

MODEL STANDSTILL/TOLLING AGREEMENT

(Annotated)

Jonathan C. Lipson and Norman M. Powell*

Introduction

The agreement below is a form which parties in a contractual relationship may quickly and easily use as a basis to preserve their relationship while the economy restabilizes following the disruption caused by the COVID-19 crisis. It does not speak to all issues that contract parties might face, but is intended to be a starting point that parties can use efficiently, preferably in consultation with a lawyer.

The form of agreement below is intended to be used either in an electronic or paper format, as the parties prefer. We have indicated below places where the parties must or may tailor the agreement to their specific needs.

The version of the agreement below contains basic provisions that we expect many parties may wish to consider *and*, where appropriate, provides an annotation that explains the provision, identifies examples of the types of matters that the term addresses, and/or other issues that the parties may wish to consider. If you wish to see or use only the model agreement without the annotation, please click [here](#) (COVIDMODELSTANDSTILLAGREEMENTNOTANNOTATED-v1.1-20200408.html)

This model agreement and the accompanying discussion are provided as general information and should not be construed as legal advice on any specific matter or as creating an attorney-client relationship. Before relying on general legal information or deciding on legal action, consider retaining a qualified attorney to consider your specific legal needs.

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STANDSTILL AND TOLLING AGREEMENT

THIS AGREEMENT (the “Standstill Agreement”), made this day day of month of month , 2020, by and between name of Debtor (“Debtor”) and name of Creditor (“Creditor”).

WITNESSETH:

WHEREAS, Debtor and Creditor are parties to that certain caption/title of primary document reflecting underlying agreement , dated as of date of primary document reflecting underlying agreement (collectively with the additional documents, if any, identified in and required or contemplated thereby, the “Underlying Agreement”); and

WHEREAS, Debtor and Creditor recognize that the COVID-19 pandemic has caused, or may cause, substantial disruptions in commercial relationships; and

WHEREAS, such disruptions may result in the breach of contracts between Debtor and Creditor which may, in turn, result in efforts to enforce rights or remedies under the Underlying Agreement, including legal actions such as self-help foreclosure, litigation, arbitration or other legal proceedings, whether by claim, counterclaim, demand, action or cause of action concerning the Underlying Agreement (collectively, “Legal Action”); and

WHEREAS, Debtor and Creditor wish to avoid Legal Action for a period of time during which their respective rights and duties under the Underlying Agreement will be frozen by and as set forth in this Standstill Agreement.

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

1. *Scope*: This Standstill Agreement covers the rights and obligations provided for in the Underlying Agreement and those reasonably anticipated to arise with respect to the Underlying Agreement during the Term (as defined below) of this Standstill Agreement. For later reference, such matters are defined as the “Standstill Issues.” This Standstill Agreement does not address other rights or obligations as between the parties.

* *Annotation*: By way of example, the Debtor may have failed to make payments, ship promised goods, or deliver promised services under the Underlying Agreement. Although the obligor is defined as a “Debtor,” that is largely for convenience, and is not meant to imply that this Standstill Agreement should be limited to traditional debtor-creditor relationships.

2. *Term and Termination*: This Standstill Agreement shall take effect as of its date and shall continue for duration of standstill period, e.g. “60 days.” unless earlier terminated by mutual agreement of the parties (the “Standstill Period”).

* *Annotation.* This Standstill Agreement is intended to halt possibly precipitous actions by either party in the near term, the duration of which the parties are free to choose. It is not a permanent substitute for the Underlying Agreement. Nor is it linked to announcements by public authorities that it is safe to resume “normal” economic activity because those announcements may come from different sources (e.g., the governors of different states) and in any case would be difficult to define. If during the Standstill Period the parties are comfortable resuming their prior commercial relationship, they may mutually terminate this agreement. It is hoped that the parties may use the Standstill Period to renegotiate their legal relationship, if appropriate. In the event the Standstill Period passes and commercial activity is not resumed, whether pursuant to the Underlying Agreement or on a renegotiated basis, the parties may wish to extend this Standstill Agreement or to resolve disputes through other means, e.g., litigation.

3. *Creditor’s Standstill and Tolling:* During the Standstill Period, Creditor shall not take Legal Action against the Debtor. Any applicable statute of limitation, statute of repose, or other period of time relevant to either party’s exercise of rights or remedies under or in connection with the Underlying Agreement is tolled for the Standstill Period. The Creditor agrees that it will not transfer its rights under the Underlying Agreement or this Standstill Agreement during the Standstill Period.

* *Annotation.* This Standstill Agreement is intended to preserve the legal rights of the parties regarding the Underlying Agreement as of the moment immediately prior to its date. Absent breach of this Standstill Agreement, it is not intended to alter the rights of either party, but instead to preserve the status quo in the hope that the parties are able either to resume their prior commercial relationship or negotiate changes in the Underlying Agreement. Nor does it affect rights or obligations that may accrue during the Standstill Period, such as the right to the payment of interest. This Standstill Agreement presumes that such rights will accrue, but will not be enforced during the Standstill Period, although the parties may wish to alter this as provided in Paragraph 6. Note that this means that if the Debtor was in default prior to this Standstill Agreement, default interest or penalties provided thereunder may accrue during the Standstill Period, unless the parties otherwise provide in this Standstill Agreement.

4. *Debtor’s Non-ordinary Course Acts or Omissions:* Except for relief efforts described in Paragraph 5, during the Standstill Period, the Debtor shall not engage in any transactions not in the ordinary course of its business, and in particular shall not transfer property or grant consensual liens or security interests or similar encumbrances on its property, except in the ordinary course of its business. During the Standstill Period, the Debtor further agrees not to engage in any transaction that results in a change of control of the Debtor. Such transactions include, without limitation, a merger, sale of the equity interests in the Debtor (if it is an entity), or a sale of all or substantially all of the assets of the Debtor, in any one (1) transaction or series of related transactions. Debtor shall not take Legal Action against the Creditor during the Standstill Period.

* *Annotation.* Consistent with the goal of preserving the status quo for a short period of time, the Debtor should agree that it will make no precipitous changes in the ownership or control of its business. In the interest of mutuality, it should refrain from commencing Legal Action against the Creditor during the Standstill Period. Any time period applicable to Legal Action the Debtor may wish to pursue against Creditor is tolled under Paragraph 3.

5. *Good Faith Negotiations and Collaboration.* During the Standstill Period, the parties agree to engage in good faith negotiations to resolve the Standstill Issues and, if appropriate, to support one another's efforts to obtain new financing or other relief that may facilitate performance under the Underlying Agreement.

* *Annotation.* Although it is not likely that this term could be enforced by a court, it is based in the strong possibility that the best outcome for both parties may require their cooperation in obtaining the participation of third parties. It is designed to encourage the parties to negotiate toward a consensual resolution of the Standstill Issues, which may require either or both parties to obtain new financing, e.g., from the Small Business Administration or private lenders. In such cases, cooperation between the parties to this Standstill Agreement may be required or appropriate. For example, a new lender may be reluctant to make a new loan to the Debtor if it is in default under the Underlying Agreement unless the Creditor agrees to some sort of accommodation of this new financing. While the details of such accommodations are beyond the scope of this Standstill Agreement, the need to encourage parties to anticipate and address them is not.

6. *Interim Performance:* During the Standstill Period, the Debtor agrees to provide to the Creditor

*[This should describe payments or goods or services that may be provided by the Debtor to the Creditor notwithstanding the Standstill Agreement, which may be 'none' if that is the agreement.]

During the Standstill Period, the Creditor agrees to provide to the Debtor

*[This should describe payments or goods or services that may be provided by the Creditor to the Debtor notwithstanding the Standstill Agreement, which may be 'none' if that is the agreement].

* *Annotation.* Although the parties may wish to freeze the legal aspects of their relationship during the Standstill Period and have no further dealings, if the parties are in an ongoing contractual relationship (e.g., a revolving loan agreement or supply contract), it may be appropriate for the parties to specify interim forms of performance during the Standstill Period that differ from that contemplated by the Underlying Agreement. For example, the Debtor may be able to make reduced payments or ship smaller quantities or substitute goods during the Standstill Period. The Creditor may have extended a revolving line of credit under which the Debtor may still wish to borrow, although possibly on a reduced or modified basis. As indicated in the Annotation to Paragraph 3, there is no need to specify that interest provided for in the Underlying Agreement continues to accrue, unless the parties wish to alter that obligation. This optional term provides for such interim exchanges of performance without altering either the standstill contemplated by this agreement or the larger commercial relationship of the parties.

7. *Breach:* Any violation of Paragraph 3 by the Creditor shall be a "Creditor Breach" of this Standstill Agreement. Any violation of Paragraph 4 by the Debtor shall be a "Debtor Breach" of this Standstill Agreement.

* *Annotation.* Because this Standstill Agreement contemplates short-term mutual obligations, it should provide mutual legal consequences for a failure to satisfy those obligations. The key obligations are those set forth in Paragraphs 3 and 4, where the parties respectively agree to take no precipitous legal action during the Standstill Period. It does not contemplate that a violation of Paragraphs 5 or 6 will be a “Breach” for these purposes for ease of administrability. The parties are, of course, free to make the obligations under either or both of those paragraphs a “breachable” term.

8. *Remedies.* In the event of a Debtor Breach, the Creditor may pursue any Legal Action under the Underlying Agreement the same as if the parties had not entered into this Standstill Agreement. In the event of a Creditor Breach, the Creditor forfeits rights (including the right to interest or penalties) and remedies that accrued during the Standstill Period but for this Standstill Agreement.

* *Annotation.* Consistent with the goals of freezing legal rights and obligations, and creating a balanced, mutual agreement, this provision gives the Creditor the ability to resume Legal Action if the Debtor breaches its obligations under Paragraph 4. By a parity of reasoning, it penalizes a Creditor Breach by eliminating the Creditor’s ability to assert or collect on obligations that may have arisen during the Standstill Period.

9. *Representations and Warranties.* Each party represents and warrants that it has the power and authority to enter into this Standstill Agreement and that, when executed and delivered, this Standstill Agreement shall be the legally binding obligation of such party, enforceable in accordance with its terms.

10. *Electronic Forms and Signatures.* This Standstill Agreement can be executed by manual signature or authenticated by any electronic signature or other method effective under the law controlling the Underlying Agreement.

11. *Notices:* During the Standstill Period, the Creditor shall provide any notice to the Debtor regarding this Standstill Agreement as follows . During the Standstill Period, the Debtor shall provide any notice to the Creditor regarding this Standstill Agreement as follows .

* *Annotation.* This is intended to enable the parties to provide different, temporary noticing addresses during the term of the Standstill Agreement. For example, a physical address may not be an appropriate destination, since the parties may be working remotely. This makes it possible to substitute an email address or cell phone number if one is not provided in the Underlying Agreement. If the Underlying Agreement contains notice mechanisms that are sufficient for purposes of this Standstill Agreement, there is no need to provide an alternative here.

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By:
