirectly use the proceeds of any Credit Extension or otherwise make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

**4.16. Foreign Assets Control Regulations, Etc.**

(a) Neither the borrowing of any Credit Extension by Borrower hereunder nor its use thereof will violate (i) the United States Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (iii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the "**Terrorism Order**"), (iv) USA PATRIOT ACT, or (v) USA FREEDOM ACT. No part of the Credit Extensions will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(b) No Loan Party (i) is or will become a "blocked person" as described in Section 1.01 of the Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is otherwise associated, with any such blocked person.

(c) Each of the Loan Parties and its Affiliates are in compliance, in all material respects, with the USA PATRIOT ACT and the USA FREEDOM ACT.

**4.17. Definition of "knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

**SECTION 5. AFFIRMATIVE COVENANTS**

Until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder, Borrower shall comply with each of the covenants in this Section 5:

**5.3. Government Compliance.** Borrower shall maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction which requires such qualification to be maintained, except that Borrower's Subsidiaries may be dissolved, liquidated or merged with another Person to the extent permitted by Section

6.4. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject.

**5.4. Financial Statements, Reports, Certificates.** Borrower shall deliver the following items to Collateral Agent:

(a) **Monthly Financial Statements.** As soon as available, but no later than thirty (30) days after the last day of each month (other than (x) in the case of a month that is the end of one of Borrower's fiscal quarters, which shall be no later than forty-five (45) days after the last day of such month, and (y) in the case of a month that is the end of one of Borrower's fiscal years, which shall be no later than sixty (60) days after the last day of such month), a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month setting forth in each case in comparative form to the figures for the previous fiscal year, certified by a Responsible Officer and in a form acceptable to Collateral Agent (the "**Monthly Financial Statements**");

(b) **Quarterly Financial Statements.** As soon as available, but no later than forty-five (45) days after the last day of each quarter, a company prepared consolidated balance sheet, income statement and related statements of operations, stockholders' equity and cash flows covering Borrower's consolidated operations for such quarter setting forth in each case in comparative form the figures for the previous fiscal year, certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent (it being understood that financial statements satisfying the requirements of Form 10-Q are acceptable to Collateral Agent), with a statement of reconciliation to GAAP (the "**Quarterly Financial Statements**");

(c) **Annual Audited Financial Statements.** As soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated balance sheet, income statement and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Collateral Agent (it being agreed that Deloitte & Touche LLP and any other public accounting firm of national standing is acceptable to Collateral Agent) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, together with a customary "management discussion and analysis" section ("**Annual Audited Financial Statements**");

(d) **Compliance Certificate.** Concurrently with the delivery of the financial statements required under Section 5.2(a), a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth such other information as Collateral Agent shall reasonably request;

(e) **Operating Budget.** As soon as available, but no later than sixty (60) days after the last day of Borrower's fiscal year, a Board-approved operating budget for Borrower and its Subsidiaries (which shall include projected Revenue and net cash flows) prepared and adopted in good faith as to the then current calendar year (the "**Budget**").

(f) **Legal Action Notice.** A prompt report (but in any event within five (5) Business Days after the service of process with respect thereto on Borrower or any of its Subsidiaries) of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to result in (i) damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000) or more, (ii) fines, penalties or other sanctions by any Governmental Authority, or (iii) claims for injunctive or equitable relief;

(g) **Intellectual Property Notice.** On each Compliance Certificate required to be delivered under Section 5.2(d) concurrently with the financial statements required to be delivered under Section

5.2

(a) for the months of March, June, September and December, written notice of (i) any material change in the composition of Borrower's or any of its Subsidiaries' Intellectual Property, (ii) the registration of any copyright or trademark, or the filing of any patent, including any subsequent ownership right of Borrower or any of its Subsidiaries' in or to any registered copyright, patent or trademark not shown in the Perfection Certificates, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of its or any of its Subsidiaries' Intellectual Property; and

(h) **Other Information.** Borrower's budgets, sales projections, operating plan and other information within thirty (30) days following Agent's written reasonable request therefor.

Notwithstanding the foregoing, documents required to be delivered pursuant to clauses (b) or (c) of this Section 5.2 shall be deemed to have been furnished to Collateral Agent on the date on which the Borrower files such documents with the SEC and such documents are publicly available on the SEC's EDGAR filing system or any successor thereto provided that Borrower emails Collateral Agent notice of the filing which notice contains a link to the applicable document(s).

#### **5.5. Notification of Noncompliance.**

(a) Borrower shall notify Collateral Agent and Administrative Agent in writing within five (5) Business Days of having knowledge (i) that it is not in compliance with any of its obligations under any of the Loan Documents, or (ii) of the occurrence of any Event of Default.

(b) If any information contained in the Perfection Certificates changes after the Effective Date and if that information relates to a subsection of Section 4 which specifically allows for information in the Perfection Certificates to be updated after the Effective Date, Borrower shall update such information in Borrower's next due Compliance Certificate, provided however, that updates related to Section 4.2(d) shall only be required to be delivered concurrently with the financial statements required to be delivered under Section 5.1(a) for the months of March, June, September and December.

(c) If any subsection of Section 4 is no longer true, accurate and complete and such subsection does not specifically authorize Borrower to update such subsection, Borrower shall indicate how such subsection is no longer true, accurate and complete in Borrower's next due Compliance Certificate, provided however, that updates related to Section 4.2(d) shall only be required to be delivered concurrently with the financial statements required to be delivered under Section 5.1(a) for the months of March, June, September and December.

**5.6. Taxes; Pensions.** Timely file, and cause each of its Subsidiaries to timely file, all required Tax Returns and reports and timely pay, and cause each of its Subsidiaries to timely pay, all foreign, federal, state and all other Taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, in each case where such liability is in excess of \$25,000, except for deferred payment of any Taxes contested pursuant to the terms of Section 4.9 hereof, and shall deliver to Collateral Agent, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**5.7. Management Rights; Access to Collateral; Books and Records.** Borrower's officers, and key employees shall meet with Lenders or Collateral Agent and their representatives from time to time and upon reasonable notice and during normal business hours for the purpose of consulting with, rendering recommendations to the management of Borrower and its Subsidiaries or obtaining information regarding their operations, activities and prospects and expressing its views thereon. Borrower shall consider in good faith the recommendations of Lender and Collateral Agent 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 Borrower, Subsidiary and their management. At reasonable times, on seven (7) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Collateral Agent or its agents, shall have the right to inspect the Collateral, to audit and copy Borrower's Books, and to conduct field audits of Borrower and any Subsidiary. Such inspections and audits shall be conducted

no more often than twice every twelve (12) months unless an Event of Default has occurred and is continuing, provided that an initial field audit may be conducted within the first forty-five (45) days following the Effective date without constituting one of the two annual audits. The foregoing inspections and audits shall be at Borrower's expense.

**5.8. Insurance.** Borrower shall keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent and shall provide that the insurer must give Collateral Agent at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. All liability policies shall show, or have endorsements showing, Collateral Agent as an additional insured with a waiver of subrogation rights, and all such policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Collateral Agent at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Administrative Agent on account of the Obligations. If Borrower fails to obtain insurance as required under this [Section 5.6](#) or to pay any amount or furnish any required proof of payment to third persons, Administrative Agent may make all or part of such payment or obtain such insurance policies required in this [Section 5.6](#), and either Administrative Agent or Collateral Agent may take any action under the policies as it deems prudent. Borrower shall have until ten (10) Business Days after the Effective Date to provide the endorsements required in this [Section 5.6](#).

**5.9. Pledged Accounts.** Borrower's and each Subsidiary's Pledged Accounts (other than Excluded Accounts) shall at all times be subject to a Control Agreement in form and substance acceptable to Collateral Agent, provided however, that Borrower's Pledged Account maintained at Bridge Bank, National Association and at Western Alliance Bank shall not be required to be subject to a Control Agreement as long as the aggregate balance in all such accounts does not exceed \$100,000 for more than three (3) Business Days, it being agreed that once a Control Agreement is in place on any of those Pledged Accounts, there will be no limit on the balance in any Pledged Account subject to a Control Agreement.

**5.10. Protection and Registration of Intellectual Property Rights.**

(a) Borrower shall: (i) as determined in Borrower's reasonable business judgment to be necessary in the operation of its business, protect, defend and maintain the validity and enforceability of Borrower's Intellectual Property that is material to its business or the business of any of its Subsidiaries; (ii) promptly advise Collateral Agent in writing of infringements of Borrower's Intellectual Property of which Borrower has knowledge; and (iii) not allow any Intellectual Property material to Borrower's business, in Borrower's reasonable business judgment, to be abandoned, forfeited or dedicated to the public, except as permitted by this Agreement.

(b) Borrower shall cause each of its Subsidiaries to: (i) as determined in such Subsidiary's reasonable business judgment to be necessary in the operation of its business, protect, defend and maintain the validity and enforceability of such Subsidiary's Intellectual Property that is necessary in or material to its business or the business of Borrower; (ii) promptly advise Collateral Agent in writing of infringements of such Subsidiary's Intellectual Property of which Borrower and such Subsidiary have knowledge; and (iii) not allow any Intellectual Property material to such Subsidiary's business, in such Subsidiary's reasonable business judgment, to be abandoned, forfeited or dedicated to the public, except as permitted by this Agreement.

(c) If Borrower or any of its Subsidiaries (i) obtain any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) apply for any Patent or the registration of any Trademark, then Borrower shall provide written notice thereof to Collateral Agent in accordance with Section 5.2(g).

(d) Borrower shall provide written notice to Collateral Agent on the Compliance Certificate next delivered after entering or becoming bound by any Restricted License (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public). Borrower shall take such steps as Collateral Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License (other than any Restricted License which is an Intellectual Property License) to be deemed "Collateral" and for Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Collateral Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Lenders' and Collateral Agent's rights and remedies under this Agreement and the other Loan Documents.

**5.11. Further Assurances.** Borrower shall execute any further instruments and take further action as Collateral Agent reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

**5.12. Creation/Acquisition of Subsidiaries.** Borrower shall, at the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, within fifteen (15) days of such formation or acquisition (a) cause such new Subsidiary (except for any Foreign Subsidiary or Excluded Domestic Subsidiary (or any of their respective Subsidiaries)) to become a Joining Party under the Loan Documents and grant a continuing pledge and security interest in and to all the assets of such Subsidiary, as well as provide the appropriate financing statements, all in form and substance reasonably satisfactory to Collateral Agent (including being sufficient to grant Collateral Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), and (b) provide appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Collateral Agent, provided that only 65% of the total outstanding voting Equity Interests of any first tier Foreign Subsidiary or Excluded Domestic Subsidiary (and none of the Equity Interests of any Subsidiary of such Foreign Subsidiary or Excluded Domestic Subsidiary) shall be required to be pledged, and (c) notify the Administrative Agent in writing of such new Subsidiary and provide the Administrative Agent with all documentation and other information which Administrative Agent may reasonably request with respect to any new Subsidiary that becomes a Joining Party in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT ACT, including an IRS Form W-9 or applicable tax forms. Borrower shall also procure the issuer's agreement to follow Collateral Agent's instructions regarding any Disposition of such securities, such agreement to be in form and substance satisfactory to Collateral Agent.

**5.13. Financial Covenants.**

(a) At all times from the Effective Date to, and including March 31, 2018, Unrestricted Cash of the Loan Parties in Pledged Accounts subject to a Control Agreement must be at least Ten Million Dollars (\$10,000,000).

(b) At all times from the Effective Date to, and including March 31, 2018, the amount of Consolidated Unrestricted Cash plus the value of Consolidated Receivables plus the value of Consolidated Inventory, when divided by aggregate amount of outstanding Credit Extensions, must equal or exceed 1.5, measured as of the last day of each calendar quarter, with such measurement and supporting data acceptable to Collateral Agent to be provided by Borrower to Collateral Agent within thirty (30) days of the end of such quarter.

(c) From April 1, 2018 and thereafter, the amount of Consolidated Unrestricted Cash plus the value of Consolidated Receivables plus the value of Consolidated Inventory, when divided by aggregate amount of outstanding Credit Extensions, must equal or exceed 1.75, measured as of the last day of each

calendar quarter, with such measurement and supporting data acceptable to Collateral Agent to be provided by Borrower to Collateral Agent within thirty (30) days of the end of such quarter.

#### **SECTION 6. NEGATIVE COVENANTS**

Until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder, Borrower shall comply with each of the covenants in this Section 6:

**6.3. Dispositions; Negative Pledge.** Borrower shall not Dispose, or permit any of its Subsidiaries to Dispose, of all or any part of its business or property, except for Dispositions (a) of Inventory in the ordinary course of business; (b) of worn-out, damaged or obsolete Equipment in the ordinary course of business for fair market value and leases or subleases of real property not useful in the conduct of the business of Borrower and its Subsidiaries; (c) in connection with Permitted Liens and Permitted Investments; (d) consisting of the Flextronics License Agreement (if it exists) and of non-exclusive licenses for the use of the property (including Intellectual Property) of Borrower or its Subsidiaries in the ordinary course of business; (e) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents; (f) without recourse of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof; (g) resulting in (i) the lapse of registered Patents, Trademarks and Copyrights property of Borrower and its Subsidiaries to the extent not economically desirable in the conduct of their business or (ii) the abandonment of Patents, Trademarks, Copyrights, or other Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to Copyrights, such Copyrights are not material revenue generating Copyrights, and (B) such lapse is not materially adverse to the interests of the Lenders; (h) the making of Restricted Payments that are expressly permitted to be made pursuant to the Agreement; (i) of assets (i) from Borrower or any of its Subsidiaries to a Loan Party, and (ii) from any Subsidiary of Borrower that is not a Loan Party to any other Subsidiary of Borrower; (j) dispositions of assets constituting Equipment sold to Flextronics so long as: (i) it is maintained at one of Flextronics' facilities located in Mexico or the People's Republic of China, (ii) such Equipment is re-acquired by Borrower within 30 days after its arrival at the relevant facility, (iii) at the time of any such disposition of such Equipment and immediately after giving effect to the same, Borrower shall be in compliance with the covenants set forth in Section 5.11, and (iv) the amount of Equipment sold to and not yet repurchased from Flextronics shall not exceed \$1,000,000; and (k) of property (other than Accounts, Inventory, Equity Interests of Subsidiaries of Borrower) not otherwise permitted in clauses (a) through (i) so long as made at fair market value and the aggregate fair market value of all assets disposed of in a fiscal year (including the proposed disposition) would not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate. Other than Permitted Liens, Borrower shall not, nor shall Borrower permit any Subsidiary to, grant a security interest in, otherwise pledge or allow any Lien on any assets other than in favor of Collateral Agent. Notwithstanding the foregoing, without Collateral Agent's prior written consent, Borrower shall not pledge or allow any Liens on its Intellectual Property or the Intellectual Property of any Subsidiary other than Permitted Liens.

**6.4. Changes in Business and Ownership.** Borrower shall not (a) engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; provided, that the foregoing shall not prevent Borrower and its Subsidiaries from discontinuing any line of business if in the reasonable business and commercial judgment of the officers of Borrower, it is no longer desirable to be engaged in such business, and if such discontinuation does not adversely affect the Lenders in any material respect; (b) liquidate or dissolve (other than the liquidation or dissolution of Subsidiaries that (x) are not Loan Parties or (y) whose assets are transferred to Borrower or another Loan Party at the time of such liquidation or dissolution); or (c) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than fifty percent (50%) of the voting Equity Interests of Borrower immediately after giving effect to such transaction or related series of such transactions.

**6.5. Business and Collateral Locations.** Borrower shall not, or permit any Subsidiary to, without at least ten (10) days prior written notice to Collateral Agent: (a) change its jurisdiction of organization, (b) change its organizational structure or type, (c) change its legal name, or (d) change any organizational number (if any) assigned by its jurisdiction of organization. Borrower shall not, or permit any Loan Party to keep its and their Inventory, to the extent located within the United States, at any location other than the Flextronics Facility and the locations identified in the Perfection Certificates, in each case subject to a bailee agreement in form and substance satisfactory to Collateral Agent; provided, that (A) Borrower and the other Loan Parties may keep up to \$5,000,000 of Inventory in the aggregate at any time at other locations located within the United States; provided that no more than \$50,000 of such Inventory in the aggregate may be kept at any individual location; (B) up to \$3,000,000 of Inventory may be transferred by Borrower to an international Flextronics location or to an Expeditors International Pty Ltd. location for the sale of such Inventory by a Subsidiary of Borrower organized outside of the United States in the ordinary course of business; and (C) Borrower may maintain (1) (x) test equipment, (y) up to \$3,000,000 at any one time of raw materials and (z) other Equipment, in each case in transit from Borrower's suppliers to the Flextronics Facility and (2) test equipment and other Equipment disposed of in accordance with Section 6.1(j) at any Flextronics facility in Mexico or the People's Republic of China.

**6.6. Mergers or Acquisitions.** Without the prior written consent of Collateral Agent, Borrower shall not merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the Equity Interests or property of another Person. Notwithstanding the foregoing, a Subsidiary may merge or consolidate into Borrower or another Subsidiary, provided that in the case of a merger or consolidation involving a Loan Party, the surviving Person shall be a Loan Party.

**6.7. Indebtedness.** Borrower shall not create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**6.8. Encumbrance.** Except for Permitted Liens, Borrower shall not create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so. Except for Permitted Liens, Borrower shall not permit any Collateral not to be subject to the first priority security interest granted herein.

**6.9. Distributions; Investments.** Borrower shall not, nor shall it permit any Subsidiary to (a) directly or indirectly make any Investment other than Permitted Investments; or (b) pay any dividends or make any distribution or payment on or in respect of its Equity Interests, or redeem, retire or repurchase any Equity Interests (or any securities or instruments convertible into or exercisable for, or other rights to acquire, directly or indirectly, Equity Interests) (each a "**Restricted Payment**") from the holders thereof, provided however, that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower and any of its Subsidiaries may make payment of cash not to exceed an aggregate of Fifty Thousand Dollars (\$50,000) in lieu of the issuance of fractional shares upon (x) exercise of options or warrants, or (y) the conversion or exchange of such Person's Equity Interests; (iii) each Loan Party may pay dividends solely in Equity Interests of such Loan Party; (iv) Borrower may repurchase the Equity Interests of Borrower of employees, former employees, officers, former officers, directors, former directors, or consultants of Borrower or any Subsidiary (or any spouses, ex-spouses, or estates of any of the foregoing) at the original sales price pursuant to Board-approved repurchase agreements, in an aggregate amount for all such repurchases, plus the amount of Indebtedness outstanding under clause (o) of the definition of Permitted Indebtedness, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000), so long as no Default or Event of Default has occurred and is continuing at the time of any such repurchase and would not exist immediately after giving effect to any such repurchase; (v) Borrower may make distributions to former employees, officers, or directors of Borrower (or any spouses, ex-spouses, or estates of any of the foregoing), solely in the form of forgiveness of Indebtedness of such Persons owing to Borrower on account

of repurchases of the Equity Interests of Borrower held by such Persons; provided, that such Indebtedness was incurred by such Persons solely to acquire Equity Interests of Borrower; (vi) (A) each Subsidiary may make Restricted Payments to any Loan Party; and (B) any non-wholly owned Subsidiary may make a Restricted Payment ratably to all Persons that own an Equity Interest in such non-wholly owned Subsidiary; and (vii) so long as it constitutes a non-cash transaction, Borrower may make repurchases of Equity Interests deemed to occur (i) upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options, and (ii) upon the withholding of a portion of the Equity Interests granted or awarded to an employees, former employees, officers, former officers, directors, former directors, or consultants of Borrower (or any spouse, ex- spouse, or estate of any of the foregoing) payable by such Person upon such grant or award (or vesting thereof).

**6.10. Transactions with Affiliates.** Borrower shall not, nor shall it permit any Subsidiary to directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions permitted pursuant to the terms of Section 6.4 hereof, (c) transactions permitted by Section 6.7(a), Section 6.9 and Permitted Intercompany Advances; (d) equity financings permitted pursuant to the terms of Section 6.2 hereof; (e) unsecured debt financings from Borrower's investors so long as all such Indebtedness is Subordinated Debt; (f) so long as it has been approved by Borrower's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law and in the ordinary course of business, any indemnity provided for the benefit of directors (or comparable managers) of Borrower or its applicable Subsidiary; (g) employment agreements, employee benefit plans, officer or director indemnification agreements or any similar arrangements entered into by any Loan Party or any of its Subsidiaries in the ordinary course of business; and (h) the payment for Goods by Borrower to any Subsidiary (direct or indirect) in the ordinary course of business.

**6.11. Subordinated Debt.** Borrower shall not, nor shall it permit any Subsidiary to (a) make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Lenders without Collateral Agent's prior written consent.

**6.12. Compliance.** Borrower shall not, nor shall it permit any Subsidiary to become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a "Reportable Event" or "Prohibited Transaction," as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Effect, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**6.13. Publicity.** Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Collateral Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable law, subpoena or judicial or similar order, in which case Borrower shall endeavor to give Collateral Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorizes each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those

arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agrees that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Effective Date.

**6.14. Uncertificated Securities.** Borrower shall not allow any Collateral consisting of uncertificated securities to be certificated without the prompt execution of a Pledge Agreement satisfactory to Collateral Agent which is signed by Borrower and the issuer of the securities.

**6.15. Additional Restrictions.** Without Collateral Agent's prior written consent, after the Effective Date, Borrower shall not amend, whether formally or informally, the Flextronics Pledge Agreement, the Flextronics Security Agreement, the Flextronics MSA or the Flextronics Logistics Agreement. Without Collateral Agent's prior written consent, Borrower shall not enter into the Flextronics License Agreement, and once entered, Borrower shall not amend, whether formally or informally, the Flextronics License Agreement.

#### **SECTION 7. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "*Event of Default*") under this Agreement:

**7.3. Payment Default.** Borrower fails to make any payment as required under the Agreement or any of the other Loan Documents;

**7.4. Covenant Default.**

(a) Borrower fails or neglects to perform any obligation in Sections 5.2(d), 5.3, 5.4, 5.7 or 5.11 or violates any covenant in Section 6; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 7) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply to covenants set forth in clause (a) above, Section 7.1, Section 7.3 or Section 7.6.

**7.5. Material Adverse Change.** A Material Adverse Change has occurred;

**7.6. Attachment; Levy; Restraint on Business.**

(a) The service of process seeking to attach, by trustee or similar process, funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or a notice of lien or levy is filed against Borrower's (or a Subsidiary's) assets by any government agency, in each case in excess of Two Hundred Fifty Thousand Dollars (\$250,000), and are not within ten (10) days after the occurrence thereof, removed or rescinded; or

(b) Borrower's (or a Subsidiary's) assets with a value in excess of Two Hundred Fifty Thousand Dollars (\$250,000) are attached, seized, levied on, or comes into possession of a trustee or receiver, or any court order enjoins, restrains, or prevents Borrower from conducting any part of its business;

**7.7. Insolvency.** (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within sixty (60) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

**7.8. Other Agreements.** There is, under any agreement to which Borrower is a party with a third party or parties, any breach or default, whether or not declared but after taking into account any applicable cure period provided in such agreement, involving Indebtedness in an amount individually or in the aggregate in excess of Seven Hundred Fifty Thousand Dollars (\$750,000);

**7.9. Judgments.** One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions shall be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

**7.10. Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Lenders or Agents, or to induce Lenders or Agents to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made or deemed made; or

**7.11. Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (other than pursuant to its terms), any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or, except as otherwise provided herein, the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement.

## **SECTION 8. COLLATERAL AGENT'S RIGHTS AND REMEDIES**

**8.3. Rights and Remedies.** While an Event of Default occurs and continues Collateral Agent may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs, all Obligations are immediately due and payable without any action by Collateral Agent);

(b) stop processing any advances of money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and any Lender without creating any liability on behalf of Collateral Agent or any Lender;

(c) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available as Collateral Agent designates. Collateral Agent or its designees may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent and its designees a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(e) apply to the Obligations any amount held by Lenders and Agents, or any of them, owing to or for the credit of Borrower;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Collateral Agent is hereby granted a non-exclusive, sub-licensable, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise agreements inure to Collateral Agent's benefit;

(g) deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(h) demand and receive possession of Borrower's Books; and

(i) exercise all rights and remedies available to Lenders or Collateral Agent under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Collateral Agent shall notify Administrative Agent in writing upon undertaking any of the foregoing rights and remedies.

**8.4. Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent and Administrative Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) make any Disposition of the Collateral into the name of Agent or a third party as the Code permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder. Agents' foregoing appointment as Borrower's attorney in fact, and all of Lender's and Agents' rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Lenders' obligation to provide Credit Extensions terminates.

**8.5. Protective Payments.** If Borrower fails to obtain the insurance called for by Section 5.6 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Agents may obtain such insurance or make such payment, and all amounts so paid by Lenders or Agents are Lender Expenses and immediately due and payable, bearing interest at the Default Rate if not paid when due, and secured by the Collateral. No payments by Agents or Lenders are deemed an agreement to make similar payments in the future or Agents' or Lender's waiver of any Event of Default.

**8.6. Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Agents may apply any funds in their possession, whether from payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Collateral Agent shall determine in its sole discretion, and Collateral Agent shall promptly

advise Administrative Agent in writing thereof. Any surplus shall be paid to Borrower or other Persons legally entitled thereto. Borrower shall remain liable to Lenders for any deficiency. If Collateral Agent, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Collateral Agent shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Administrative Agent of cash therefor.

**8.7. Liability for Collateral.** So long as Collateral Agent complies with reasonable lending practices regarding the safekeeping of the Collateral in Collateral Agent's or Lender's possession or under their control, neither Collateral Agent nor Lender shall be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**8.8. No Waiver; Remedies Cumulative.** Agents' or any Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Agents or Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Agents' and Lenders' rights and remedies under this Agreement and the other Loan Documents are cumulative. Agents and Lenders have all rights and remedies provided under the Code, by law, or in equity. Agents' or Lenders' exercise of one right or remedy is not an election and shall not preclude either from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Agents' or Lenders' waiver of any Event of Default is not a continuing waiver. Agents' or Lenders' delay in exercising any remedy is not a waiver, election, or acquiescence.

**8.9. Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Agents and Lenders, or any of them, on which Borrower is liable, except when any such notice, demand or any other of the foregoing actions are specifically provided for in this Agreement.

**8.10. No Marshaling or Related Rights.** Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or Lenders to: (i) proceed against any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent or Lenders under this Agreement) to benefit from, or to participate in, any security for the Obligations as a result of any payment made with respect to the Obligations in connection with this Agreement or otherwise. If any payment is made to Borrower in contravention of this Section 8.8, Borrower shall hold such payment in trust for Collateral Agent and such payment shall be promptly delivered to Administrative Agent for application to the Obligations, whether matured or unmatured.

#### **SECTION 9. RESERVED**

#### **SECTION 10. NOTICES**

Notices and other communications provided for herein or any of the other Loan Documents shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by fax or email, as follows:

(i) if to Borrower, to it at 1420 N. McDowell Blvd., Petaluma, California 94954, Attention: Chief Financial Officer, Director of Legal Affairs (Fax No. 707-795-5835), (email: ksennesael@enphaseenergy.com and legal@enphaseenergy.com);

(ii) if to Administrative Agent, to it at 225 W. Washington St., 21st Floor, Chicago, IL 60606, Attention: Attn: Ryan Warren and Legal Department (Fax No. (312) 376-0751), email: ryan.warren@cortlandglobal.com and legal@cortlandglobal.com; with a copy to, Holland & Knight LLP, 131 South Dearborn Street, 30th Floor, Chicago, Illinois 60602, Attention: Joshua Spencer, (Phone No. 312-715-5709), email: joshua.spencer@hkllaw.com

(iii) if to Collateral Agent, to it at 2951 28th Street, Suite 1000, Santa Monica, CA 90405, Attention: Todd Jaquez-Fissori (email: todd.fissori@tennenbaumcapital.com), with a copy to asher.finci@tennenbaumcapital.com);

(iv) if to any Lender, the address listed on its signature page to this Agreement, or such other address provided in writing to Borrower and Agents from time to time after the Effective Date.

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or email or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this [Section 10](#) or in accordance with the latest unrevoked direction from such party given in accordance with this [Section 10](#). All reports and other information required under [Section 5.2](#) shall be delivered by Borrower by email, but if email is unavailable, then by fax.

#### **SECTION 11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER**

**11.1 Governing Law.** California law governs the Loan Documents without regard to principles of conflicts of law. Borrowers and Lender each submit to the exclusive jurisdiction of the State and Federal courts in Los Angeles County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrowers in accordance with, [Section 10](#) of this Agreement and that service so made shall

be deemed completed upon the earlier to occur of Borrowers' actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

**11.2 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENTS AND EACH LENDER WAIVE THEIR RIGHT TO**

**A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

**11.3 Judicial Reference.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of Los Angeles County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Los Angeles County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Los Angeles County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge.

**11.4 Scope of Authority.** The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against Collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

## **SECTION 12. AGENT PROVISIONS**

**12.1 Appointment.** Each Lender hereby irrevocably appoints Administrative Agent and Collateral Agent its agent and authorizes Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents and the Fee Letter, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby expressly authorized to execute any and all documents (including releases) with respect to (i) the Collateral and the rights of Lenders with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents, (ii) the Intercreditor Agreement and (iii) any other subordination agreement with respect to any junior or Subordinated Indebtedness.

**12.2 Dual Capacities.** Each Person serving as the Administrative Agent and/or the Collateral Agent hereunder which is also a Lender shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an agent, and each such Person and

its Affiliates may provide debt financing, equity capital or other services (including financial advisory services) to any of the Loan Parties (or any Person engaged in similar business as that engaged in by any of the Loan Parties) as if such Person was not performing the duties specified herein, and may accept fees and other consideration from any of the Loan Parties for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

### 12.3 Limitation of Liability.

(a) No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (i) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (ii) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 13.7), and (iii) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to Borrower or any of the Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent and/or Collateral Agent or any of its Affiliates or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 13.7) or in the absence of its own gross negligence or willful misconduct as finally judicially determined by a court of competent jurisdiction. No Agent or Lender shall be deemed to have knowledge of any Event of Default unless and until written notice thereof is given to such Agent or such Lender by Borrower, a Joining Party or a Lender, and no Agent or any Lender shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent or such Lender. Notwithstanding anything to the contrary contained in this Agreement, each Agent shall not be required to take any action that is in its opinion contrary to applicable law or the terms of any of the Loan Documents or that would in its reasonable opinion subject it or any of its officers, employees, or directors to personal liability.

(b) Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(c) Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to their Affiliates and any such sub-agent, and shall apply to their respective activities in connection with the

syndication of the Term Loan as well as activities as Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**12.4 Assignment.** Any Agent may resign at any time by notifying Lenders and Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of Lenders, appoint a successor Agent which shall be a bank with an office in California or New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. Borrower shall pay the reasonable fees of a successor Agent. If no successor Agent has accepted appointment as the Administrative Agent or the Collateral Agent, as applicable by the date 30 days following such Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Required Lenders shall perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders appoint a successor Agent. After Agent's resignation hereunder, the provisions of this Section 12 and Section 13.2 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

**12.5 Exculpation.** Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

**12.6 Authorization.** Each Lender hereby further authorizes Collateral Agent, on behalf of and for the benefit of Lenders, to enter into any of the Security Documents or other Loan Document as secured party and to be Collateral Agent for and representative of Lenders thereunder, and each Lender agrees to be bound by the terms of each such document; provided that Collateral Agent shall not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any such document or (ii) release any Collateral (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Security Document or Loan Document), in the case of each of clauses (i) and (ii) without the prior consent of Required Lenders (or, if required pursuant to Section 13.7, all Lenders); provided further, however, that, without further written consent or authorization from Lenders, Collateral Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other Disposition of assets permitted by this Agreement or to which Required Lenders have otherwise consented, (b) release any Joining Party from the Joinder if all of the Equity Interests of such Joining Party are sold or otherwise Disposed of to any Person (other than an Affiliate of a Loan Party) pursuant to a sale or other Disposition permitted hereunder or to which Required Lenders have otherwise consented, or (c) subordinate the Liens of Collateral Agent, on behalf of Lenders, to any Permitted Liens or (d) release all Liens in accordance with Section 3.3. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Agents and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under or otherwise enforce any Security Document, it being understood and agreed that all powers, rights and remedies under the Security Documents may be exercised solely by Collateral Agent for the benefit of Lenders in accordance with the

terms thereof, and (2) in the event of a foreclosure by either on any of the Collateral pursuant to a public or private sale, either Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Collateral Agent at such sale. Notwithstanding anything to the contrary herein, each Agent shall be permitted to take any action it is authorized to take under any Loan Document.

**12.7 Bankruptcy.** In case of the pendency of any case or proceeding under any applicable Bankruptcy Law or any other judicial proceeding relative to any Loan Party, Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Collateral Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loan and all other Obligations that are owing or unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Agents and their respective agents and counsel and all other amounts due Lenders and Agents under Section 1.5, Section 5.3 and Section 13.2) allowed in such judicial proceeding; and to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequester or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of any Agent and its agents and counsel, and any other amounts due such Agent;

(b) to consent to, accept or adopt on behalf of any Lender any plan of reorganization, adjustment or composition affecting the Obligations or the rights of any Lender; and

(c) to vote in respect of the claim of any Lender in any Insolvency Proceeding.

## **SECTION 13. GENERAL PROVISIONS**

### **13.1 Successors and Assigns.**

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Loan Parties, Agents or Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) No Lender shall make any Disposition of any or all of its interests, rights or obligations under this Agreement (including all or a portion of its Term Loan Commitment and the Loan at the time owing to it) without the prior written consent of Collateral Agent, which consent may be provided or withheld in Collateral Agent's sole discretion. Any approved assignment shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loan), the parties to such assignment shall execute and deliver to

Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 (provided that only one such fee shall be payable in the case of concurrent assignments to Persons that, after giving effect to such assignments, will be Related Funds), a signed joinder to the Fee Letter whereby assignee agrees to be subject to the Fee Letter, and the assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire and all applicable tax forms. Upon acceptance and recording pursuant to paragraph (d) of this [Section 13.1](#), from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of [Section 1.8](#), [Section 1.11](#) and [Section 13.2](#)).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Term Loan Commitment, and the outstanding balance of its Loan, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Borrower or any Subsidiary or the performance or observance by Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in [Section 5.2](#) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (vi) such assignee appoints and authorizes each Agent to take such action as Agent on its behalf and to exercise such powers under this Agreement as are delegated to such Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

(d) Administrative Agent shall maintain at its principal executive offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of Lenders, and the Term Loan Commitment of, and principal amount (and stated interest) of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). Absent manifest error, Borrower, Agents and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Agents, Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee

referred to in paragraph (b) above, if applicable, and the written consent of Collateral Agent to such assignment and any applicable tax forms, Administrative Agent shall accept such Assignment and Acceptance.

(f) If a Lender is allowed to and proceeds with selling a participation of all or part of its rights and obligations under this Agreement, such Lender shall, acting solely for this purpose as an agent of Borrower and Administrative Agent, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loan or other obligations under the Loan Documents (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender or participant may, in connection with any permitted assignment or participation or proposed assignment or participation pursuant to this [Section 13.1](#), disclose to the assignee or participant or proposed assignee or participant any information relating to Borrower furnished to such Lender by or on behalf of Borrower; *provided* that, prior to any such disclosure of information designated by Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to Lenders pursuant to [Section 13.1](#).

(h) No Loan Party shall assign or delegate any of its rights or duties hereunder without the prior written consent of Agents, and any attempted assignment without such consent shall be null and void.

### **13.2 Indemnity.**

(a) Each Loan Party agrees, jointly and severally, to indemnify each Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including Lender's Expenses and reasonable attorney's fees and the allocated cost of in-house counsel) of any kind or nature whatsoever incurred by or asserted against any Indemnitee arising out of, in anyway connected with, or as a result of (i) the execution, delivery, enforcement or administration of this Agreement, the Fee Letter or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated thereby (including any syndication of the Loan), (ii) the use of the proceeds of the Loan, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing (including any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, dissolution or relief of debtors or any appellate proceeding), whether or not any Indemnitee is a party thereto or the plaintiff or defendant thereunder (and regardless of whether such matter is initiated by a third party, a Lender, Borrower, any other Loan Party or any of their respective Affiliates), or (iv) any actual or alleged Environmental Liability related in any way to any Loan Party, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. The obligations in this [Section 13.2](#) shall survive payment of all other Obligations and payment under the Fee Letter. At the election of any Indemnitee, Borrower shall defend such Indemnitee using legal counsel satisfactory to such Indemnitee in such Person's sole discretion, at the sole cost and expense of

Borrower. All amounts owing under this Section 13.2 shall be paid within thirty (30) days after written demand.

(b) To the extent that Borrower or any Joining Party fails to pay any amount required to be paid by them under Section 13.2(a) to the Administrative Agent or the Collateral Agent, each Lender severally agrees to pay to the applicable Agent such Lender's Pro Rata Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent in its capacity as such.

(c) To the extent permitted by applicable law, neither Borrower nor any Joining Party shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof.

(d) The provisions of this Section 13.2 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loan, the expiration of the Term Loan Commitment, the invalidity or unenforceability of any term or provision of this Agreement, the Fee Letter or any other Loan Document, or any investigation made by or on behalf of any Agent or any Lender. All amounts due under this Section 13.2 shall be payable on written demand therefor.

**13.3 Maximum Rate.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to the Term Loan, together with all fees, charges and other amounts that are treated as interest on such loans under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") that may be contracted for, charged, taken, received or reserved by Lender holding such loans in accordance with applicable law, the rate of interest payable in respect of such loans hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such loans but were not payable as a result of the operation of this Section 13.3 shall be cumulated and the interest and Charges payable to such Lender in respect of other periods shall be adjusted (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Maximum Rate to the date of repayment, shall have been received by such Lender.

**13.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**13.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**13.6 Correction of Loan Documents.** Either Agent may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties so long as such Agent provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by Collateral Agent, Lenders and Borrower.

**13.7 Waivers and Amendments.**

(a) No failure or delay of Administrative Agent, Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Administrative Agent, Collateral Agent and Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive

of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders with reasonable prior written notice provided to the Administrative Agent; provided, however, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan, without the prior written consent of each Lender directly adversely affected thereby (other than any waiver of any increase in the interest rate applicable to the Loan as a result of the occurrence of an Event of Default), (ii) increase or extend the Term Loan Commitment or decrease or extend the date for payment of any fees of any Lender under [Section 1.5](#) without the prior written consent of such Lender, (iii) amend or modify the provisions of this [Section 13.7](#) or release any Joining Party (other than in connection with the sale or other disposition of such Joining Party in a transaction expressly permitted hereunder or all or substantially all of the Collateral), without the prior written consent of each Lender, or (iv) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the date hereof); provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of Administrative Agent or Collateral Agent hereunder or under any other Loan Document without the prior written consent of Administrative Agent or Collateral Agent, as applicable.

**13.8 Integration.** The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements, including any and all Lender's summary of terms presented to Borrower.

**13.9 Counterparts.** This Agreement may be executed by facsimile or PDF, and in in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**13.10 Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. The obligation of Borrower in [Section 1.8](#) to indemnify Agents and Lenders shall survive until the statute of limitations with respect to such claim or cause of action shall have run. Upon such payment as described in the immediately preceding sentence, this Agreement and the other Loan Documents shall terminate and shall be of no further force and effect, provided however, that [Section 1.5\(c\)](#), [Section 3.3](#), [Section 9](#), [Section 11](#), and [Section 13](#) of this Agreement, and all indemnities in favor of Lenders or Agents contained in any of the Loan Documents shall survive such termination subject to the applicable statutes of limitations.

**13.11 Confidentiality.** In handling any Confidential Information of Borrower, Agents and Lenders shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Agents' or a Lender's Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or

purchaser shall have entered into an agreement containing provisions substantially the same as those in this [Section 13.11](#); (c) as required by law, regulation, subpoena, or other order; (d) to Agents' or a Lender's regulators or as otherwise required in connection with Agents' or a Lender's examination or audit; (e) as any Agent or a Lender considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of any Agent or Lender so long as such service providers have executed a confidentiality agreement with terms no less restrictive than those contained herein. Confidential Information does not include information that is: (i) in the public domain or in any Agent's or Lender's possession when disclosed to any Agent or Lender, or becomes part of the public domain after disclosure to any Agent or Lender (in each case, through no fault of any Agent or Lender); (ii) disclosed to any Agent or Lender by a third party if such Agent or Lender does not know that the third party is prohibited from disclosing the information; or (iii) that any Agent or Lender develops independently.

**13.12 Right of Set Off.** Borrower hereby grants to Lender, a lien, security interest and right of set off as security for all Obligations to Lender, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender (including a Lender subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Lender may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**13.13 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**13.14 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**13.15 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**13.16 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

**13.17 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

**13.18 Patriot Act/Freedom Act.** Lender hereby notifies Borrower and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act and USA FREEDOM Act, it is required to

obtain, verify and record information that identifies Borrower and its Subsidiaries, which information includes the name and address of Borrower and its Subsidiaries and other information that will allow Lender to identify Borrower and its Subsidiaries in accordance with the USA PATRIOT Act and the USA FREEDOM Act.

#### SECTION 14. DEFINITIONS

**14.1 Definitions.** Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

**"Accommodation Conditions"** means the occurrence to Collateral Agent's satisfaction of the following: (a) no Event of Default has occurred and is continuing, (b) Consolidated Operating Income for calendar year 2017 measured as of December 31, 2017, is at least Fifteen Million Dollars (\$15,000,000), with evidence reasonably satisfactory thereof having been provided to Collateral Agent not later than January 31, 2018, (c) Consolidated Operating Income on a trailing twelve consecutive month basis measured as of the last day of each month following December 31, 2017, is at least Fifteen Million Dollars (\$15,000,000), with evidence reasonably satisfactory thereof having been provided to Collateral Agent not later than the last day of each following month. Collateral Agent shall promptly notify Administrative Agent in writing upon any change in the Accommodation Conditions.

**"Account"** means any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

**"Account Debtor"** means any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

**"Administrative Agent"** is defined in the preamble.

**"Administrative Questionnaire"** means an Administrative Questionnaire in the form of Exhibit G, or such other form as may be supplied from time to time by Administrative Agent.

**"Affiliate"** means, with respect to any Person, each other Person that owns 10% or more of or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

**"Agents"** mean, collectively, the Administrative Agent and the Collateral Agent.

**"Agreement"** is defined in the preamble.

**"Annual Audited Financial Statements"** is defined in Section 5.2(c).

**"Assignment and Acceptance"** means an assignment and acceptance entered into by a Lender and a permitted assignee, in the form of Exhibit F or such other form as shall be approved by Administrative Agent.

**"Bankruptcy Code"** means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

**"Bankruptcy Law"** means the Bankruptcy Code or any other foreign, federal or state bankruptcy, insolvency, receivership, creditors' rights or similar law.

**"Board"** means Borrower's board of directors. **"Borrower"** is defined in the preamble.

**"Borrower's Books"** mean all Borrower and each of its Subsidiary's books and records including ledgers, federal and state Tax Returns, records regarding their assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**"Borrowing Resolutions"** mean, with respect to any Person, those resolutions adopted by such Person's board of directors and delivered by such Person to Administrative Agent approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its Secretary or other authorized officer on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Agents and Lenders may conclusively rely on such certificate unless and until such Person shall have delivered to them a further certificate canceling or amending such prior certificate.

**"Budget"** is defined in [Section 5.2\(e\)](#).

**"Business Day"** means any day other than a Saturday, Sunday or other day on which banking institutions in the State of California are authorized or required by law or other governmental action to close; provided, however, that, when used with reference to a Loan at LIBOR Rate (including the making, continuing, prepaying or repaying of such Loan), the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits on the London interbank market.

**"Cash" or "Cash Equivalents"** means (a) cash, (b) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition, and (c) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.

**"Closing Fee"** means Three Million Five Hundred Thousand Dollars (\$3,500,000).

**"Code"** means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term **"Code"** shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**"Collateral"** means any and all properties, rights and assets of Borrower described on [Exhibit A](#).

**"Collateral Agent"** is defined in the preamble.

“**Comerica Account**” means that certain deposit account maintained by Borrower with Comerica Bank, account number 1894409612 as long as such account shall at no time contain more than US \$60,000.

“**Commitment Fee**” means One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000).

“**Commodity Account**” means any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” means that certain certificate in the form attached hereto as Exhibit B.

“**Confidential Information**” means, subject to the exclusions provided in Section 13.11, information that is generally not available to the public and either (i) is marked as confidential at the time disclosed, or (ii) should under the circumstances be reasonably expected to be confidential.

“**Consolidated Inventory**” means Inventory of Borrower and its Subsidiaries, on a consolidated basis, in all cases being in good, saleable condition, undamaged, unused and not having been held for more than ninety (90) days.

“**Consolidated Operating Income**” means the aggregate Operating Income of Borrower and its Subsidiaries on a consolidated basis.

“**Consolidated Receivables**” means Accounts which arise in the ordinary course of Borrower’s and its Subsidiaries’ business on a consolidated basis. Collateral Agent reserves the right at any time and from time to time after the Effective Date upon notice to Borrower, to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Without limiting the fact that the determination of which Accounts are to be included as Consolidated Receivables as a matter of Collateral Agent’s good faith judgment, the following are the minimum requirements for an Account to be a Consolidated Receivable. Unless Collateral Agent agrees otherwise in writing, Consolidated Receivables shall not include:

- (a) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent;
- (b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
- (c) Accounts with credit balances over ninety (90) days from invoice date;
- (d) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower and/or the applicable Subsidiary has assigned its payment rights to Collateral Agent and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;
- (e) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;
- (f) Accounts owing from an Account Debtor where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- (g) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts) unless, in each case, non-offset letters satisfactory to Collateral Agent are provided;

(h) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(i) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(j) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Collateral Agent, Borrower and/or its Subsidiaries, as applicable, and the Account Debtor have entered into an agreement acceptable to Collateral Agent in its sole discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower and/or its Subsidiaries, as applicable (sometimes called "bill and hold" accounts);

(k) Accounts for which the Account Debtor has not been invoiced;

(l) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;

(m) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond ninety (90) days;

(n) Accounts arising from chargebacks, debit memos or other payment deductions taken by an Account Debtor;

(o) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);

(p) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(q) Accounts for which Collateral Agent in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by "refreshed" or "recycled" invoices; and

(r) other Accounts Collateral Agent deems ineligible in the exercise of its good faith business judgment.

**"Consolidated Revenue"** means the aggregate Revenue for Borrower and its Subsidiaries on a consolidated basis.

**"Consolidated Unrestricted Cash"** means the aggregate Unrestricted Cash for Borrower and its Subsidiaries on a consolidated basis.

**"Contingent Obligation"** means, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

**“Control Agreement”** means any control agreement in form and substance satisfactory to Collateral Agent which is entered into among Borrower, Collateral Agent and the depository institution or intermediary at which Borrower maintains a Pledged Account, pursuant to which Collateral Agent obtains control (within the meaning of the Code) over such Pledged Account. For the purposes of any Pledged Account maintained outside of the United States, a debenture, in form and substance satisfactory to Collateral Agent shall be used in place of and shall constitute a “Control Agreement.” If an agreement of a different character than a Control Agreement or debenture is needed to perfect or charge a Pledged Account located outside of the United States, such agreement shall constitute a “Control Agreement.”

**“Copyrights”** mean any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**“Credit Extension”** means any advance of funds under the Term Loan, or any other extension of credit by a Lender for Borrower’s benefit.

**“Default Rate”** is defined in [Section 1.3\(c\)](#).

**“Deposit Account”** means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

**“Disposition”** means with respect to any property, any sale, lease, sublease, sale and leaseback, assignment, participation, pledge, grant of security interest, conveyance, transfer, license or other disposition thereof. The terms **“Dispose”** and **“Disposed of”** shall have correlative meanings.

**“Dollars,” “dollars”** or use of the sign **“\$”** means only lawful money of the United States and not any other currency, regardless of whether that currency uses the **“\$”** sign to denote its currency or may be readily converted into lawful money of the United States.

**“Domestic Subsidiary”** means any Subsidiary of Borrower that was formed under the laws of the United States or any state of the United States or the District of Columbia.

**“Effective Date”** is defined in the preamble.

**“Equipment”** means all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

**“Equity Interests”** mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, warrant, convertible debt or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest, provided that in the case of any convertible debt, such convertible debt shall be required to be Subordinated Debt.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and its regulations.

**“Event of Default”** is defined in [Section 7](#).

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

**“Excluded Accounts”** means (a) any Deposit Accounts exclusively established to cash collateralize letters of credit permitted by the Agreement, (b) Deposit Accounts exclusively established to cash collateralize business credit card programs, not to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate, (c) the HSBC Australia Account, (d) the HSBC US Account, (e) the Comerica Account, and (f) a single Payroll Account but only to the extent that no more than one month’s payroll may be on deposit at any given time.

**“Excluded Domestic Subsidiary”** means any Domestic Subsidiary of Borrower that is treated as a disregarded entity for United States purposes and substantially all of the assets of which consist of equity and/or debt of one or more Foreign Subsidiaries.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) income or franchise Taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America, or by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, and (c) in the case of a Foreign Lender, U.S. federal withholding Taxes imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 1.11(f), except in each case to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from Borrower with respect to such withholding Tax pursuant to Section 1.11 and (d) U.S. federal withholding Taxes imposed under FATCA.

**“FATCA”** shall mean Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and any intergovernmental agreement entered into in connection with the implementation of such Sections of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

**“Fee Letter”** means that certain Fee Letter, dated the date hereof, by and between the Administrative Agent and the Borrower.

**“Flextronics”** means Flextronics International Ltd., an entity incorporated in the Republic of Singapore.

**“Flextronics America, LLC”** means Flextronics America, Inc..

**“Flextronics Facility”** means that certain facility owned and operated by Flextronics America LLC, located at 847 Gibraltar Drive, Milpitas, California 95035.

**“Flextronics Industrial Ltd.”** means Flextronics Industrial Ltd. (together with all its Subsidiaries and Affiliates that manufacture or supply goods, inventory and/or services under the Flextronics MSA to or for the benefit of Borrower and its Subsidiaries.

**“Flextronics IP Security Agreement”** means that certain Intellectual Property Security Agreement dated as of December 27, 2016 by and between Flextronics and Borrower, as may be amended in accordance with Section 6.13.

**“Flextronics License Agreement”** means subject to Collateral Agent’s prior written consent, which consent may be withheld in Collateral Agent’s sole discretion, that certain Master License Agreement to be entered into between Flextronics Industrial Ltd. and Borrower pursuant to which Borrower grants Flextronics, Flextronics America, LLC or any of their Affiliates any right to sell, market or otherwise distribute any Goods, as such agreement may be amended in accordance with Section 6.13.

**“Flextronics Logistics Agreement”** means that certain Flextronics Logistics Services Agreement dated as of May 1, 2009, as may be amended in accordance with Section 6.13.

**“Flextronics MSA”** means the Manufacturing Services Agreement entered into between Borrower and Flextronics Industrial Ltd. on March 1, 2009, as may be amended in accordance with Section 6.13.

“**Flextronics Pledge Agreement**” means that certain Pledge Agreement dated as of December 27, 2016, by and between Flextronics Industrial Ltd and Borrower, as may be amended in accordance with Section 6.13.

“**Flextronics Security Agreement**” means that certain Security Agreement dated as of December 27, 2016, by and between Flextronics Industrial Ltd and Borrower, as may be amended in accordance with Section 6.13.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Foreign Subsidiary**” means any Subsidiary of Borrower that is not a Domestic Subsidiary.

“**Funding Date**” means any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**GAAP**” means generally accepted accounting principles for the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination. Notwithstanding the foregoing, operating and capital leases will be treated in a manner consistent with their treatment under GAAP as in effect on the Effective Date, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

“**General Intangibles**” means all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**HSBC Australia Account**” means that certain deposit account maintained by Borrower with HSBC Australia, account number 011-510559-001 as long as such account shall at no time contain more than US \$1,000,000 for a period of ten (10) consecutive Business Days.

“**HSBC US Account**” means that certain deposit account maintained by Borrower with HSBC in the United States, account number 267098600 as long as such account shall at no time contain more than US \$35,000.

“**Hedging Agreement**” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“**Indebtedness**” means indebtedness of any nature.

“**Indemnitee**” is defined in [Section 13.2\(a\)](#).

**"Indemnified Taxes"** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**"Insolvency Proceeding"** means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**"Intellectual Property"** means, with regard to any Person, all of such Person's right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to it;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**"Intellectual Property Licenses"** means any licenses or other similar rights in or with respect to Intellectual Property.

**"Intercreditor Agreement"** means that certain intercreditor agreement, dated as of December 27, 2016, between Collateral Agent, Wells Fargo Bank and Flextronics America LLC, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

**"Intercompany Subordination Agreement"** means an intercompany subordination agreement, dated as of the Effective Date, executed and delivered by Borrower, each of its Subsidiaries, and Collateral Agent, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

**"Interest Only Period"** means the period of time beginning on July 8, 2016 and continuing through and including February 28, 2018, provided however, that the Interest Only Period shall be extended on a month to month basis as long as the Accommodation Conditions remain satisfied, not to extend beyond February 28, 2019. For the avoidance of doubt, once the Accommodation Conditions are not satisfied, the Interest Only Period will no longer be extended.

**"Interest Payment Date"** means the first Business Day of each month after the Effective Date.

**"Inventory"** means all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**"Investment"** means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any stocks, bonds, notes, debentures or other obligations or securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by Borrower or any Subsidiary of Borrower from any Person, of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for

moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iv) all investments consisting of any exchange traded or over the counter derivative transaction, including any Hedging Agreement, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment and after giving effect to any return of capital, repayment or dividends or distributions in respect thereof received in cash with respect to such Investment.

**"IP Release Trigger"** means Collateral Agent has confirmed its receipt of evidence, satisfactory to Collateral Agent, that (a) the Flextronics License Agreement (if it exists), the Flex Security Agreement, the Flex Pledge Agreement and the Flextronics IP Security Agreement have been terminated, (b) Consolidated Unrestricted Cash plus Consolidated Receivables, minus (iii) Consolidated Receivables that the Account Debtor has not paid within sixty (60) days of invoice date regardless of invoice payment period terms, must be at least \$35,000,000 for 90 consecutive days, where Consolidated Unrestricted Cash is not less than \$20,000,000 at all times during such period; and (c) no Event of Default has occurred and continues as of the satisfaction of the foregoing conditions.

**"IP Security Agreement"** means that certain Intellectual Property Security Agreement dated as of December 27, 2016, by and between Borrower and Collateral Agent.

**"IRC"** means the Internal Revenue Code of 1986, as amended from time to time.

**"Joinder"** means that certain Joinder in substantially the form attached as Exhibit D, hereto.

**"Joining Party"** means any Person signing a Joinder as a "Co-Borrower" (as defined in the Joinder) whereby such Person becomes bound to observe the requirements of this Agreement as provided in the Joinder.

**"Lender(s)"** mean (a) the Persons listed on Schedule 1.2 (other than any such Person that has ceased to be a party hereto) and (b) any Person that has become a party hereto as a Lender.

**"Lender Expenses"** are all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) and reasonable fees and expenses of accountants, advisors and consultants incurred by a Lender or an Agent for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents and the Warrants (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

**"LIBOR Rate"** means, for any date of determination, the three-month London Interbank Offered Rate (rounded upward to the nearest 1/16 of one percent) that appears on Bloomberg at 11:00 am (London, England time) on the second full Business Day preceding the first day of such date of determination; *provided*, that if such index ceases to exist or is no longer published or announced, then the term "LIBOR Rate" shall mean the rate per annum determined by the Administrative Agent to be the average of rates per annum at which deposits in dollars are offered for a maturity comparable to such relevant interest period to three (3) major banks in the London interbank market in London, England at approximately 11:00 a.m. (England, London time), two Business Days prior to the first day of such date of determination. Notwithstanding the foregoing, the LIBOR Rate shall not be less than 0%. The LIBOR Rate shall be determined on the first Business Day of each month by Administrative Agent, such determination being conclusive absent manifest error.

**"LIBOR Unavailability Notice"** shall have the meaning assigned to such term in Section 1.3(e).

“**Lien**” means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan**” means the Term Loan.

“**Loan Documents**” are, collectively, this Agreement, the Perfection Certificates, the Security Documents, each Joinder, each Note and any other present or future agreement between Borrower and/or any Joining Party and/or for the benefit of Lenders and/or Agents, as all such may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“**Loan Parties**” mean Borrower, any Joining Party and any guarantor of such entities’ obligations under the Loan Documents. For the avoidance of doubt, no Foreign Subsidiary or Excluded Subsidiary (nor any of their Subsidiaries) shall become a Loan Party under the Loan Documents.

“**Loan Party**” means any of the Loan Parties.

“**Material Adverse Change**” means any circumstance, occurrence, fact, condition (financial or otherwise) or change (including a change in Applicable Law, event, development or effect) that, individually or in the aggregate, has, or is reasonably likely to have, in the opinion of Collateral Agent or the Required Lenders, acting reasonably, in a Material Adverse Effect.

“**Material Adverse Effect**” means (i) a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, result in a material adverse effect) on the business, operations, affairs, performance, properties, Revenue, assets, liabilities (including contingent liabilities), obligations, capitalization, results of operations (financial or otherwise), cash flows or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, (ii) any material impairment of any Loan Party’s ability to exercise its rights or perform any of its obligations under this Agreement or any of the Security Documents or (iii) any prejudice to, restriction on or rendering unenforceable or ineffective, any obligation under this Agreement or any of the Security Documents or any Lien over all or any material portion of the Collateral or any right intended or purported to be granted under or pursuant to any of the Loan Documents to or for the benefit of Agents or Lenders. The final determination as to whether a Material Adverse Effect has occurred will be made by either Collateral Agent or the Required Lenders acting reasonably.

“**Monthly Financial Statements**” is defined in [Section 5.2\(a\)](#).

“**Note**” means for a Term Loan, the Note attached in substantially the form attached hereto as [Exhibit E](#).

“**Notice of Borrowing**” means a notice given by Borrower to Administrative Agent in accordance with [Section 2.2\(a\)](#), substantially in the form of [Exhibit C](#), with appropriate insertions.

“**Obligations**” are each Loan Party’s obligations to pay when due any debts, principal, interest, Origination Fee, Commitment Fee, Lender Expenses, Prepayment Fee, Closing Fee and other amounts such Person owes Lender now or later, whether under this Agreement, the Loan Documents or otherwise, and including interest accruing after Insolvency Proceedings begin, and debts, liabilities, or obligations of such Person assigned to Lender, and to perform each Loan Party’s duties under the Loan Documents.

“**OFAC**” is defined in [Section 4.13](#).

“**Operating Income**” means for any Person, such Person’s gross profit minus operating expenses, depreciation and amortization, in each case as determined in accordance with GAAP, provided that the following expenses may be added back (y) expenses related to stock based compensation in the amount of up to \$3,100,000 for the first fiscal quarter of 2017, up to \$3,200,000 for the second fiscal quarter of 2017, up to \$3,200,000 for the third fiscal quarter of 2017, and up to \$3,300,000 for the fourth fiscal quarter of 2017, and (z) restructuring fees and expenses up to \$9,000,000 for the fiscal year of 2017, in all cases consistent

with past practices as reported in the financial statements provided to Lenders and their Affiliates immediately prior to the Effective Date.

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“**Origination Fee**” means a payment in the amount of \$75,000 due from Borrower to Lenders to initiate Lenders’ due diligence process.

“**Participant Register**” is defined in [Section 13.1\(f\)](#).

“**Patents**” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“**Payment Office**” means the office of the Administrative Agent located at 225 W. Washington St., 21st Floor, Chicago, IL 60606, or such other office or account as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“**Payroll Account**” means a zero balance account maintained by Borrower used exclusively to process payroll and related taxes.

“**Perfection Certificate**” is defined in [Section 4.1\(a\)](#).

“**Permitted Indebtedness**” means:

- (a) Indebtedness to Lenders under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and shown on the Perfection Certificates; (c) Subordinated Debt;
- (d) Indebtedness consisting of (i) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Dispositions permitted under [Section 6.1](#); and (iii) unsecured guarantees with respect to Indebtedness of Borrower or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness under this Agreement;
- (e) intracompany Indebtedness among any Loan Parties;
- (f) Indebtedness incurred as a result of endorsing negotiable instruments or other payment items for deposit, in all cases received in the ordinary course of business;
- (g) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;
- (h) reserved;
- (i) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called “purchase cards”, “procurement cards” or “p-cards”), or cash management services;
- (j) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Borrower or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

- (k) the incurrence by Borrower or its Subsidiaries of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with Borrower's and its Subsidiaries' operations and not for speculative purposes;
- (l) unsecured Indebtedness of Borrower owing to employees, former employees, officers, former officers, directors, former directors, or consultants (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the redemption or repurchase by Borrower of the Equity Interests of Borrower that has been issued to such Persons, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000), and (iii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to Collateral Agent;
- (m) Indebtedness composing Permitted Investments;
- (n) unsecured Indebtedness incurred in respect of netting services, overdraft protection, and other like services, in each case, incurred in the ordinary course of business;
- (o) Indebtedness in an aggregate outstanding principal amount not to exceed Five Million Dollars (\$5,000,000) at any time outstanding for all Foreign Subsidiaries; provided, that such Indebtedness is not directly or indirectly recourse to any of the Loan Parties or of their respective assets;
- (p) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness;
- (q) other unsecured Indebtedness in an aggregate outstanding principal amount not to exceed Five Hundred Thousand Dollars (\$500,000) at any time outstanding; and
- (r) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (q) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**"Permitted Intercompany Advances"** means loans made by (a) a Loan Party to another Loan Party, (b) a Subsidiary of Borrower that is not a Loan Party to another Subsidiary of Borrower that is not a Loan Party, and (c) a Subsidiary of Borrower that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement.

**"Permitted Investments"** mean:

- (a) Investments (including, without limitation, in Subsidiaries) existing on the Effective Date and shown on the Perfection Certificates;
- (b) Investments after the Effective Date among any Loan Parties; (c) Investments consisting of Cash or Cash Equivalents;
- (d) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (e) advances made in connection with purchases of goods or services in the ordinary course of business;
- (f) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

- (g) guarantees permitted under the definition of Permitted Indebtedness; (h) Permitted Intercompany Advances;
- (i) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers) or as security for any such Indebtedness or claims;
- (j) Reserved;
- (k) (i) non-Cash loans and advances to employees, officers, and directors of Borrower or any of its Subsidiaries for the purpose of purchasing Equity Interests in Borrower so long as the proceeds of such loans are used in their entirety to purchase such Equity Interests in Borrower, and (ii) loans and advances to employees and officers of Borrower or any of its Subsidiaries in the ordinary course of business for any other business purpose and in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year;
- (l) Investments resulting from entering into agreements relative to Indebtedness that is permitted under clauses (i) or (k) of the definition of Permitted Indebtedness; and
- (m) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support and strategic alliances with particular customers in which such customers will share in the research and development expense of Borrower associated with the incorporation by such customers of microconverters purchased from Borrower into solar panels produced by such customers, provided in all cases that any cash investments by Borrower do not exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate in any fiscal year.

**"Permitted Liens" mean:**

- (a) Liens existing on the Effective Date and shown on the Perfection Certificates or arising under this Agreement and the other Loan Documents;
- (b) Liens for unpaid Taxes, fees, assessments or other government charges or levies, either (i) not past due or (ii) do not have priority over Collateral Agent's Liens and are being contested in good faith and for which Borrower maintains adequate reserves on Borrower's Books, provided that no notice of any such Lien has been filed or recorded under the IRC and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens or capital leases (i) on Equipment and related software acquired or held by Borrower after the Effective Date which is incurred for financing the acquisition of the Equipment and related software securing no more than \$2,000,000 in the aggregate which remains outstanding, or (ii) existing on Equipment and related software when acquired prior to the Effective Date, if the Lien is confined to the property and improvements and the proceeds of the Equipment and related software;
- (d) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;
- (e) licenses of Intellectual Property permitted under Section 6.1;
- (f) Liens granted to Flextronics Industrial LTD under the Flextronics Security Agreement and Flextronics Pledge Agreement, which Liens granted to Flextronics must at all times be junior and subordinate to the Liens granted Collateral Agent;
- (g) reserved;

- (h) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens are for sums not yet delinquent;
- (i) Liens on amounts deposited to secure Borrower's and its Subsidiaries obligations in connection with worker's compensation or other unemployment insurance;
- (j) with respect to any real property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof;
- (k) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of a permitted refinancing thereof and so long as the replacement Liens only encumber those assets that secured the original Indebtedness;
- (l) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of Deposit Accounts in the ordinary course of business;
- (m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;
- (n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods provided that the amount owed for such customs duties is not yet due;
- (o) Liens consisting of cash collateral securing (i) obligations of the Foreign Subsidiaries under foreign credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p- cards") or other cash management services permitted by clause (i) of the definition of Permitted Indebtedness, but in each such case only to the extent that such cash collateral is owned by one or more of the Foreign Subsidiaries; (ii) any Hedging Agreement; and
- (p) other Liens securing obligations not in excess of One Hundred Thousand Dollars (\$100,000).

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Pledge Agreements**" mean, collectively, any local law pledge agreement relating to the Equity Interests or evidence of Indebtedness of any Subsidiary owned directly or indirectly by a Loan Party to the extent necessary or useful to perfect Collateral Agent's security interest therein under applicable laws.

"**Pledged Account**" means any Deposit Account, Securities Account, Commodity Account or other similar account (other than an Excluded Account) even though it may not precisely fit the definition of a Deposit Account, Securities Account or a Commodity Account.

"**Prepayment Fee**" means a payment equal to the amount of the Term Loan being prepaid multiplied by the Prepayment Percentage.

"**Prepayment Percentage**" means (i) three percent (3.00%) of the Term Loan amount prepaid on or prior to the first anniversary of July 8, 2016, and (ii) two percent (2.00%) of the Term Loan amount prepaid after the first anniversary of July 8, 2016 of such Term Loan but on or prior to the second anniversary of July 8, 2016, and (iii) one percent (1.00%) of the Term Loan amount prepaid after the second anniversary of July 8, 2016 but prior to the Term Loan Maturity Date.

**"Prime Rate"** means, for any day, the rate of interest in effect for such day that is identified and normally published by The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published as the Prime Rate, then the highest of such rates), with any change in Prime Rate to become effective as of the date the rate of interest which is so identified as the "Prime Rate" is different from that published on the preceding Business Day. If The Wall Street Journal no longer reports the Prime Rate, or if the Prime Rate no longer exists, or Administrative Agent determines in good faith that the rate so reported no longer accurately reflects an accurate determination of the prevailing Prime Rate, then Administrative Agent may select a reasonably comparable index or source to use as the basis for the Prime Rate.

**"Pro Rata Percentage"** means, with respect to any Lender, a percentage equal to a fraction, the numerator of which is such Lender's Term Loan Commitment and the denominator of which is the aggregate of the Term Loan Commitments of all Lenders.

**"Quarterly Financial Statements"** is defined in [Section 5.2\(b\)](#).

**"Recipient"** means (a) Administrative Agent, (b) Collateral Agent, and (c) any Lender, as applicable.

**"Register"** is defined in [Section 13.1\(d\)](#).

**"Registered Organization"** means any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

**"Related Fund"** means, with respect to any Lender that is a fund or commingled investment vehicle that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**"Related Parties"** means, with respect to any specified Person, such Person's Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person's Affiliates.

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

**"Required Lenders"** means, at any time, Lenders having funded Credit Extensions and having Term Loan Commitments representing more than 50% of the sum of all Credit Extensions and Term Loan Commitments at such time.

**"Requirement of Law"** means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**"Responsible Officer"** means any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

**"Restricted License"** is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Collateral Agent's right to sell any Collateral.

**"Restricted Payment"** is defined in [Section 6.7](#).

**"Revenue"** means, for any Person, revenue received by such Person as determined in accordance with GAAP from the sale of finished Goods Inventory or services, in all cases in the ordinary course of such entity's business, less returns, credits and sales taxes.

“**SBA Forms**” mean SBA Form 480 (11-10), SBA Form 652 (11-91) and SBA Form 1031 (12/10) promulgated by the U.S. Small Business Administration.

“**SEC**” means the Securities and Exchange Commission or any other similar or successor agency of the United States federal government administering the Securities Act.

“**Securities Account**” means any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar United States Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“**Security Documents**” mean the IP Security Agreement, the Pledge Agreements, Perfection Certificates, any Joinder, any Control Agreement, any Subordination Agreement and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or in connection with [Section 5.8](#).

“**Solvent**” means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person’s debts (including contingent liabilities) is less than all of such Person’s assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, and (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is “solvent” or not “insolvent”, as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“**Subordination Agreement**” means any subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent entered into between Collateral Agent and the other creditor, on terms acceptable to Collateral Agent whereby a Person subordinates the Indebtedness of any Loan Party to such Person to the Indebtedness of any Loan Party to Collateral Agent and/or Lenders.

“**Subordinated Debt**” means indebtedness subject to a Subordination Agreement.

“**Subsidiary**” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

“**Tax Returns**” mean all returns, declarations, reports, schedules, forms or information return or statement of, or with respect to, Taxes filed or required to be filed with any Governmental Authority or depository.

“**Taxes**” mean any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term Loan”** means the term loan made available by Lenders to Borrower under the Initial Credit Extension and the Additional Credit Extension pursuant to [Section 1.2](#) of the Agreement, which amount shall not exceed in the aggregate Fifty Million Dollars (\$50,000,000).

**“Term Loan Alternate Base Rate”** means, for any day, the greater of (a) 10.3125% and (b) a fluctuating rate of interest per annum equal to the Prime Rate in effect on such day plus 6.5625%, provided that during the time the Accommodation Conditions remain satisfied, the Term Loan Alternate Base Rate shall be reduced by 1.0%. Any change in the Term Loan Alternate Base Rate due to a change in the Prime Rate shall be effective from and including the effective day of such change in the Prime Rate. For the avoidance of doubt, once the Accommodation Conditions have been satisfied and then become unsatisfied, the Term Loan Alternate Base Rate shall increase by 1.0% and the Term Loan Alternate Base Rate shall no longer be eligible for reduction based on satisfying the Accommodation Conditions.

**“Term Loan Commitment”** means with respect to each Term Loan Lender, the commitment of such Lender to make Credit Extensions under the Term Loan hereunder as set forth on [Schedule 1.2](#) directly below the column entitled “Term Loan Commitment,” or in the Assignment and Acceptance pursuant to which such Lender assumed its Term Loan Commitment, in all cases as the same may be reduced, terminated or adjusted as provided in the Agreement. The aggregate amount of Lenders’ Term Loan Commitments is Fifty Million Dollars (\$50,000,000).

**“Term Loan Lender”** mean each Lender with a Term Loan Commitment or with outstanding Term Loan.

**“Term Loan Interest Rate”** means, for any given day, the greater of (a) 10.3125%, and (b) a fluctuating rate of interest per annum equal to the LIBOR Rate plus 9.25%; provided that all times during which there is an effective LIBOR Unavailability Notice, the Term Loan Interest Rate shall mean the Term Loan Alternate Base Rate; provided further, that during the time the Accommodation Conditions remain satisfied, the Term Loan Interest Rate shall be reduced by 1.0%. Any change in the Term Loan Interest Rate due to a change in the LIBOR Rate shall be effective from and including the effective day of such change in the LIBOR Rate. For the avoidance of doubt, once the Accommodation Conditions have been satisfied and then become unsatisfied, the Term Loan Interest Rate shall increase by 1.0% and the Term Loan Interest Rate shall no longer be eligible for reduction based on satisfying the Accommodation Conditions.

**“Term Loan Maturity Date”** means July 1, 2020.

**“Trademarks”** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Person connected with and symbolized by such trademarks.

**“Unrestricted Cash”** of any Person, shall mean Cash or Cash Equivalents of such Person, (a) that are not, and are not required to be, designated as “restricted” on the financial statements of such Person, (b) that are not contractually required, and have not been contractually committed by such Person, to be used for a specific purpose, (c) that are not subject to (i) any provision of law, statute, rule or regulation, (ii) any provision of the organizational documents of such Person, (iii) any order of any Governmental Authority or (iv) any contractual restriction (including the terms of any Equity Interests), in each case of (i) through (iv), preventing such Cash or Cash Equivalents from being applied to the payment of the Obligations, (d) in which no Person other than the Collateral Agent has a Lien other than Permitted Liens as set forth in subsection (h) of the definition of Permitted Liens, and (e) that are held in a Deposit Account or Securities Account, as applicable, in which the Collateral Agent has a valid and enforceable security interest, perfected by “control” (within the meaning of the applicable Code), but in all cases shall exclude the amount of such Person’s Indebtedness which is more than three (3) Business Days overdue.

**“USA FREEDOM Act”** means The Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection and Online Monitoring (USA FREEDOM ACT) Act of 2015, Public Law 114-23 (June 2, 2015), as may be amended.

“**USA PATRIOT Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as may be amended.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the IRC.

“**Warrant**” means the warrant to purchase Borrower’s common stock Borrower issues to each Lender on the Effective Date, as such Warrants may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“**Wells Fargo Additional Security Agreements**” mean that certain Copyright Security Agreement, Trademark Security Agreement and Patent Security Agreement by and between Wells Fargo Bank, National Association and Borrower dated as of December 27, 2016, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“**Wells Fargo Credit Agreement**” means that certain AMENDED AND RESTATED CREDIT AGREEMENT by and among WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent, the lenders that are parties thereto as the Lenders, and ENPHASE ENERGY, INC., as borrower dated as of December 18, 2015, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“**Wells Fargo Guaranty and Security Agreement**” means that certain AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT executed and delivered by Borrower and each of the guarantor parties thereto as grantors, and WELLS FARGO BANK, NATIONAL ASSOCIATION as agent dated as of December 18, 2015, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time,

“**Wells Fargo Indebtedness**” means the “Obligations” (as defined in the Wells Fargo Credit Agreement) arising under the Wells Fargo Credit Agreement and secured by the Wells Fargo Guaranty and Security Agreement and the Wells Fargo Additional Security Agreements.

*[Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

LENDER:

Tennenbaum Special Situations Fund IX, LLC Tennenbaum Special Situations IX-A, LLC Tennenbaum Special Situations IX-0, L.P. Tennenbaum Special Situations IX-C, L.P. Tennenbaum Energy Opportunities Co,  
LLC Tennenbaum Senior Loan Fund IV-B, LP  
Each as Lenders

On behalf of each of the above entities:

By: Tennenbaum Capital Partners, LLC  
Its: Investment Manager

By: /s/ Philip Tseng

Name: Philip Tseng

Title: Managing Partner

Address:

c/o Tennenbaum Capital Partners, LLC

2951 28<sup>th</sup> Street, Suite 1000

Santa Monica, CA 90405

Attention: Todd Jaquez-Fissori and Asher Finci

COLLATERAL AGENT:

**Obsidian Agency Services, Inc.**, as Collateral Agent

By: /s/ Philip Tseng

Name: Philip Tseng

Title: Vice President

ADMINISTRATIVE AGENT:

**Cortland Capital Market Services LLC**, as Administrative Agent

By: /s/ Emily Ergang Pappas  
Name: Emily Ergang Pappas  
Title: Associate Counsel

BORROWER:

**Enphase Energy, Inc.**

/s/ Bert Garcia  
Name: Bert Garcia  
Title: CFO

**SCHEDULES AND EXHIBITS**

Schedule 1.2 – List of Lenders and Term Loan Commitments

Exhibit A – Collateral Description Exhibit B – Compliance Certificate Exhibit C – Notice of Borrowing Exhibit D – Joinder

Exhibit E – Note – Term Loan

Exhibit F – Form of Assignment and Acceptance

Exhibit G – Administrative Questionnaire

Exhibit H – Tax Certificates

SCHEDULE 1.2

LIST OF LENDERS AND TERM LOAN COMMITMENTS

Name of Lender	Initial Term Loan Commitment	Additional Term Loan Commitment	Total Term Loan Commitment	Comments
Tennenbaum Special Situations Fund IX, LLC	\$15,291,000.00	\$9,786,240.00	\$25,077,240.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
Tennenbaum Special Situations IX-A, LLC.	\$3,052,000.00	\$1,953,280.00	\$5,005,280.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
Tennenbaum Special Situations IX-O, L.P.	3,804,000.00	\$2,434,560.00	\$6,238,560.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
Tennenbaum Special Situations IX-C, L.P.	\$2,853,000.00	\$1,825,920.00	\$4,678,920.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
Tennenbaum Energy Opportunities Co, LLC	\$0.00	\$7,000,000.00	7,000,000.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
Tennenbaum Senior Loan Fund IV-B, LP	\$0.00	\$2,000,000.00	\$2,000,000.00	Lender will fund its Pro Rata Percentage of the applicable Credit Extension
<b>TOTAL</b>	<b>\$25,000,000.00</b>	<b>\$25,000,000.00</b>	<b>\$50,000,000.00</b>	

**SCHEDULE 1.4**

**WIRE TRANSFER INSTRUCTIONS Cortland to provide wire instructions for all payments under the Agreement**

**EXHIBIT A**

**COLLATERAL DESCRIPTION**

The Collateral consists of all of Borrower's real and personal property of every kind and nature whether now owned or hereafter acquired by, or arising in favor of Borrower, and regardless of where located, including, without limitation, all of Borrower's right, title and interest in and to the following property:

1. All Goods, Accounts (including health-care receivables), Pledged Accounts, Equipment, Inventory, contract rights (including Intellectual Property and Intellectual Property Licenses) or rights to payment of money, leases, license agreements (including Intellectual Property and Intellectual Property Licenses), franchise agreements, General Intangibles (including Intellectual Property and Intellectual Property Licenses), Commercial Tort Claims, Documents, Instruments (including any Promissory Notes), Chattel Paper (whether tangible or electronic), cash and Cash Equivalents, Fixtures, letters of credit, Letter of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities, and all other Investment Property, Supporting Obligations, and Financial Assets, whether now owned or hereafter acquired, wherever located;
2. All real property interests (including leaseholds, mineral rights, timber, etc.); and
3. All Borrower's Books relating to the foregoing, and all additions, attachments, accessories, accessions and improvements to any of the foregoing, and all substitutions, replacements or exchanges therefor, and all Proceeds, insurance claims, products, profits and other rights to payments not otherwise included in the foregoing;

provided, that, the grant of security interest herein shall not extend to and the term "Collateral" shall not include (a) any rights or interests held under any contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party that are not assignable or prohibit the grant of a security interest or lien therein by applicable law or their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); (b) equipment subject to liens permitted pursuant to Subsection (c) of the definition of Permitted Liens where the agreements governing the capital lease obligations or purchase money Indebtedness related thereto prohibit such security interest, for so long as such prohibition exists; (c) voting Equity Interests of any Foreign Subsidiary or Excluded Domestic Subsidiary, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary or Excluded Domestic Subsidiary; or (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to use trademark applications under applicable federal law; provided, that upon submission and acceptance by the USPTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral.

In the event that the IP Release Trigger Occurs, then the Collateral shall consist of all Borrower's real and personal property of every kind and nature whether now owned or hereafter acquired by, or arising in favor of Borrower, and regardless of where located, including, without limitation, all of Borrower's right, title and interest in and to the following property:

1. All Goods, Accounts (including health-care receivables), Pledged Accounts, Equipment, Inventory, contract rights (excluding Intellectual Property and Intellectual Property Licenses) or rights to payment of money, leases, license agreements (excluding Intellectual Property and Intellectual Property Licenses), franchise agreements, General Intangibles (excluding Intellectual Property and Intellectual Property Licenses), Commercial Tort Claims, Documents, Instruments (including any Promissory Notes), Chattel Paper (whether tangible or electronic), cash and Cash Equivalents,

Fixtures, letters of credit, Letter of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities, and all other Investment Property, Supporting Obligations, and Financial Assets, whether now owned or hereafter acquired, wherever located, provided however, that (i) the Collateral shall include all Accounts and General Intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the Intellectual Property or Intellectual Property Licenses (the "Rights to Payment"); and (ii) if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in Borrower's Intellectual Property or Intellectual Property Licenses is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the date of this Agreement, include the Intellectual Property to the extent necessary to permit perfection of Collateral Agent's security interest in the Rights to Payment;

2. All real property interests (including leaseholds, mineral rights, timber, etc.); and

3. All Borrower's Books relating to the foregoing, and all additions, attachments, accessories, accessions and improvements to any of the foregoing, and all substitutions, replacements or exchanges thereof, and all Proceeds, insurance claims, products, profits and other rights to payments not otherwise included in the foregoing;

provided, that, the grant of security interest herein shall not extend to and the term "Collateral" shall not include (a) any rights or interests held under any contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party that are not assignable or prohibit the grant of a security interest or lien therein by applicable law or their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); (b) equipment subject to liens permitted pursuant to Subsection (c) of the definition of Permitted Liens where the agreements governing the capital lease obligations or purchase money Indebtedness related thereto prohibit such security interest, for so long as such prohibition exists; (c) voting Equity Interests of any Foreign Subsidiary or Excluded Domestic Subsidiary, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary or Excluded Domestic Subsidiary; or (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to use trademark applications under applicable federal law; provided, that upon submission and acceptance by the PTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral.



Quarterly financial statements	Quarterly within 45 days	Yes	No
Annual financial statement (CPA Audited)	FYE within 90 days	Yes	No
Board approved Operating Budget	FYE within 60 days after the end of the year	Yes	No

The following space should be used to list:

- Intellectual Property registered (or a registration application submitted) after the Effective Date and which has not yet been listed on a previous Compliance Certificate, or any other permitted updates to the Perfection Certificates; and
- any material change in the composition of (i) Borrower's or any of its Subsidiaries' Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries' in or to any registered copyright, patent or trademark not shown in the Perfection Certificates, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of its or any of its Subsidiaries' Intellectual Property.

(if no registrations or updates, state "None")

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note." The listing of an exception does not excuse non-compliance.)

Date: [Borrower]

Name: Title:

EXHIBIT C

FORM OF NOTICE OF BORROWING

\_\_, 201\_\_

TO: Cortland Capital Market Services LLC  
225 W. Washington St., 21st Floor  
Chicago, IL 60606  
Attention: Attn: Ryan Warren and Legal Department  
Email: [ryan.warren@cortlandglobal.com](mailto:ryan.warren@cortlandglobal.com) and [legal@cortlandglobal.com](mailto:legal@cortlandglobal.com)

RE: Enphase Energy, Inc.

Reference is made to that certain Amended and Restated Loan and Security Agreement, dated as of February \_\_, 2017 (as the same may be amended, restated, supplemented, amended and restated or otherwise modified from time to time, the "**Credit Agreement**"), by and among Enphase Energy, Inc. (the "**Borrower**") and \_\_\_\_ and \_\_\_\_ (collectively, "**Lenders**"). Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

Borrower hereby gives you notice, irrevocably, pursuant to Section 2.4 of the Credit Agreement that it hereby requests a borrowing (the "**Proposed Borrowing**") under the Credit Agreement and, in connection therewith, sets forth below the information relating to the Proposed Borrowing as required by Section 2.4 of the Credit Agreement:

- a. The date of the Proposed Borrowing is \_\_\_\_, 201\_\_ (the "**Funding Date**").
- b. The aggregate principal amount of the Proposed Borrowing is \$ \_\_, and is to be made under the Term Loan.
- c. The proceeds are to be funded to the following account:

Bank Name: \_\_\_\_\_

Bank Address: \_\_\_\_\_

Account Number: \_\_\_\_\_

\_\_\_\_\_

ABA Number: \_\_\_\_\_

Account Name: \_\_\_\_\_

The undersigned, being the Chief Financial Officer of Borrower, after due inquiry hereby certifies that the following statements are true on the date hereof, shall be true on the Funding Date, both before and after giving effect to the Proposed Borrowing and any other Loan to be made on or before the Funding Date:

- (i) as of the Funding Date, the representations and warranties contained in the Credit Agreement and in the other Loan Documents are true and correct in all respects on and as of the Funding Date to the same extent as though made on and as of the Funding Date (or to the extent such representations and warranties specifically relate to a specified date on and as of such specified date);
- (ii) as of the Funding Date, no event has occurred and is continuing or would result from the consummation of the Proposed Borrowing that would constitute a Default or an Event of Default; and
- (iii) as of the Funding Date, no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by the Credit Agreement or the making of the Proposed Borrowing or the making of a Credit Extension under the Credit Agreement.

Delivery of an executed counterpart of this Notice of Borrowing by facsimile or other electronic means shall be effective as delivery of an original executed counterpart of this Notice of Borrowing.

[Remainder of page intentionally left blank]

**Enphase Energy, Inc.**

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

Name:

Title:

**EXHIBIT D**

**Joinder**

This Joinder (the "**Agreement**") is entered into as of \_\_\_\_\_, 201\_, by and between Obsidian Agency Services, Inc. ("**Agent**") and \_\_\_\_\_, a \_\_\_\_\_ [corporation / limited liability company] ("**Co-Borrower**").

WHEREAS, as a condition to Agent and Lenders entering into that certain Amended and Restated Loan and Security Agreement dated \_\_\_\_\_, 2017, as such may be amended, restated, supplemented, amended and restated or otherwise modified from time to time (the "**Credit Agreement**") with Enphase Energy, Inc. ("**Borrower**"), Agent and Lenders require that each of Borrower's Subsidiaries agree to become bound by Credit Agreement as if such entity were a party thereto, as modified by this Agreement.

WHEREAS, Co-Borrower is a Subsidiary.

WHEREAS, Co-Borrower acknowledges and agrees that it derives a substantial benefit from the Credit Agreement even if it does not directly receive proceeds thereunder, and that it is willing to deliver this Agreement in order to induce Lenders to extend such credit.

NOW, THEREFORE, based on the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Agent, Lenders and Co-Borrower hereby agree:

1. Capitalized terms used but not defined herein shall have the meaning provided in the Credit Agreement. The recitals set forth above are incorporated herein by reference.

2. By signing below, Co-Borrower shall be bound by the Credit Agreement as if it were Borrower with the following exceptions:

- a. Co-Borrower is a \_\_\_[corporation/ LLC/etc.];
- b. Co-Borrower shall not be entitled to submit a Notice of Borrowing or otherwise be entitled to require Lenders to make a Credit Extension to Co-Borrower, it being acknowledged that only Borrower has any right to such obtain funds from Lenders;
- c. Co-Borrower need not maintain separate insurance as long as it is covered under Borrower's insurance in compliance with Section 5.6 of the Credit Agreement.
- d. Co-Borrower need not provide the periodic information or reports required by Section 5.2 of the Credit Agreement as long as the information and reports submitted by Borrower contains complete and accurate information for Co-Borrower; and
- e. Neither Agent nor Lender shall be required to provide Co-Borrower with any notice or other deliverables under the Credit Agreement, it being agreed that Co-Borrower shall look exclusively to Borrower for all such items. In furtherance thereof, to the extent that Agent or Lenders have any duties, obligations or responsibilities to Borrower under the Credit Agreement, those duties, obligations and responsibilities will be limited to Borrower and not extend to Co-Borrower.

3. [Co-Borrower's securities have not been certificated. If Co-Borrower certifies its securities, it shall immediately deliver the original certificate evidencing such securities to Agent and shall follow Agent's directions regarding such securities after the occurrence and during the continuation of any Event of Default.]

4. The provisions of Sections 11, 13 and 14 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*.

5. Co-Borrower acknowledges that the providing of this Agreement to Agent is integral and material to Agent and Lenders' decision to proceed with the Credit Agreement, without which Agent and Lenders would not proceed. Co-Borrower further agrees that it is receiving substantial and material benefits from Borrower's execution of the Credit Agreement and receipt of the loan proceeds thereunder, even if the loan proceeds have not directly been made available to Co-Borrower. At a minimum, Co-Borrower acknowledges that it has received reasonably equivalent value in connection with the execution and delivery of this Agreement. Co-Borrower waives, for itself and any successors (e.g., an assignee for the benefit of creditors, a receiver, a trustee in Bankruptcy, a debtor-in-possession, etc.), to the fullest extent provided by law, any rights or remedies regarding the enforceability of this Agreement, including without limitation, that Co-Borrower did not receive adequate consideration in connection with this Agreement or any of the transactions or agreements relating thereto.

[signatures continued on the following page]

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

AGENT:

**Obsidian Agency Services, Inc.**

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

CO-BORROWER:

[\_\_\_\_\_]

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

EXHIBIT E

**Note – Term Loan**

**FORM OF TERM NOTE**

\$ \_\_.00

\_\_\_ \_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned, [NAME OF BORROWER], a [\_\_\_\_\_] (the “**Borrower**”, together with all successors and assigns), promises to pay [NAME OF LENDER] hereinafter, together with its successors in title and permitted assigns, “**Lender**”), the principal sum of \_\_\_ DOLLARS (\$ \_\_.00), or such lesser amount as is outstanding from time to time, on the dates and in the amounts set forth in the Credit Agreement (as hereafter defined), with interest, fees, expenses and costs at the rate and payable in the manner stated in the Credit Agreement. As used herein, the “**Credit Agreement**” means and refers to that certain Amended and Restated Loan and Security Agreement, dated as of [DATE OF AGREEMENT] (as such may be amended, restated, supplemented, amended and restated or otherwise modified from time to time) by and among Borrower, Lender, Cortland Capital Market Services LLC, as administrative agent for the Lenders (“**Administrative Agent**”) and Obsidian Agency Services, Inc. as collateral agent for the Lenders (“**Collateral Agent**”). Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

This Term Note is a “Note” to which reference is made in the Credit Agreement and is subject to all terms and provisions thereof. This Term Note is also entitled to the benefits of the Credit Agreement and is secured by the Collateral. The principal of, and interest on, this Term Note shall be payable at the times, in the manner, and in the amounts as provided in the Credit Agreement and shall be subject to prepayment and acceleration as provided therein. Administrative Agent’s books and records concerning the Term Loan, the accrual of interest and fees thereon and the repayment of such Term Loan shall be prima facie evidence of the indebtedness to Lender hereunder, absent manifest error.

No delay or omission by Lender or Agents in exercising or enforcing any of their powers, rights, privileges, remedies or discretions hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any Event of Default shall operate as a waiver of any other Event of Default, nor as a continuing waiver.

Borrower waives presentment, demand, notice and protest, and also waives any delay on the part of the holder hereof. Borrower assents to any extension or other indulgence (including, without limitation, the release or substitution of Collateral) permitted by Collateral Agent, and/or Lender with respect to this Term Note and/or any Loan Document or any extension or other indulgence with respect to any other liability or any collateral given to secure any other liability of Borrower or any other Person obligated on account of this Term Note.

This Term Note shall be binding upon Borrower and upon its successors, assigns, and representatives, and shall inure to the benefit of Lender and its successors, endorsees and assigns.

Borrower agrees that any action or proceeding arising out of or relating to this Term Note or for recognition or enforcement of any judgment, may be brought in any California State court or Federal court

of the United States of America sitting in Los Angeles, and any appellate court from any thereof, and by execution and delivery of this Term Note, Borrower and Lender each consent, for itself and in respect of its property, to the exclusive jurisdiction of those courts. Each of Borrower and, by its acceptance hereof, Lender, irrevocably and unconditionally waives, to the fullest extent that it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Term Note in any California State or Federal court. Each of Borrower and, by its acceptance hereof, Lender, hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

THIS TERM NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO ITS CONFLICT OF LAW PRINCIPALS.

Each of Borrower and, by its acceptance hereof, Lender, makes the following waiver knowingly, voluntarily, and intentionally, and understands that Lender or Borrower, as applicable, are each relying thereon. EACH OF BORROWER AND LENDER BY ITS ACCEPTANCE HEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS TERM NOTE. If such waiver is for any reason not enforceable as provided, then the provisions of Sections 11.3 and 11.4 of the Credit Agreement shall be deemed incorporated herein by reference.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned has caused this Term Note to be duly executed and delivered by its duly authorized officer as of the date first above written.

**[NAME OF BORROWER]**

By: \_\_ Name:

Title:

[SIGNATURE PAGE TO FORM OF TERM NOTE]

Date \_\_\_\_\_

Amount of Term Loan \_\_\_\_\_

Maturity Date Payments of Principal/Interest \_\_\_\_\_

Principal Balance of Term Note \_\_\_\_\_

Name of Person Making this Notation \_\_\_\_\_

**EXHIBIT F**

**FORM OF ASSIGNMENT AND ACCEPTANCE**

This Assignment and Acceptance (this “**Assignment and Acceptance**”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the] [each, an] “**Assignor**”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “**Assignee**”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Amended and Restated Loan and Security Agreement identified below (the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration set forth below as the “Purchase Price”, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)]

against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty (express or implied) by [the][any] Assignor.

1. Assignor[s]: —
2. Assignee[s]: —

- 1 For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.
- 2 For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.
- 3 Select as appropriate.
- 4 Include bracketed language if there are either multiple Assignors or multiple Assignees.

[for each Assignee identify Lender]

3. Borrower: Enphase Energy, Inc., a Delaware corporation
4. Administrative Agent: Cortland Capital Market Services LLC, including any successor thereto, as the "Administrative Agent" under the Credit Agreement.
5. Credit Agreement: The Amended and Restated Loan and Security Agreement, dated as of \_\_\_\_\_, 2017, among Enphase Energy, Inc., a Delaware corporation, as Borrower, Lenders from time to time party thereto, Cortland Capital Market Services LLC, as administrative agent for Lenders and Obsidian Agency Services, Inc., a Delaware corporation, as collateral agent for Lenders.
6. Term Loan Assigned Interest:

<u>Assignor[s]</u>	<u>Assignee[s]</u>	Aggregate Amount of Term Loan <u>for all Lenders</u>	Amount of Term <u>Loan Assigned</u>	Percentage Assigned of Term <u>Loan</u>	<u>CUSIP Number</u>
		\$	\$	%	
		\$	\$	%	
		\$	\$	%	

7. Reserved.

8. Purchase Price: \$\_\_\_

9. Trade Date: \_\_\_9

Effective Date: \_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

*[Remainder of page intentionally left blank]*

5 List each Assignor, as appropriate.

6 List each Assignee, as appropriate.

7 Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

8 Set forth, to at least 9 decimals, as a percentage of the Loan of all Lenders thereunder.

9 To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Acceptance are hereby agreed to: ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_

Name: Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: Name:

Title:

Consented to and Accepted:

Cortland Capital Market Services LLC, as Administrative Agent

By: Name:

Title:

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ACCEPTANCE****1. Representations and Warranties.**

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Commitment, and the outstanding balance of its Loan, without giving effect to the assignments pursuant thereto, are as set forth herein; and (b) except as set forth in (a) above, makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant to the Credit Agreement, or the financial condition of, Borrower or any Subsidiary or the performance or observance by Borrower or any Subsidiary of any of its obligations under the Credit Agreement, any other Loan Document or any other instrument or document furnished pursuant to the Credit Agreement.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it is legally authorized to enter into such Assignment and Acceptance; (ii) it meets all the requirements to be an assignee under Section 13.1 of the Credit Agreement (subject to such consents, if any, as may be required under Section 13.1 of the Credit Agreement); (iii) from and after the Effective Date referred to in this Assignment and Acceptance, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder; (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type; (v) it has, independently and without reliance upon Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase [the][such] Assigned Interest; (vi) it is not the Excluded Lender and (vii) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.2 of the Credit Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) will independently and without reliance upon Agents, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (d) appoints and authorizes Agents to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to such Agent by the terms of the Credit Agreement, together with such powers as are reasonably incidental thereto; and agree that it will perform in accordance with their terms all the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and

Acceptance may be executed in any number of counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the internal laws of the State of California.

4. Eligible Assignee. Each Person who is to become a Lender under the Credit Agreement is required to meet the requirements in Section 13.1 of the Credit Agreement and be approved in writing by Administrative Agent.

**EXHIBIT G ADMINISTRATIVE QUESTIONNAIRE**

[ADMINISTRATIVE AGENT LOGO] Enphase Energy, Inc.

Cortland Capital Market Services LLC  
225 W. Washington St., 21st Floor  
Chicago, IL 60606  
Attention: Attn: Ryan Warren and Legal Department  
Email: [ryan.warren@cortlandglobal.com](mailto:ryan.warren@cortlandglobal.com) and [legal@cortlandglobal.com](mailto:legal@cortlandglobal.com)

**[Fund Name]**

[Fund Address] Tax Payer ID:

**Administrative Details**

**Payment Instructions**

**USD:**

Bank Name: ABA:

Account Name:

Account Number: Attn:

**Signature Block**

[Fund Name:]

By: \_\_

## Contacts

**Operations (Agent Notices):**

[Fund Name] Address:

Attn: Phone: Fax:

E-mail:

**Credit/Legal (Public/Private):**

[Fund Name] Address:

Attn: Phone: Fax:

E-mail:

EXHIBIT H  
TAX CERTIFICATES

**Tax Documents**

**NON-U.S. LENDER INSTITUTIONS :**

**I. Corporations:**

If your institution is incorporated outside of the United States for U.S. federal income tax purposes, and is the beneficial owner of the interest and other income it receives, you must complete one of the following three tax forms, as applicable to your institution: **a.) Form W-8BEN-E** (*Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*), **b.) Form W-8ECI** (*Income Effectively Connected to a U.S. Trade or Business*), or **c.) Form W-8EXP** (*Certificate of Foreign Government or Governmental Agency*).

A U.S. taxpayer identification number is required for any institution submitting Form W-8ECI. It is also required on Form W-8BEN-E for certain institutions claiming the benefits of a tax treaty with the U.S. Please refer to the instructions when completing the form applicable to your institution. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **An original tax form must be submitted.**

**II. Flow-Through Entities:**

If your institution is organized outside the U.S., and is classified for U.S. federal income tax purposes as either a Partnership, Trust, Qualified or Non-Qualified Intermediary, or other non-U.S. flow-through entity, an original **Form W-8IMY** (*Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*) must be completed by the intermediary together with a withholding statement. Flow-through entities other than Qualified Intermediaries are required to include tax forms for each of the underlying beneficial owners.

Please refer to the instructions when completing this form. In addition, please be advised that U.S. tax regulations do not permit the acceptance of faxed forms. **Original tax form(s) must be submitted.**

**U.S. LENDER INSTITUTIONS:**

If your institution is incorporated or organized within the United States, you must complete and return **Form W-9** (*Request for Taxpayer Identification Number and Certification*). **Please be advised that we request that you submit an original Form W-9.**

***Pursuant to the language contained in the tax section of the Credit Agreement, the applicable tax form for your Non-U.S. or U.S. institution must be completed and returned on or prior to the date on which your institution becomes a Lender under the Credit Agreement. Failure to provide the proper tax form when requested may subject your institution to U.S. tax withholding.***

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Loan and Security Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among Enphase Energy, Inc., a Delaware corporation, each Lender (as defined in Section 14 therein), Cortland Capital Market Services LLC, in its capacity as administrative agent for Lenders ("Administrative Agent") and Obsidian Agency Services, Inc., in its capacity as collateral agent for Lenders (the "Collateral Agent").

Pursuant to the provisions of Section 1.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 8811(3)(A) of the IRC, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the IRC.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF LENDER]

By: \_\_

Name: Title:

Date: \_\_, 20[ ]

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Loan and Security Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among Enphase Energy, Inc., a Delaware corporation, each Lender (as defined in Section 14 therein) and Cortland Capital Market Services LLC, in its capacity as administrative agent for Lenders ("Administrative Agent") and Obsidian Agency Services, Inc., in its capacity as collateral agent for Lenders (the "Collateral Agent").

Pursuant to the provisions of Section 1.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(3)(A) of the IRC, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the IRC.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF PARTICIPANT]

By: \_\_

Name: Title:

Date: \_\_, 20[ ]

## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

## (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Loan and Security Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among Enphase Energy, Inc., a Delaware corporation, each Lender (as defined in Section 14 therein) and Cortland Capital Market Services LLC, in its capacity as administrative agent for Lenders ("Administrative Agent") and Obsidian Agency Services, Inc., in its capacity as collateral agent for Lenders (the "Collateral Agent").

Pursuant to the provisions of Section 1.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(3)(A) of the IRC, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the IRC.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF PARTICIPANT]

By: \_\_

Name: Title:

Date: \_\_, 20[ ]

## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

## (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Loan and Security Agreement dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the "Agreement"), among Enphase Energy, Inc., a Delaware corporation, each Lender (as defined in Section 14 therein) and Cortland Capital Market Services LLC, in its capacity as administrative agent for Lenders ("Administrative Agent") and Obsidian Agency Services, Inc., in its capacity as collateral agent for Lenders (the "Collateral Agent").

Pursuant to the provisions of Section 1.11 of the Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881I(3)(A) of the IRC, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the IRC and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the IRC.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Agreement and used herein shall have the meanings given to them in the Agreement.

[NAME OF LENDER]

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

Name: Title:



THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF SECTION 8 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION. NO OPINION OF COUNSEL SHALL BE REQUIRED IF THE TRANSFER IS TO AN AFFILIATE OF HOLDER, PROVIDED THAT ANY SUCH TRANSFEREE IS AN "ACCREDITED INVESTOR" AS DEFINED IN REGULATION D PROMULGATED UNDER THE ACT.

#### WARRANT TO PURCHASE STOCK

This Warrant to Purchase Stock ("**Warrant**") is issued by Enphase Energy, Inc., a Delaware corporation (the "**Company**") and certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_ ("**Holder**") is entitled to purchase at the Exercise Price that number of fully paid and non-assessable shares of Warrant Stock equal to the Warrant Number, subject to the provisions and upon the terms and conditions set forth in this Warrant. Capitalized terms used but not defined herein shall have the meaning provided in the Credit Agreement.

#### SECTION 1. **Exercise.**

1.1. **Method of Exercise.** Holder may exercise this Warrant at any time by delivering a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check or wire transfer (to an account designated by the Company) for the aggregate Exercise Price for the Warrant Stock being purchased.

1.2. **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which the Notice of Exercise shall have been delivered to the Company as provided in Section 1.1. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 1.5 shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

1.3. **Net Issuance Right.** In lieu of exercising this Warrant for check or wire transfer as specified in Section 1.1, Holder may convert this Warrant, in whole or in part, into a number of shares of Warrant Stock as is computed using the following formula:

$$X = \frac{Y}{A - B}$$

A

where:

- X = the number of shares of Warrant Stock to be issued to the Holder pursuant to this Section 1.3.
- Y = the number of shares of Warrant Stock covered by this Warrant in respect of which the net issue election is made pursuant to this Section 1.3.
- A = the Fair Market Value (as determined pursuant to Section 1.4) of one share of Warrant Stock, as determined at the time the net issue election is made pursuant to this Section 1.3.
- B = the Exercise Price in effect under this Warrant at the time the net issue election is made pursuant to this Section 1.3.

1.4. Fair Market Value. If, at the time of any exercise or conversion of this Warrant, the Common Stock is traded in a public market, the fair market value of a share of Warrant Stock shall be deemed to be the average of the closing prices over a ten (10) day period ending three days before the day Holder delivers its Notice of Exercise to the Company. If the Common Stock is not traded in a public market, the Board of Directors of the Company shall determine the fair market value of each share of Warrant Stock in its reasonable good faith judgment, provided however, that if the value of a share of Warrant Stock is to be determined in connection with an Acquisition, the fair market value shall be deemed to be the value ascribed to such Warrant Stock in the Acquisition assuming that the Common Stock holders receive the maximum consideration potentially available pursuant to such Acquisition whether or not such consideration is actually received.

1.5. Delivery of Certificate. Promptly, but in no event more than three (3) Business Days after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Exercise Price, the Company shall deliver to Holder certificates for the Warrant Stock acquired and/or other property to be delivered in connection with such exercise or conversion. If this Warrant has not been fully exercised or converted and has not expired, the Company shall also deliver a statement setting forth the number of shares of Warrant Stock that remain available for exercise under the Warrant.

1.6. Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

## **SECTION 2. Adjustments To The Warrant Shares and Exercise Price.**

2.1. Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of Warrant Stock payable in Common Stock or other securities, then upon exercise of this Warrant, for each share of Warrant Stock acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Warrant Stock of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of Warrant Stock by reclassification or otherwise into a greater number of shares, the number of shares of Warrant Stock purchasable hereunder shall be proportionately increased and the Exercise Price shall be proportionately decreased. If the

outstanding shares of Warrant Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Exercise Price shall be proportionately increased and the number of shares of Warrant Stock shall be proportionately decreased.

2.2. Reclassification, Exchange, Combinations or Substitution. On any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise of this Warrant, Holder shall be entitled to receive, upon exercise of this Warrant, the number and kind of securities and property that Holder would have received for Warrant Stock if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. The Company or its successor shall promptly issue to Holder a certificate pursuant to Section 2.6 hereof setting forth the number, class and series or other designation of such new securities or other property issuable upon exercise of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon the exercise of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3. Adjustments for Diluting Issuances. To the extent that any antidilution rights applicable to the Common Stock purchasable hereunder may be set forth in the Charter, the Company shall promptly provide the Holder with a copy of any restatement, amendment, modification or waiver of the Charter that impairs or reduces such antidilution rights; provided, that no such amendment, modification or waiver shall impair or reduce the antidilution rights, if any, set forth in the Charter with respect to the Common Stock unless such amendment, modification or waiver affects the rights of Holder with respect to the Common Stock issuable hereunder generally in the same manner as it affects all other holders of Common Stock. The Company shall, within ten (10) business days of the end of each fiscal quarter following the Effective Date, provide Holder with written notice of any issuance of its stock or other equity security during such fiscal quarter that triggered an antidilution adjustment under the antidilution rights applicable to the Common Stock purchasable hereunder, if any, as may be set forth in the Charter, which notice shall include (a) the price at which such stock or security was sold, (b) the number of shares issued, and (c) such other information as reasonably necessary for Holder to verify that such antidilution adjustment occurred and the amount of any such adjustment. For the avoidance of doubt, there shall be no duplicate antidilution adjustment pursuant to this subsection 2.3, the forgoing subsection 2.1 or 2.2 and the Charter.

2.4. No Impairment. The Company shall not, by amendment of the Charter or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Section 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Section against impairment.

2.5. Fractional Shares. No fractional shares of Common Stock shall be issuable upon exercise of the Warrant and the number of shares of Common Stock to be issued shall be rounded down to the nearest whole share. If a fractional share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional share interest by paying Holder in cash the

amount computed by multiplying the fractional interest by the fair market value of a full share of Warrant Stock as determined pursuant to Section 1.4.

2.6. Certificate as to Adjustments. Upon each adjustment of the Exercise Price or Warrant Stock pursuant to this Section 2, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Executive Officer or Chief Financial Officer or other duly authorized officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Exercise Price and number of shares of Warrant Stock in effect upon the date thereof and the series of adjustments leading to such Exercise Price and number of shares of Warrant Stock. Notwithstanding the foregoing, in the event of an adjustment pursuant to Section 2.3, the Company shall only be required to provide Holder with such notices as are required to be delivered to holders of Common Stock pursuant to the Charter regarding antidilution protection, as and when the Company provides such notices to such holders.

### **SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.**

3.1. Representations and Warranties. The Company represents and warrants to the Holder as follows:

(a) The Company is duly authorized to issue this Warrant by all necessary corporate actions in order for the proper issuance of this Warrant, and has obtained consent of the Purchasers to grant Holder the rights set forth in Section 6, below.

(b) The issuance of this Warrant and the rights granted hereunder do not, as of the date hereof, (i) conflict with or give rise to a breach of the Company's Charter or any other agreement, judgment or other obligations binding on the Company, or (ii) violate any applicable laws, including without limitation, laws relating to the offer and sale of securities.

(c) This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) All shares of Warrant Stock which may be issued upon the exercise of the purchase right represented by this Warrant under Section 1.1 or Section 1.3, shall, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Warrant, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable securities laws.

(e) The Company has reserved and will keep available for issuance upon exercise of the Warrant the maximum number of shares of Warrant Stock that could possibly be issued on exercise of the Warrant from time to time outstanding, and any securities, if any, into which such shares are convertible.

(f) The Company's summary capitalization table attached hereto as Schedule 1 is true and complete as of the Issuance Date.

3.2. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of Warrant Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend (other than securities for which adjustment is made pursuant to Section 2 hereof); (b) to offer for subscription or sale pro rata to the holders of the outstanding shares of Warrant Stock any additional shares of any other class or series of the Company's stock; (c) to effect any reclassification, reorganization or recapitalization of the shares of Warrant Stock; or (d) to effect an Acquisition or to liquidate, dissolve or wind up; then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of shares of Warrant Stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; and (2) in the case of the matters referred to in (c) and (d) above, at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of Warrant Stock will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

3.3. Certain Information. The Company agrees to provide Holder at any time and from time to time with such information as Holder may reasonably request for purposes of Holder's compliance with regulatory, accounting and reporting requirements applicable to Holder, including without limitation, all Company financial information, and that of any of its subsidiaries, reasonably requested by Holder.

3.4. Acquisitions. Upon the closing of any Acquisition other than a Qualified Acquisition, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Warrant Stock issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Stock were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES OF THE HOLDER.**

4.1. Representations and Warranties. The Holder represents and warrants to the Company as follows:

(a) Authorization. The Holder has full power and authority to enter into this Warrant. The Warrant, when executed and delivered by the Holder, will constitute a valid and legally binding obligation of the Holder, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that Holder has not been formed for the specific purpose of acquiring this Warrant or the shares of Warrant Stock.

(c) Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

(d) Investment Experience. Holder understands that the acquisition of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

(e) Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(f) The Act. Holder understands that this Warrant and the shares of Warrant Stock issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the shares of Warrant Stock issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. The right to acquire Warrant Stock issuable upon exercise of the Holder's rights contained herein has been, and such shares will be, acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration under the Act or an exemption from the registration requirements of the Act. Holder is not a registered broker-dealer under Section 15 of the 1934 Act or an entity engaged in a business that would require it to be so registered as a broker-dealer. The Holder also understands that any sale of (A) its rights hereunder to purchase Common Stock or (B) Common Stock issued or issuable hereunder which might be made by it in reliance upon Rule 144 under the Act may be made only in accordance with the terms and conditions of that Rule.

4.2. No Stockholder Rights. Without limiting any provision in this Warrant, Holder agrees that it will not have any rights as a stockholder of the Company until the exercise of this Warrant.

4.3. No "Bad Actor" Disqualification. Neither (i) the Holder, (ii) any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members, nor (iii) any beneficial owner of any of the Company's voting equity securities (in accordance with Rule 506(d) of the Securities Act) held by the Holder is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the acceptance of this Warrant, in writing in reasonable detail to the Company.

#### **SECTION 5. DEFINITIONS.**

5.1. Defined Terms. The following capitalized terms shall have the meanings provided:

- (a) 1934 Act means the Securities Exchange Act of 1934, as amended.
- (b) Acquisition means any transaction or series of related transactions involving: (i) the sale of all or substantially all of the assets of the Company, or (ii) any consolidation or merger of the Company where the Company is not the surviving entity (other than a merger or consolidation effected exclusively to change the Company's domicile or type of entity).
- (c) Act means the Securities Act of 1933, as amended.
- (d) Aggregate Warrant Shares means the number of shares of Common Stock into which this Warrant may be exercised plus the number of shares of Common Stock Holder owns resulting from the exercise of this Warrant.
- (e) Allowable Grace Period shall have the meaning provided in Section 6.2(u).
- (f) Charter means the Company's certificate of incorporation as filed in its jurisdiction of organization, as may be amended or amended and restated from time to time.
- (g) Common Stock means the Company's common stock, par value \$0.00001 per share, or such securities into which the Company's common stock are exchanged or converted.
- (h) Claims shall have the meaning provided in Section 6.4(a).
- (i) Credit Agreement means that certain Amended and Restated Loan and Security Agreement by and between Holder, Company and the other parties thereto dated as of the Issuance Date, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.
- (j) Credit Extensions shall have the meaning provided in the Credit Agreement.
- (k) Exercise Price means \$1.05 per share.

- (l) Expiration Date means the earlier of February \_\_, 2024, and the closing of a Qualified Acquisition.
- (m) Holder shall have the meaning provided in the first paragraph of this Warrant, as may be modified by Section 6.4 of this Warrant.
- (n) Holder Entities shall have the meaning provided in Section 7.12 of this Warrant.
- (o) Issuance Date means February \_\_, 2017.
- (p) Marketable Securities mean shares of stock issued by a publicly traded company listed on a national market or exchange which may be resold without restrictions (other than restrictions to which Holder may separately agree in writing) immediately upon the consummation of the Qualified Acquisition.
- (q) Purchaser and Purchasers shall have the meaning provided in the Securities Purchase Agreement.
- (r) Qualified Acquisition means an Acquisition in which the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities.
- (s) Registration Statement shall have the meaning provided in the Securities Purchase Agreement.
- (t) SEC means the United States Securities and Exchange Commission, or any successor agency.
- (u) Securities Purchase Agreement means that certain Securities Purchase Agreement dated as of January 9, 2016, between the Company, Rodgers Massey Revocable Living Trust dtd 4/4/11 and Foris Ventures, LLC.
- (v) Warrant shall have the meaning provided in the first paragraph of this agreement.
- (w) Warrant Number means [\_\_\_\_].
- (x) Warrant Stock means shares of Common Stock issuable upon exercise of this Warrant.

## **SECTION 6. REGISTRATION REQUIREMENTS**

### **6.1. Registration Rights.**

(a) The Company agrees to use commercially reasonable efforts to obtain consent from the Purchasers to grant Holder full rights as a Purchaser under Articles 5 and 6 of the Securities Purchase Agreement, and to have the Warrant Stock be deemed to be Registrable Securities, Securities and Shares, as applicable, under the Securities Purchase Agreement. Promptly on obtaining such consent, the Company shall so notify Holder in writing, whereby Holder hereby agrees that it shall be bound to all obligations of a Purchaser under Articles 5 and 6 of the Securities Purchase Agreement. If any amendment or modification to the

rights and obligations under Articles 5 or 6 are made, such amendment or modification shall only be applicable to Holder upon Holder's further written consent.

(b) If the Company has not obtained the consent of the Purchasers as described in Section 6.1(a) prior to February 28, 2016, then the Company hereby agrees that Holder shall be deemed to be granted registration rights substantially equivalent to the rights granted to Purchasers under Articles 5 and 6 of the Securities Purchase Agreement.

6.2. Additional Registration Rights. In addition to the rights granted Holder pursuant to Section 6.1, above, the Company hereby covenants that the Registration Statement which will allow Holder to resell the Warrant Stock without restrictions or limitations shall be declared effective by the SEC not later than 90 days after the Issuance Date (the "Effectiveness Deadline"). If (i) such Registration Statement is not declared effective by the SEC on or before the Effectiveness Deadline, or (ii) on any day after such Registration Statement has been declared effective by the SEC but the Registration Statement is not available for the resale of Warrant Stock and no exemption from registration under the Act is available to Holder that allows for the resale of the Warrant Stock without restrictions or limitations, then, as partial relief for the damages to Holder by reason of any such delay in or reduction of its ability to resell the Warrant Stock (which remedy shall not be exclusive of any other remedies available at law or in equity), the Company shall pay to Holder an amount in cash equal to \$16,000 divided by the Aggregate Warrant Shares, multiplied by the number of days that Warrant Stock cannot be resold by Holder without restrictions or limitations. The payments to which Holder shall be entitled pursuant to this Section 6.2 are referred to herein as "Registration Delay Payments". Registration Delay Payments shall be paid on the earlier of (I) the last day of the calendar month during which such Registration Delay Payments are incurred and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full.

## SECTION 7. MISCELLANEOUS.

7.1. Term. This Warrant is exercisable in whole or in part at any time before the Expiration Date.

7.2. Legends. Prior to the Registration Date, the shares of Warrant Stock shall be imprinted with a legend in substantially the following form:

THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION. NO OPINION OF COUNSEL SHALL BE REQUIRED IF THE TRANSFER IS TO AN AFFILIATE OF

HOLDER, PROVIDED THAT ANY SUCH TRANSFEREE IS AN "ACCREDITED INVESTOR" AS DEFINED IN REGULATION D PROMULGATED UNDER THE ACT.

7.3. Compliance with Securities Laws on Transfer. This Warrant and the shares of Warrant Stock issuable upon exercise of this Warrant may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of a legal opinion reasonably satisfactory to the Company if transferred or assigned prior to the Registration Date, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is an Affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act or another exemption under applicable securities laws.

7.4. Transfer Procedure. Subject to the provisions of Section 7.3 and upon providing the Company with written notice in substantially the form as provided in Appendix 2, hereto and countersigned by the proposed transferee, Holder and any subsequent Holder may transfer all or part of this Warrant or the shares of Warrant Stock issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of Warrant Stock, if any) to any transferee, provided, however, in connection with any such transfer, any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee, and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

7.5. Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

7.6. Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one share of Warrant Stock (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.4 above is greater than the Exercise Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.3 above as to all shares of Warrant Stock (or such other securities) for which it shall not previously have been exercised or converted that may be acquired hereunder at the lowest per share price as available hereunder, and the Company shall promptly deliver a certificate representing the shares of Warrant Stock (or such other securities) issued upon such conversion to Holder.

7.7. Counterparts. This Warrant may be executed in counterparts and by facsimile (e.g., PDF), all of which together shall constitute one and the same agreement.

7.8. Choice Of Law, Venue, Jury Trial Waiver.

(a) Governing Law. California law governs this Warrant without regard to principles of conflicts of law. The Company and Holder each submit to the exclusive jurisdiction of the State and Federal courts in Los Angeles County, California; provided, however, that nothing in this Warrant shall be deemed to operate to preclude Holder from bringing suit or

taking other legal action in any other jurisdiction in connection with the Credit Agreement. The Company expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Company hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Company hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Company at the address set forth in, or subsequently provided by the Company in accordance with Section 7.13 of this Warrant and that service so made shall be deemed completed upon the earlier to occur of the Company's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

(b) **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND HOLDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS WARRANT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

(c) **Judicial Reference.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of Los Angeles County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Los Angeles County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Los Angeles County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may

enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge.

(d) **Scope of Authority.** The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

7.9. **Time of Essence.** Time is of the essence for the performance of all obligations in this Warrant.

7.10. **Severability of Provisions.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Warrant, (b) the balance of this Warrant shall be interpreted as if such provision were so excluded and (c) the balance of this Warrant shall be enforceable in accordance with its terms.

7.11. **Amendments in Writing; Waiver; Integration.** No purported amendment or modification of this Warrant, or waiver, discharge or termination of any obligation under this Warrant, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Warrant. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. This Warrant represents the entire agreement about this subject matter and supersedes prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Warrant merge into this Warrant.

7.12. **Confidentiality.** In handling any confidential information provided pursuant to this Warrant, Holder shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Holder's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Holder, collectively, "**Holder Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section 7.12); (c) as required by law, regulation, subpoena, or other order; (d) to Holder Entities' regulators or as otherwise required in connection with Holder Entities' examination or audit; (e) as Holder considers appropriate in exercising remedies under this Warrant; and (f) to Holder Entities' third-party service providers so long as such service providers have executed a confidentiality agreement with one or more of the Holder Entities with terms no less restrictive than those contained herein. Confidential information does

not include information that is either: (i) in the public domain or in any Holder Entity's possession when disclosed to Holder, or becomes part of the public domain after disclosure to Holder (in each case, through no fault of any of the Holder Entities); or (ii) disclosed to any Holder Entity by a third party if such Holder Entity does not know that the third party is prohibited from disclosing the information.

7.13. Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by fax or email, as follows:

if to the Company, to it at:

if to Holder, to it at:

All notices and other communications given to any party hereto in accordance with the provisions of this Warrant shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by fax or email, or on the date five (5) business days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 7.13 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 7.13.

7.14. No Third Party Beneficiaries. No Person other than a party to this Warrant shall have any rights under this Warrant.

7.15. Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in this Warrant shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

7.16. Captions. The headings used in this Warrant are for convenience only and shall not affect the interpretation of this Warrant.

7.17. Construction of Warrant. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Warrant. In cases of uncertainty this Warrant shall be construed without regard to which of the parties caused the uncertainty to exist.

*[Remainder of page left blank intentionally]*

IN WITNESS WHEREOF, the parties have caused this Warrant to be executed and delivered as of the Issuance Date.

“COMPANY”

**Enphase Energy, Inc.**

---

Name:

Title:

“HOLDER”

---

By:

Its:

---

Name:

Title:

APPENDIX 1

**NOTICE OF EXERCISE**

1. Holder elects to exercise the Warrant dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the "**Warrant**") to purchase \_\_\_\_\_ shares of Common Stock of Enphase Energy, Inc., a Delaware corporation, pursuant to Section 1.1 of the Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to exercise the Warrant dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the "**Warrant**"), to purchase \_\_\_\_\_ shares of Common Stock of Enphase Energy, Inc., a Delaware corporation, pursuant to Section 1.3 of the Warrant, and tenders \_\_\_\_\_ shares of Common Stock available under the Warrant as payment in full.

[Strike paragraph that does not apply.]

2. Capitalized terms used but not defined herein shall have the meaning provided in the Warrant.

3. Please issue a certificate or certificates representing the shares of Common Stock in the name specified below:

\_\_\_\_\_  
Holders Name

\_\_\_\_\_

\_\_\_\_\_  
(Address)

HOLDER:

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

(Date): \_\_\_\_\_

Appendix 2

**NOTICE OF TRANSFER**

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the attached Warrant to purchase Common Stock of Enphase Energy, Inc., a Delaware corporation (the "**Company**"), to which the attached Warrant relates, and appoints \_\_\_\_\_ as attorney in fact to transfer such right on the books of the Company, with full power of substitution in the premises.

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

\_\_\_\_\_  
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address: \_\_\_\_\_

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

Acknowledgement and Acceptance:

The undersigned transferee of the Warrant hereby accepts the transfer of the Warrant and agrees to be bound by the Warrant as if it were the original Holder thereof.

[insert name of transferee]

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Name:  
Title:  
Tax Payer Identification Number:  
Address:

SCHEDULE 1

Company Summary Capitalization Table

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is entered into as of December 30, 2016 (the "Effective Date"), by and between Enphase Energy, Inc., a Delaware corporation (together with all subsidiaries and affiliates of Enphase Energy, Inc. that order or purchase goods, inventory and/or services under the Flex Services Agreements (collectively, "Enphase" or the "Debtor") and Flextronics Industrial, LTD and Flextronics America, LLC (together with all subsidiaries and affiliates of Flextronics Industrial, LTD and Flextronics America, LLC that manufacture or supply goods, inventory and/or services under the Flex Services Agreements to or for the benefit of Debtor (collectively, "Flex"), and provides the terms on which Flex shall extend credit to Enphase and Enphase shall repay Flex.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

Except as words may be otherwise defined herein, any capitalized words used herein which are specifically defined in the Flex Services Agreements shall have the meaning assigned to those words by the Flex Services Agreements, unless the context in which the words are used herein clearly requires a different meaning. For purposes of this Security Agreement, the following terms shall have the meanings set forth:

"Account" means any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Debtor.

"Account Debtor" means any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"Code" means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that in the event that any or all of the attachment, perfection, or priority of, or remedies with respect to, Flex's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" means any and all properties, rights and assets of Debtor described on Exhibit A.

"Control Agreement" means any control agreement satisfactory to Flex which is entered into among Debtor, Flex and the depository institution or intermediary at which Debtor maintains a Pledged

Account, pursuant to which Flex obtains control (within the meaning of the Code) over such Pledged Account.

“Copyrights” mean any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“Deposit Account” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“Domestic Subsidiary” means any Subsidiary of Debtor that was formed under the laws of the United States or any state of the United States or the District of Columbia.

“Debtor’s Books” mean all Debtor’s and each of its Subsidiary’s books and records including ledgers, federal and state tax returns, records regarding their assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“DSA” means the Design Services Agreement entered into between Enphase and Flextronics Industrial, Ltd. on August 29, 2012, together with all modifications, amendments, extensions and substitutions thereof and therefore.

“Equipment” means all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“Equity Interests” mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, warrant, convertible debt or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest.

“Event of Default” is defined in Section 6.

“Excluded Accounts” has the meaning assigned thereto in the Obsidian Credit Agreement.

“Excluded Domestic Subsidiary” means any Domestic Subsidiary of Debtor that is treated as a disregarded entity for United States purposes and substantially all of the assets of which consist of equity and/or debt of one or more Foreign Subsidiaries.

“Flextronics Services Agreements” means the LSA, the MSA, the DSA and all other agreements, understandings, purchase orders and the like giving rise to work or services performed for Borrower or its Subsidiaries from time to time.

“Foreign Subsidiary” means any Subsidiary of Debtor that is not a Domestic Subsidiary.

“General Intangibles” means all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation,

all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“Governmental Approval” means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“Indebtedness” means indebtedness of any nature.

“Insolvency Proceeding” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“Intellectual Property” means, with regard to any Person, all of such Person’s right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to it;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Intellectual Property Licenses” means any licenses or other similar rights in or with respect to Intellectual Property.

“Intercreditor Agreement” means that certain intercreditor agreement, dated as of December 27, 2016, between Flex, Wells Fargo Bank, N.A., Obsidian Agency Services, Inc., and Debtor, relating to the Wells Fargo Indebtedness and the Obsidian Indebtedness, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“Inventory” means all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products.

including without limitation such inventory as is temporarily out of Debtor's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"IRC" means the Internal Revenue Code of 1986, as amended from time to time.

"Lien" means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"LSA" means the Logistics Services Agreement, by and between Debtor and Flex America, LLC, dated as of May 1, 2009, together with all modifications, amendments, extensions and substitutions thereof and therefore.

"MSA" means the Manufacturing Services Agreement entered into between Enphase and Flextronics Industrial, Ltd. on March 1, 2009, together with all modifications, amendments, extensions and substitutions thereof and therefore.

"Obligations" are each the obligation of Debtor and any of Debtor's Subsidiaries to pay when due any debts, principal, interest, obligations, fees, invoices, Inventory purchase and indemnification obligations and other amounts such Person owes to Flex now or later, whether under this Agreement or the Flex Services Agreements, and including interest accruing after Insolvency Proceedings begin, and to perform Debtor's duties under this Agreement.

"Obsidian Credit Agreement" means that certain Loan and Security Agreement, dated as of July 8, 2016, by and among Enphase Energy, Inc., Obsidian Agency Services, Inc. and the various lenders party thereto, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

"Obsidian Indebtedness" means the "Obligations" (as defined in the Obsidian Credit Agreement, but not the Obligations as defined in this Agreement).

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Pledged Account" means any Deposit Account, Securities Account, Commodity Account or other similar account (other than an Excluded Account) even though it may not precisely fit the definition of a Deposit Account, Securities Account or a Commodity Account.

"Requirement of Law" means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted License” is any material license or other material agreement with respect to which Debtor is the licensee (a) that prohibits or otherwise restricts Debtor from granting a security interest in Debtor’s interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with Flex’s right to sell any Collateral.

“Securities Account” means any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Subsidiary” means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Debtor.

“Wells Fargo Credit Agreement” means that certain Amended and Restated Credit Agreement by and among WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent, the lenders that are parties thereto as the Lenders, and Enphase Energy, Inc., as borrower dated as of December 18, 2015, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“Wells Fargo Guaranty and Security Agreement” means that certain Amended and Restated Guaranty and Security Agreement executed and delivered by Debtor and each of the guarantor parties thereto as grantors, and WELLS FARGO BANK, NATIONAL ASSOCIATION as agent dated as of December 18, 2015, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

“Wells Fargo Indebtedness” means the “Obligations” (as defined in the Wells Fargo Credit Agreement and not as defined in this Agreement) and secured by the Wells Fargo Guaranty and Security Agreement.

## 2. GRANT OF SECURITY INTEREST

2.1. Grant of Security Interest. Debtor hereby grants Flex, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Flex, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If Flex determines that the perfection of its security interest in any Collateral requires the recording or filing of documentation other than a Financing Statement, Debtor shall promptly execute such additional documentation upon presentation. If Flex determines that the perfection of its security interest in any Collateral requires the possession or control of such Collateral, Debtor shall, subject to the Intercreditor Agreement, promptly deliver such Collateral to Flex or enter into a control agreement satisfactory to the Flex to establish such control. Notwithstanding anything to the contrary in this agreement, (a) so long as the Wells Fargo Indebtedness or the Obsidian Indebtedness remains outstanding and Wells Fargo and Obsidian have not taken any actions to create or perfect their security interest outside of the United States, then except for Pledged Account, no such actions shall be required or taken

by Flex in order to create or perfect any security interests in assets of Debtor and its Subsidiaries located or titled outside of the United States; and (b) so long as the Wells Fargo Indebtedness or the Obsidian Indebtedness remains outstanding and Wells Fargo and Obsidian have not taken any actions to create or perfect its security interest in any real estate of Debtor and its Subsidiaries, then no such actions shall be required or taken by Flex in order to create or perfect any security interest in any real estate.

2.2. Priority of Security Interest. Debtor represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a perfected security interest in the Collateral. If Debtor shall acquire a Commercial Tort Claim in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000), Debtor shall promptly notify Flex in a writing signed by Debtor of the general details thereof and upon request grant to Flex in such writing a security interest therein and in the proceeds thereof, with such writing to be reasonably satisfactory to Flex.

2.3. Termination. If the Obligations (other than inchoate indemnity obligations) are satisfied in full and this Agreement is terminated, Flex's Lien on the Collateral shall automatically terminate and all rights therein shall revert to Debtor and Flex shall, at Debtor's sole cost and expense, execute such documentation and take such further action as may be reasonably necessary to evidence the termination contemplated by this Section 2.3.

2.4. Reinstatement. If at any time after such termination or Flex's release of its security interest granted herein any Collateral or other property Flex receives in satisfaction of the Obligations is recovered, disgorged, set aside or otherwise avoided, or is subject to recovery, disgorgement, being set aside or avoided (whether through a formal court proceeding or otherwise) by or to Debtor, a bankruptcy trustee, a receiver or similar representative, then this Agreement and the Obligations under the Flex Services Agreements as Flex may elect shall be deemed revived, reinstated and in full force and effect as if the original termination did not occur, and Flex's security interest and all other rights in the Collateral shall be deemed in full force and effect until the full and final repayment of all Obligations (other than inchoate indemnity obligations).

2.5. Authorization to File Financing Statements. Debtor hereby authorizes Flex to file financing statements, without notice to Debtor, with all appropriate jurisdictions to perfect or protect Flex's interest or rights hereunder, including a notice that any disposition of the Collateral, by Debtor or any other Person, shall be deemed to violate Flex's rights under the Code.

### 3. REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants as follows:

#### 3.1. Due Organization, Authorization, Power and Authority; Enforceability.

(a) Debtor is and each of its Subsidiaries are duly existing and in good standing in their jurisdiction of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified.

(b) The execution, delivery and performance by Debtor under this Agreement and the Flex Services Agreements have been duly authorized, and do not (i) conflict with Debtor's or any

Subsidiary's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Debtor or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Debtor or any Subsidiary is bound.

(c) This Agreement has been duly executed and delivered by Debtor and constitutes a legal, valid and binding obligation of Debtor enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

### 3.2. Collateral.

(a) Debtor has good title to, has rights in, and the power to grant a security interest in each item of the Collateral, free and clear of any and all Liens except Permitted Liens. Debtor's Accounts and those of its Subsidiaries are bona fide, existing obligations of the Account Debtors.

(b) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in Schedule 3.2(b), which may be amended to add or remove bailees.

(c) To the extent that Inventory exists, all Debtor's and its Subsidiaries' Inventory is in all material respects of good and marketable quality, free from defect (other than defects that do not prevent satisfaction of the standard requirements for delivery and acceptance of such Inventory and except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established).

(d) Schedule 3.2(d) lists all Intellectual Property of Debtor and its Subsidiaries (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public), and may be updated to add or remove Intellectual Property. Debtor is the sole owner of the Intellectual Property which it owns or purports to own except for (i) non-exclusive licenses granted to its customers in the ordinary course of business, (ii) over-the-counter software and other non-customized mass market licenses that are commercially available to the public, and (iii) material Intellectual Property licensed to Debtor or its Subsidiaries and noted on Schedule 3.2(d)(iii) (such Schedule 3.2(d)(iii) to be provided to Flex within fifteen (15) days after the date of this Agreement). Except as specifically noted in such Schedule 3.2, Debtor and each of its Subsidiaries has the full right and authority to grant a security interest in and to its Intellectual Property.

(e) Except as noted in Schedule 3.2(e) (such Schedule to be provided to Flex within fifteen (15) days after the date of this Agreement), neither Debtor nor any of its Subsidiaries are a party to, or bound by, any Restricted License. Such Schedule 3.2(e) may be updated to add or remove Restricted Licenses.

(f) Except as noted in Schedule 3.2(f) (such Schedule to be provided to Flex within fifteen (15) days after the date of this Agreement), Debtor's ownership interests in its Subsidiaries are uncertificated, and shall not be certificated. Such Schedule 3.2(f) may be updated as appropriate.

3.3. Investments. Debtor and its Subsidiaries do not own any Equity Interests except for the Subsidiaries listed in Schedule 3.3 (such Schedule to be provided to Flex within fifteen (15) days after the date of this Agreement). Such Schedule 3.3 may be updated as appropriate.

#### 4. AFFIRMATIVE COVENANTS

Until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Flex is under no further obligation to extend credit under the Flex Services Agreements, Debtor shall comply with each of the covenants in this Section 4:

4.1. Compliance with Laws. Debtor shall maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction which requires such qualification to be maintained. Debtor shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject.

4.2. Legal Action Notice. Promptly report (but in any event within five (5) Business Days after the service of process with respect thereto on Debtor or any of its Subsidiaries) to Flex any legal actions pending or threatened in writing against Debtor or any of its Subsidiaries that could reasonably be expected to result in (i) damages or costs to Debtor or any of its Subsidiaries of, individually or in the aggregate, Five Hundred Thousand Dollars (\$500,000) or more, (ii) fines, penalties or other sanctions by any Governmental Authority, or (iii) claims for injunctive or equitable relief;

4.3. Intellectual Property Notice. Promptly report (but in any event within five (5) Business Days after the service of process with respect thereto on Debtor or any of its Subsidiaries) to Flex (i) any material change in the composition of Debtor's or any of its Subsidiaries' Intellectual Property, (ii) the registration of any copyright or trademark, or the filing of any patent, including any subsequent ownership right of Debtor or any of its Subsidiaries' in or to any registered copyright, patent or trademark not shown in the Perfection Certificates, and (iii) Debtor's knowledge of an event that could reasonably be expected to materially and adversely affect the value of its or any of its Subsidiaries' Intellectual Property; and

4.4. Insurance. Debtor shall keep its business and the Collateral insured for risks and in amounts standard for companies in Debtor's industry and location and as Flex may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Flex. All property policies shall have a lender's loss payable endorsement showing Flex as lender loss payee and waive subrogation against Flex and shall provide that the insurer must give Flex at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. All liability policies shall show, or have endorsements showing, Flex as an additional insured with a waiver of subrogation rights, and all such policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Flex at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. Proceeds payable under any policy shall, at Flex's option, be payable to Flex on account of the Obligations. If Debtor fails to obtain insurance as required under this Section 4.4 or to pay any amount or furnish any required proof of payment to third persons and Flex, Flex may make all or part

of such payment or obtain such insurance policies required in this Section 4.4, and take any action under the policies Flex deems prudent. Debtor shall provide to Flex the endorsements required in this Section 4.4.

4.5 Pledged Accounts. Debtor's and each Subsidiary's Pledged Accounts (other than Excluded Accounts) shall at all times be subject to a Control Agreement acceptable to Flex. Debtor will have up to 45 days after the date of this Agreement to execute and deliver Control Agreements reasonably acceptable to Flex and the respective depository or intermediary institutions.

4.6 Protection and Registration of Intellectual Property Rights.

(a) Debtor shall, and shall cause each Subsidiary: (i) as determined in Debtor's reasonable business judgment to be necessary in the operation of its business, protect, defend and maintain the validity and enforceability of Debtor's Intellectual Property that is material to its business or the business of any of its Subsidiaries; (ii) promptly advise Flex in writing of infringements of Debtor's Intellectual Property of which Debtor has knowledge; and (iii) not allow any Intellectual Property material to Debtor's business, in Debtor's reasonable business judgment, to be abandoned, forfeited or dedicated to the public, except as permitted by this Agreement.

(b) If Debtor or any of its Subsidiaries (i) obtain any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) apply for any Patent or the registration of any Trademark, then Debtor shall provide prompt written notice thereof to Flex.

(c) Debtor shall provide written notice to Flex within five (5) business days after entering or becoming bound by any Restricted License (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public). Debtor shall take such steps as Flex reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License (other than any Restricted License which is an Intellectual Property License) to be deemed "Collateral" and for Flex to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Flex to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Flex's rights and remedies under this Agreement and the Intercreditor Agreement.

4.7 Further Assurances. Debtor shall execute any further instruments and take further action as Flex reasonably requests to perfect or continue Flex's Lien in the Collateral or to effect the purposes of this Agreement.

4.8 Creation/Acquisition of Subsidiaries. Debtor shall, at the time that any Subsidiary forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, within fifteen (15) days of such formation or acquisition (a) cause such new Subsidiary (except for any Foreign Subsidiary or Excluded Domestic Subsidiary (or any of their respective Subsidiaries)) to become a party under this Agreement and grant a continuing pledge and security interest in and to all the assets of such Subsidiary, and (b) provide appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Flex, provided that only 65% of the total outstanding voting Equity Interests of any first tier Foreign Subsidiary

or Excluded Domestic Subsidiary (and none of the Equity Interests of any Subsidiary of such Foreign Subsidiary or Excluded Domestic Subsidiary) shall be required to be pledged. Debtor shall also procure the issuer's agreement to follow Flex's instructions regarding any Disposition of such securities, such agreement to be satisfactory to Flex.

#### 4.9 Financial Reports.

(a) As soon as available, but no later than ninety (90) days after the last day of Debtor's fiscal year, audited consolidated balance sheet, income statement and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, together with all letters issued by the certified public accountants auditing same. Such financial report will be prepared on a consolidated basis in accordance with generally accepted accounting procedures in the United States ("GAAP") consistently applied, together with a customary "management discussion and analysis" section.

(b) As soon as available, but no later than forty-five (45) days after the last day of each quarter, a company prepared consolidated balance sheet, income statement and related statements of operations, stockholders' equity and cash flows covering Borrower's consolidated operations for such quarter setting forth in each case in comparative form the figures for the previous fiscal year, certified by a Responsible Officer and in a form reasonably acceptable to Agent (it being understood that financial statements satisfying the requirements of Form 10-Q are acceptable to Agent), with a statement of reconciliation to GAAP.

4 RESERVED

#### 6. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

6.1. Payment Default. Debtor fails to make any payment as required under the Flex Services Agreements, or any of them, and has not timely cured such failure as may be provided under the respective Flex Services Agreement;

6.2. Covenant Default. Debtor fails or neglects to perform any obligation in this Agreement that can be cured, and has failed to cure the default within ten (10) days after the occurrence thereof. Cure periods provided under this section shall not apply to Section 6.1.

#### 7. FLEX'S RIGHTS AND REMEDIES

7.1. Rights and Remedies. Subject to the Intercreditor Agreement, while an Event of Default occurs and continues Flex may, without notice or demand, do any or all of the following:

- by Flex);
- (a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 6.5 occurs, all Obligations are immediately due and payable without any action by Flex);
  - (b) stop extending credit or processing orders for Debtor's benefit under this Agreement, the Flex Services Agreements or under any other agreement between Debtor and Flex without creating any liability on behalf of Flex;
  - (c) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Flex considers advisable, notify any Person owing Debtor money of Flex's security interest in such funds, and verify the amount of such account;
  - (d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Debtor shall assemble the Collateral if Flex requests and make it available as Flex designates. Flex or its designees may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Debtor grants Flex and its designees a license to enter and occupy any of its premises, without charge, to exercise any of Flex's rights or remedies;
  - (e) apply to the Obligations any amount held by Flex owing to or for the credit of Debtor;
  - (f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Flex is hereby granted a non-exclusive, sub-licensable, royalty-free license or other right to use, without charge, Debtor's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Flex's exercise of its rights under this Section 7.1, Debtor's rights under all licenses and all franchise agreements inure to Flex's benefit;
  - (g) deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;
  - (h) demand and receive possession of Debtor's Books; and
  - (i) exercise all rights and remedies available to Flex under this Agreement or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

7.2. **Power of Attorney.** Debtor hereby irrevocably appoints Flex as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default but subject to the Intercreditor Agreement, to: (a) endorse Debtor's name on any checks or other forms of payment or security; (b) sign Debtor's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Flex determines reasonable; (d) make, settle, and adjust all claims under Debtor's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) make any Disposition of the Collateral into the name of Flex or a third party as the Code permits. Debtor hereby appoints Flex as its lawful attorney-in-fact

to sign Debtor's name on any documents necessary to perfect or continue the perfection of Flex's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Flex is under no further obligation to make extend credit under the Flex Services Agreements. Flex's foregoing appointment as Debtor's attorney in fact, and all of Flex's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Flex's obligation to provide extend credit under the Flex Services Agreements terminates.

7.3. Protective Payments. If Debtor fails to obtain the insurance called for by Section 4 or fails to pay any premium thereon or fails to pay any other amount which Debtor is obligated to pay under this Agreement or any other Loan Document, Flex may obtain such insurance or make such payment, and all amounts so paid by Flex are immediately due and payable, and secured by the Collateral. No payments by Flex are deemed an agreement to make similar future payments or Flex's waiver of any Event of Default.

7.4. Application of Payments and Proceeds Upon Default. Subject to the Intercreditor Agreement, if an Event of Default has occurred and is continuing, Flex may apply any funds in its, whether from payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Flex shall determine in its sole discretion. Any surplus shall be paid to Debtor or other Persons legally entitled thereto. Debtor shall remain liable to Flex for any deficiency. If Flex, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Flex shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Flex of cash therefor.

7.5. Liability for Collateral. So long as Flex complies with reasonable lending practices regarding the safekeeping of the Collateral in Flex's possession or under their control, Flex shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Debtor bears all risk of loss, damage or destruction of the Collateral.

7.6. No Waiver; Remedies Cumulative. Flex's failure, at any time or times, to require strict performance by Debtor of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Flex thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Flex's rights and remedies under this Agreement are cumulative. Subject to the Intercreditor Agreement, Flex has all rights and remedies provided under the Code, by law, or in equity. Flex's exercise of one right or remedy is not an election and shall not preclude either from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Flex's waiver of any Event of Default is not a continuing waiver. Flex's delay in exercising any remedy is not a waiver, election, or acquiescence.

7.7. Demand Waiver. Debtor waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees

held by Flex on which Debtor is liable, except when any such notice, demand or any other of the foregoing actions are specifically provided for in this Agreement.

7.8. **No Marshaling or Related Rights.** Debtor waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Flex to: (i) proceed against any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Flex may exercise or not exercise any right or remedy it has against any Debtor or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting any Debtor's liability. Notwithstanding any other provision of this Agreement or other related document, Debtor irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Debtor to the rights of Flex under this Agreement) to benefit from, or to participate in, any security for the Obligations as a result of any payment made with respect to the Obligations in connection with this Agreement or otherwise. If any payment is made to Debtor in contravention of this Section 7.8, Debtor shall hold such payment in trust for Flex and such payment shall be promptly delivered to Flex for application to the Obligations, whether matured or unmatured.

#### 8. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER

8.1 **Governing Law.** California law governs this Agreement without regard to principles of conflicts of law. Debtors and Flex each submit to the exclusive jurisdiction of the State and Federal courts in Los Angeles County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Flex from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Flex. Debtor expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Debtor hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Debtor hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Debtor at the address set forth in, or subsequently provided by Debtors in accordance with the Flex Services Agreements and that service so made shall be deemed completed upon the earlier to occur of Debtors' actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

8.2 **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DEBTOR, FLEX WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

8.3 **Judicial Reference.** WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of Los Angeles

County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Los Angeles County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Los Angeles County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge.

8.4 Scope of Authority. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against Collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

## 9. IN GENERAL

9.1 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

9.2 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

9.3 Integration. This Agreement represents the entire agreement about this subject matter and supersedes prior negotiations or agreements.

9.4 Counterparts. This Agreement may be executed by facsimile or PDF, and in in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

9.5 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

9.6 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

9.7 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

9.8 Expenses. Flex may incur reasonable fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) in exercising any of its rights and remedies under this Security Agreement. Subject to the terms of the Intercreditor Agreement, Debtor shall reimburse Flex for such fees and expenses, which fees and expenses shall be secured hereby and shall become part of the Flex's reasonable expenses of enforcement, of retaking, holding, preparing for sale and the like.

I IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the Effective Date.

**ENPHASE:**

**ENPHASE ENERGY, INC.**

By: /s/ PAUL B. NAHI  
Print Name: Paul B. Nahi  
Print Title: President and CEO

**FLEX:**

**FLEXTRONICS INDUSTRIAL, LTD**

By: /s/ MANNY MARIMUTHU  
Print Name: Manny Marimuthu  
Print Title: Director

**FLEXTRONICS AMERICA, LLC**

By: /s/ TIMOTHY STEWART  
Print Name: Timothy Stewart  
Print Title: Secretary

[Signature Page to Security Agreement]

**EXHIBIT A**  
**COLLATERAL DESCRIPTION**

The Collateral consists of all of Debtor's real and personal property of every kind and nature whether now owned or hereafter acquired by, or arising in favor of Debtor, and regardless of where located, including, without limitation, all of Debtor's right, title and interest in and to the following property:

1. All Goods, Accounts (including health-care receivables), Pledged Accounts, Equipment, Inventory, contract rights (including Intellectual Property and Intellectual Property Licenses) or rights to payment of money, leases, license agreements (including Intellectual Property and Intellectual Property Licenses), franchise agreements, General Intangibles (including Intellectual Property and Intellectual Property Licenses), Commercial Tort Claims, Documents, Instruments (including any Promissory Notes), Chattel Paper (whether tangible or electronic), cash and Cash Equivalents, Fixtures, letters of credit, Letter of Credit Rights (whether or not the letter of credit is evidenced by a writing), Securities, and all other Investment Property, Supporting Obligations, and Financial Assets, whether now owned or hereafter acquired, wherever located; and
2. All Debtor's Books relating to the foregoing, and all additions, attachments, accessories, accessions and improvements to any of the foregoing, and all substitutions, replacements or exchanges therefor, and all Proceeds, insurance claims, products, profits and other rights to payments not otherwise included in the foregoing;

provided, that, the grant of security interest herein shall not extend to and the term "Collateral" shall not include (a) any rights or interests held under any contract, lease, permit, license, or license agreement covering real or personal property of any Subsidiary that are not assignable or prohibit the grant of a security interest or lien therein by applicable law or their terms without the consent of the licensor thereof (but only to the extent such restriction on assignment is enforceable under applicable law); (b) equipment subject to liens permitted pursuant to Subsection (c) of the definition of Permitted Liens where the agreements governing the capital lease obligations or purchase money Indebtedness related thereto prohibit such security interest, for so long as such prohibition exists; (c) voting Equity Interests of any Foreign Subsidiary or Excluded Domestic Subsidiary, solely to the extent that such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such Foreign Subsidiary or Excluded Domestic Subsidiary; or (d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to use trademark applications under applicable federal law; provided, that upon submission and acceptance by the USPTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral.

In addition, in the event that the Wells Fargo Indebtedness or the Obsidian Indebtedness is secured or in the future becomes secured by any of Debtor's real property interests of any nature, then all such assets shall be considered as part of the Collateral. Once the Wells Fargo Indebtedness is no longer outstanding, all of Debtor's real property interests shall be considered as part of the Collateral.

Schedule 3.2(b)  
Inventory Locations

Flex-Milpitas  
890 Yosemite Drive  
Milpitas CA 95035, USA

Flex-Venray  
Nobelstraat 10-14  
5807 GA Oostrum  
The Netherlands

Yusen Logistics (Flex Partner)  
1/3 Basalt Road Greystanes  
Sydney, 2145 AU

Esgardi Storage (Expedito Partner in Guadalajara)  
Calle Incalpa # 900 y 1000 Bodegas 1, 3, 5  
Col. Santa Cruz del Valle  
C.P. 45635, Jalisco Mexico

Schedule 3.2(d)  
Intellectual Property

Copyrights

None

Trademarks

See attached listing

Patents

See attached listing

**Enphase Energy, Inc.**  
**Statement of Computation of Ratio of Earnings to Fixed Charges**  
(in thousands)

	Years Ended December 31,				
	2012	2013	2014	2015	2016
<b>Earnings:</b>					
Loss from operations before income taxes	\$ (31,161)	\$ (22,158)	\$ (4,429)	\$ (19,309)	\$ (62,700)
Add: Total fixed charges (per below)	4,338	2,771	2,588	1,438	3,908
<b>Total earnings (loss)</b>	<b>\$ (26,823)</b>	<b>\$ (19,387)</b>	<b>\$ (1,841)</b>	<b>\$ (17,871)</b>	<b>\$ (58,792)</b>
<b>Fixed charges:</b>					
Interest incurred	3,616	1,625	1,389	358	2,704
Amortization of debt discount and debt issuance costs	—	429	483	163	145
Portion of rental expense representative of the interest factor	722	717	716	917	1,059
<b>Total fixed charges</b>	<b>\$ 4,338</b>	<b>\$ 2,771</b>	<b>\$ 2,588</b>	<b>\$ 1,438</b>	<b>\$ 3,908</b>
<b>Ratio of earnings to fixed charges(1)</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>
<b>Deficiency in the coverage of fixed charges by earnings(2)</b>	<b>\$ (31,161)</b>	<b>\$ (22,158)</b>	<b>\$ (4,429)</b>	<b>\$ (19,309)</b>	<b>\$ (62,700)</b>

(1) In each of the periods presented, earnings were not sufficient to cover fixed charges.

(2) For purposes of these calculations, "earnings" consist of loss from operations before income taxes plus fixed charges. "Fixed charges" consist of interest expense and the estimated interest within rental expense. Interest expense resulting from the extinguishment of debt has been excluded from fixed charges.

SUBSIDIARIES OF REGISTRANT

Enphase Energy Australia Pty. Ltd., an Australian corporation.  
Enphase Energy Canada, Inc., a Canadian corporation.  
Enphase Energy S.A.S., a French corporation.  
Enphase Energy S.r.l., an Italian corporation.  
Enphase Energy NL B.V., a Dutch private limited liability company.  
Enphase Energy New Zealand Limited, a New Zealand corporation.  
Enphase Energy UK Limited, a United Kingdom corporation.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-209315 and 333-195694 on Form S-3 and Registration Statement Nos. 333-210037, 333-202630, 333-194749, 333-187057, and 333-181382 on Form S-8 of our report dated March 16, 2017, relating to the consolidated financial statements of Enphase Energy, Inc. and subsidiaries (which report expresses an unqualified opinion and includes an explanatory paragraph relating to substantial doubt about its ability to continue as a going concern) appearing in this Annual Report on Form 10-K of Enphase Energy, Inc. for the year ended December 31, 2016.

/s/ Deloitte & Touche LLP  
San Francisco, California  
March 16, 2017

CERTIFICATION

I, Paul B. Nahi, certify that:

1. I have reviewed this Annual Report on Form 10-K of Enphase Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2017

/s/ Paul B. Nahi

Paul B. Nahi  
President and Chief Executive Officer  
(Principal Executive Officer)

CERTIFICATION

I, Humberto Garcia, certify that:

1. I have reviewed this Annual Report on Form 10-K of Enphase Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2017

/s/ Humberto Garcia

Humberto Garcia  
Vice President and Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Paul B. Nahi, President and Chief Executive Officer of Enphase Energy, Inc. (the "Company"), and Kris Sennesael, Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the annual period ended December 31, 2016, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**In Witness Whereof**, the undersigned have set their hands hereto as of the 16th day of March, 2017.

/s/ Paul B. Nahi

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Paul B. Nahi  
President and Chief Executive Officer

/s/ Humberto Garcia

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Humberto Garcia  
Vice President and Chief Financial Officer

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Enphase Energy, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.